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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MID TOWN**

SEPTEMBER 28, 2005

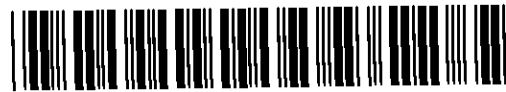
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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MID TOWN**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MID TOWN is made as of Sept. 28, 2005, by Mid Town Holding, LLC, a Colorado limited liability company.

ARTICLE I
GENERAL

1.1 Purposes. This "Declaration" (as defined below) is executed in order to impose upon certain real property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of such property, and to establish a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of such property. In furtherance thereof, this Declaration provides for the creation of Mid Town Owners Association, to own, operate and maintain the "Common Elements" (as defined below), and to administer and enforce the provisions of this Declaration, the "Bylaws" and the "Rules" (as such terms are defined below).

1.2 Declaration. Declarant, for itself and its successors and assigns, hereby declares that all of the "Property" (as defined below) shall, from and after the date hereof, constitute a planned community and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the covenants, conditions, restrictions, reservations, easements, equitable servitudes and other provisions set forth in this Declaration in furtherance of, and the same shall constitute, a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Property and to enhance the value, desirability and attractiveness of the Property. This Declaration shall: (i) run with the Property at law and as an equitable servitude; (ii) bind any "Person" (as defined below) having or acquiring any right, title or interest in any portion of the Property; (iii) inure to the benefit of and be binding upon every part of the Property and every interest therein; and (iv) inure to the benefit of, be binding upon and be enforceable by Declarant and its successors in interest and assigns, each "Owner" (as defined below) and its heirs, successors in interest and assigns, and the "Association" (as defined below) and its successors in interest.

1.3 Exhibits. The following exhibits are attached to and, by this reference, incorporated as part of this Declaration:

- | | |
|------------------|--|
| Exhibit A | Legal Description of the Property |
| Exhibit B | Common Elements |
| Exhibit C | Recorded Easements and Other Matters of Record |



ARTICLE II
DEFINITIONS

The following terms shall have the meanings set forth below when used herein.

2.1 “**Act**” means the Colorado Common Interest Ownership Act, codified at C.R.S. § 38-33.3-101 et seq., as the same has been and may hereafter be amended from time to time, and any statute which from time to time may replace the same.

2.2 “**Architectural Review Committee**” means the committee formed pursuant to Section 11.2.

2.3 “**Articles of Incorporation or Articles**” means the Articles of Incorporation of the Association which have been or will be filed with the Secretary of State of the State of Colorado, as amended from time to time.

2.4 “**Assessment**” means any monetary assessment, which may be a Common Assessment, a Special Assessment or a Specific Assessment, that is levied by the Association on one or more Lots pursuant to the terms of this Declaration.

2.5 “**Association**” means Mid Town Owners Association, a Colorado nonprofit corporation.

2.6 “**Association Documents**” means this Declaration, the Plat, the Articles, the Bylaws, the Design Criteria and the Rules, as the same may be amended from time to time.

2.7 “**Board of Directors or Board**” means the Board of Directors of the Association.

2.8 “**Bylaws**” means the Bylaws of the Association, as amended from time to time.

2.9 “**City**” means the City of Lafayette, State of Colorado.

2.10 “**Common Allocation**” means a percentage allocated to each Lot that is derived from a fraction, the numerator of which is one and the denominator of which is the total number of Lots within the Community. The percentages comprising the Common Allocations for the various Lots may be rounded by the Association in accordance with its ordinary practices adopted from time to time, provided the rounding methodology is applied in a materially consistent manner for all of the Lots.

2.11 “**Common Assessment**” means an Assessment levied on all Lots subject to assessment under Article IX to fund the Common Expenses as more particularly described in Section 9.3.

2.12 “**Common Elements**” means all real property, easements, possessory interests in property and Improvements within the Community owned or to be owned and maintained by the Association pursuant to this Declaration for the benefit, use or enjoyment of



the Owners. Subject to Sections 4.1(c) and 4.2, the Common Elements are described on **Exhibit B**. A portion of the Common Elements may be referred to as a "Common Element."

2.13 "**Common Expenses**" means, except for those costs and expenses expressly excluded below, all costs, expenses and financial liabilities incurred by the Association pursuant to this Declaration or the Bylaws, including, without limitation: all costs of operating, managing, maintaining, replacing or restoring (to the extent not covered by insurance or condemnation proceeds) the Common Elements and the Association's personal property; taxes on the Common Elements to the extent payable by the Association; general administrative costs incurred by the Association, including any administrative costs incurred in levying and collecting Assessments; and contributions to the Reserve Fund. Except as expressly provided in this Declaration, Common Expenses shall not include costs or expenses to be funded by or payable through levying of Special Assessments or Specific Assessments.

2.14 "**Community**" means the "planned community" created by this Declaration pursuant to the Act, the name of which planned community shall be "Mid Town."

2.15 "**Declarant**" means Mid Town Holding, LLC, a Colorado limited liability company, or any successor in interest or assignee who takes title to any portion of the Community for the purpose of development and/or sale and who is designated as the Declarant in a Recorded instrument executed by the immediately preceding Declarant.

2.16 "**Declarant Control Period**" means the period beginning on the date the Association is formed and ending on the first to occur of (i) 60 days after 75% of the maximum number of Lots that may be created pursuant to Section 3.3 have been conveyed to Owners other than Declarant; (ii) two years after the last conveyance of a Lot by Declarant in the ordinary course of business; and (iii) the date on which Declarant, in its sole discretion, voluntarily terminates the Declarant Control Period pursuant to a Recorded statement of termination. If Declarant terminates the Declarant Control Period pursuant to the preceding clause (iii), Declarant may require that, for the balance of what would have been the Declarant Control Period had Declarant not terminated it, certain actions of the Association or the Board, as described in the Recorded statement of termination, be approved by Declarant before they become effective. After termination of the Declarant Control Period, Declarant, if still an Owner, will have all of the rights and duties given to Members under the Association Documents and will retain all of the rights belonging to Declarant under the Association Documents (including without limitation the Special Declarant Rights) other than those that expire by their terms or pursuant to the Act upon the expiration of the Declarant Control Period.

2.17 "**Declaration**" means this document and all amendments or supplements hereto hereafter Recorded in the Records, together with all Plats for the Property.

2.18 "**Design Criteria**" means the design criteria standards promulgated by the Architectural Review Committee pursuant to Section 11.3 governing the construction, installation, modification or renovation of Improvements on any Lot.

2.19 "**Development Period**" means the period of time during which Declarant is entitled to exercise Development Rights. The Development Period shall commence upon the



Recording of this Declaration and shall terminate 30 years later unless reinstated or extended by agreement between Declarant and the Association; provided, however, that the exercise of any Special Declarant Rights pursuant to such agreement shall be subject to such terms as the Board may impose in such agreement. Declarant may terminate the Development Period at any time by Recording a notarized instrument executed by Declarant stating that the Development Period is terminated.

2.20 **“Development Rights”** means the rights reserved by Declarant pursuant to Section 4.1.

2.21 **“Director”** means a member of the Board of Directors.

2.22 **“Eligible Holder”** means a Mortgagee who provides a written request for notices to the Association, stating the name and address of such Mortgagee and the street address, or, if not available, other sufficient identification, of the Lot to which its Mortgage relates. The Fair Housing Administration and the Department of Veterans Affairs shall be considered Eligible Holders regarding any Lots for which they are insuring or guarantying Mortgages if they satisfy the written request requirements described above in this Section 2.22.

2.23 **“Final Plan”** means collectively, the Mid Town Final Plan, Recorded in the Records on NOV 16, 2005, at Reception No. 2738028, as approved by and on file with the City, including all tables, plans, exhibits and maps attached to or incorporated into such plan and any other materials that constitute, supplement or govern the zoning regulations for the Property or any part of it, as such plan and materials may be amended or replaced from time to time. **{note- fill in recording information.}**

2.24 **“First Mortgage”** means a Mortgage that is Recorded and has priority of record over all other Recorded liens except those liens made superior by statute (e.g., general ad valorem tax liens and special assessments, mechanics’ liens and, to the extent set forth in the Act, the Association’s liens for Assessments).

2.25 **“First Mortgagee”** means a beneficiary or holder of a First Mortgage.

2.26 **“Improvements”** means all structures, improvements and appurtenances on or to real property of every type and kind including, without limitation, buildings, outbuildings, fixtures, utilities, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, facilities associated with regular or cable or satellite television, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, grading, drainage facilities, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone or other utilities, as well as those construction activities necessary to build such items.

2.27 **“Lot”** means a physical portion of the Property, whether improved or unimproved, that is designated for separate ownership pursuant to this Declaration, the Final Plan or other applicable zoning document. Subject to Sections 4.1(d) and 4.2, the Lots are legally described and identified on the Plat. Any Lot may be subdivided into two or more Lots



in accordance with and subject to the limitations and requirements of Sections 4.1(d) and 4.2 of this Declaration. The boundaries between adjoining Lots may be relocated in accordance with and subject to the limitations and requirements of Sections 4.1(d) and 4.2 or Section 7.1 of this Declaration. The term Lot shall not include any Common Elements owned in fee simple by the Association or any property dedicated to any governmental or quasi-governmental entity for a public purpose. The term Lot, as used in this Declaration, is intended to be coextensive with the term "unit" as used in the Act, and, without limiting the foregoing, any unit within a legally established "condominium" (as defined in the Act) shall constitute a separate Lot under this Declaration.

2.28 "Member" means a Person who is a member of the Association pursuant to Section 8.1.

2.29 "Mortgage" means an unpaid or outstanding mortgage, deed of trust, deed to secure debt or any other form of security instrument encumbering the Property or a portion thereof.

2.30 "Mortgagee" means a beneficiary or holder of a Mortgage.

2.31 "Municipal Code" means the Lafayette Municipal Code in effect as of the date of this Declaration, as may be amended from time to time.

2.32 "Owner" means a Person or Persons, including Declarant, owning fee simple title of record to any Lot from time to time. The term "Owner" shall include a seller under an executory contract for sale and exclude a buyer thereunder and shall include a landlord under a lease affecting a Lot and exclude a tenant thereunder.

2.33 "Permittee" means a Person, other than an Owner, who is a tenant or occupant of a Lot or a Person who is an agent, employee, customer, contractor, licensee, guest or invitee of an Owner or of such tenant or occupant.

2.34 "Person" means a natural person, corporation, partnership, limited liability company, trustee or other legal entity.

2.35 "Plat" means the final plat of Mid Town, Recorded in the Records of Boulder County, Colorado, on Nov. 16, 2005, at Reception No. 2738037 as such Plat may be amended or supplemented from time to time. Without limiting any other provision of this Declaration, the Plat may be supplemented or amended by a subdivision or resubdivision plat that is filed pursuant to the City's subdivision regulations, references the Plat as originally recorded or otherwise satisfies the requirements of the Act. {note- fill in recording information.}

2.36 "Property" means all of the real property described on Exhibit A, the appurtenances thereto, and all Improvements now in place or hereafter constructed thereon.

2.37 "Quorum" means, with respect to a meeting of the Members or the Board of Directors, that percentage or number of the Members or Directors that constitutes a quorum pursuant to the applicable provisions of the Bylaws.



2.38 **“Records”** means the official real property records of Boulder County, State of Colorado; the phrases “to Record” and “Recording” mean, respectively, to file or filing for recording in the Records, and the phrases “of Record” and “Recorded” mean having been recorded in the Records.

2.39 **“Reserve Fund”** means a reserve fund to be established and maintained by the Board for the repair or replacement of the Common Elements and for unbudgeted and unplanned Common Expenses incurred by the Association from time to time (including, without limitation, the payment of any insurance deductible).

2.40 **“Rules”** means the rules and regulations governing the use of the Property which are adopted from time to time by the Association, the Board or the Architectural Review Committee. The Rules shall be binding upon all Owners and their Permittees.

2.41 **“Special Assessment”** means an Assessment levied in accordance with Section 9.4.

2.42 **“Special Declarant Rights”** means the rights of Declarant set forth in Article VI.

2.43 **“Specific Assessment”** means an Assessment levied in accordance with Section 9.5.

2.44 **“Supplemental Declaration”** means an amendment to this Declaration filed in the Records pursuant to this Declaration.

2.45 **“Taking”** means a taking by eminent domain or conveyance in lieu thereof.

2.46 **“Working Capital Fund”** means a fund to be maintained by the Association to provide the Association with sufficient working capital.

ARTICLE III
CREATION OF THE COMMUNITY

3.1 Creation. Upon the Recording of this Declaration, the Property shall be a “planned community” pursuant to the Act, and the name of the planned community shall be “Mid Town.” The Community is located entirely within the City.

3.2 Division of Property. Pursuant to the Act and subject to Sections 4.1(d) and 4.2, the Property is divided into the Lots identified and legally described on the Plat. The Lots are designated for separate ownership.

3.3 Number of Lots. The maximum number of Lots that may be created in the Community equals 31.



3.4 Allocations.

(a) Allocation of Votes. In all matters submitted to a vote of the Members of the Association, each Lot is allocated one vote in the Association; provided, however, that no vote shall be exercised for any Lot owned by the Association.

(b) Allocation of Common Expenses. Each Lot is allocated, and the Owner of the Lot is liable for, a percentage of the Common Expenses equal to such Lot's Common Allocation in effect from time to time. All other costs and expenses of the Association are allocated among the Lots as otherwise provided in this Declaration.

ARTICLE IV
DEVELOPMENT OF THE PROPERTY

4.1 Development Rights. Declarant hereby reserves the following Development Rights for the duration of the Development Period:

(a) Withdrawal of Property. To the extent permitted by the Act, Declarant reserves the right to amend this Declaration to withdraw all or any portion of the Property from the coverage of this Declaration whether such Property was originally described on **Exhibit A**. For this purpose each portion of or tract within the Property having its own discrete legal description at the time of its inclusion within the Property, whether as a separate subdivision lot or tract or by its own metes and bounds description, shall constitute a severable portion of the Property that may be withdrawn independently of all other portions of the Property. Upon such a withdrawal, the Common Allocation for each remaining Lot shall be subject to recalculation pursuant to the formula in Section 2.10, and the amendment to this Declaration effecting the withdrawal shall reflect such recalculation. Any amendment shall not require the consent of any Person other than the owner of the portion of the Property to be withdrawn, if other than Declarant. If the portion of the Property to be withdrawn includes any of the Common Elements, the Association shall consent to such withdrawal upon the request of Declarant.

(b) Designation for Public Purposes. Declarant reserves the right to designate or dedicate sites within the Property for public or quasi-public facilities as provided in Section 4.3.

(c) Creation and Conversion of Common Elements. Declarant reserves the right to establish, create and convert Common Elements as provided in Section 4.4.

(d) Subdivision and Replatting. Declarant reserves the unilateral right to subdivide any Lot into additional Lots, change the boundary line of or replat any Lots or other portions of the Property owned by Declarant, subject to the approval of the City.

4.2 Exercise of Development Rights. Declarant may exercise any Development Right by preparing, executing and Recording a Supplemental Declaration amending this Declaration as necessary to effectuate the exercise of such Development Right, which Supplemental Declaration shall be accompanied by any amendment or supplement to the Plat required by the Act. If the exercise of any Development Right by Declarant results in the



creation of additional Lots or a reduction in the number of Lots, then the Common Allocation for each Lot shall be adjusted accordingly. If Declarant, by exercising any Development Right, creates any new Common Elements, then the Supplemental Declaration shall describe such newly created Common Elements. Except as expressly provided to the contrary in this Declaration, Declarant's exercise of any Development Right shall not require the consent of any other Owner.

4.3 Governmental Interests. For so long as Declarant owns any of the Property, Declarant may designate and dedicate sites within the Property for fire, police and utility facilities, public schools and parks, and other public or quasi-public facilities. Such a site may include Common Elements, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance or dedication of the site (subject to Section 15.3), if so directed by Declarant. Such a site may also include other property not owned by Declarant provided the owner of such property consents. Subject to Declarant's consent during the Development Period, but otherwise within the discretion of the Board, the Association may dedicate portions of the Common Elements to the City or to any other local, state or federal governmental or quasi-governmental entity, subject to such approval as may be required by Section 15.3.

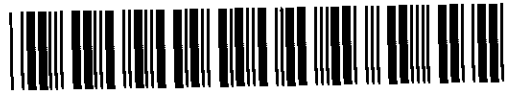
4.4 Common Elements.

(a) Generally. Subject to the other provisions of this Declaration expressly pertaining to establishment of Common Elements, the Common Elements are described on **Exhibit B**. Declarant shall be responsible for completing the construction of any Improvements that Declarant determines will be located on or that will constitute such Common Elements, including, without limitation, landscaping, monuments, signage, recreation facilities, drainage facilities, public trails, sidewalks, fences, walls and plantings. The Association at its election may agree to reimburse Declarant for sums incurred by Declarant which are indemnified under the foregoing provisions, in which case the Association's reimbursement obligation will also fall within the indemnity. Declarant will convey those Common Elements to be owned by the Association (whether in fee simple or as an easement) to the Association by bargain and sale deed upon substantial completion of the Improvements to be located thereon. Common Elements that comprise Improvements located on or within public rights-of-way shall automatically become, to the extent provided in Section 2.12, the property of the Association upon Declarant's substantial completion of such Improvements.

(b) Conversions. For the duration of the Development Period, Declarant reserves the unilateral right to convert any Lot or other portion of the Property owned by Declarant into Common Elements, so long as the pertinent Lot or portion of the Property is owned by Declarant or by an Owner who has agreed to the conversion with Declarant.

(c) Association's Obligation. The Association shall accept any grant, conveyance or dedication to it of any Common Elements made pursuant to this Declaration.

4.5 Plat Amendments. Declarant reserves the right to amend the Plat as it applies specifically to any Lot or other portion of the Property owned by Declarant or owned by another Owner with such Owner's consent. By taking title, each Owner of any Lot covenants



and agrees to cooperate (including any consent or joinder as required by the City) in connection with and not object to such proposed amendment so long as the amendment is sought in a manner that complies with the procedures prescribed in the City zoning and subdivision ordinance. No Owner required to cooperate with a proposed amendment to the Plat pursuant to this Section 4.5 shall be required to incur any costs or expenses in connection with such cooperation.

4.6 Succession to Declarant's Interests. The rights and interests reserved to or otherwise allocated in favor of Declarant under this Declaration (including, without limitation, the Development Rights and those rights arising under Section 4.5 above) may be assigned or transferred by Declarant, at its election and in whole or in part, to another Owner or other transferee, but only by an instrument expressly effectuating such assignment or transfer, and any deed from Declarant conveying any portion of the Property to another Person, or any other instrument of Record, shall not be effective to so transfer or assign any of Declarant's rights or interests hereunder, except to the extent specifically and expressly established therein. Each transferee of any portion of the Property, by such transferee's acceptance of the transfer or conveyance of Record, shall be bound by and subject to all such rights and interests in favor of the Declarant hereunder, and the foregoing provisions governing the transfer of those rights and interests. Each such transferee and each Owner, and their successors in interest, shall be bound to execute and deliver such documents as Declarant may require from time to time in order to verify and confirm the rights and interests of Declarant hereunder.

ARTICLE V
EASEMENTS

5.1 Easement for Use, Access and Enjoyment in and to Common Elements. Declarant hereby establishes and grants to each Owner a nonexclusive easement of use, access and enjoyment in and to the Common Elements. Any Owner may extend its right of use and enjoyment to its Permittees (excluding, however, Permittees whose status as such derives from a commercial relationship) subject to reasonable regulation by the Board. Without limiting the generality of the foregoing, Declarant hereby grants to each Owner a nonexclusive easement over and across all walkways and other pedestrian access-ways and all private drives, roads and streets designated as Common Elements, including, without limitation, any access easements of Record, for the purpose of gaining pedestrian or vehicular access, as applicable, between (a) the public streets and sidewalks adjoining the Property and (b) any other Common Elements or such Owner's Lot. The easement granted by this Section 5.1 shall be appurtenant to and pass with the title to the Lots and shall be subject to:

(a) This Declaration and any other applicable covenants and any other easements, rights-of-way or other title matters of Record against the Property;

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

(c) The right of the Board to adopt Rules regulating the use and enjoyment of the Common Elements in a manner consistent with their intended purpose, including rules limiting the number of guests who may use the Common Elements;



(d) The right of the Board to suspend any Owner's or such Owner's Permittees' right to use and enjoyment of any Common Elements (i) for any period during which any Assessment or charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed 30 days for a single violation (or, in the case of a continuing violation, for the duration of such violation, plus a period not to exceed 30 days) of this Declaration, the Bylaws or the Rules, after providing such notice and hearing as may be required pursuant to the Act;

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Elements, subject to Section 15.3 and such other approval requirements as may be set forth in this Declaration or the Act; and

(f) The right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of the Common Elements as security for money borrowed or debts incurred, subject to the limitations of the Act and the approval requirements set forth in Section 15.3.

5.2 Certain Easements for the Association. Declarant hereby establishes and grants to the Association a non-exclusive easement over each Lot and other portions of the Property (but excluding in any case the interior of any building Improvements that do not constitute Common Elements) for the purpose of installing, maintaining, repairing, replacing and improving landscaping, fencing, monumentation, signage, sidewalks, irrigation and water distribution systems, and utility servicing any Common Elements; provided, however, that in using such easement, the Association shall not unreasonably interfere with any Owner's quiet use and enjoyment of such Owner's Lot.

(a) Maintenance of Common Elements. Declarant hereby establishes and grants to the Association a non-exclusive easement over each Lot and other portions of the Property for the purpose of permitting the Association reasonable and necessary access to any of the Common Elements for the purpose of maintaining, repairing, replacing and improving any such Common Elements and the Improvements thereon (but excluding in any case the interior of any building improvements that do not constitute Common Elements); provided, however, that in using such easement, the Association shall not unreasonably interfere with any Owner's quiet use and enjoyment of such Owner's Lot.

5.3 Easements for Encroachments. In the event that, as a result of the construction, reconstruction, shifting, settlement, restoration, rehabilitation, alteration or improvement of any Improvement located on a Lot or the Common Elements or any portion thereof, any portion of any Lot or Common Elements now or hereafter encroaches upon any other Lot or Common Elements, Declarant hereby establishes and grants an easement for the continued existence and maintenance of such encroachment which will continue for so long as such encroachment exists and which will burden the Lot or Common Elements encroached upon and benefit the encroaching Lot or Common Elements. In no event, however, will an easement for any such encroachment be deemed established or granted if such encroachment is materially detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Lot(s) burdened by such encroachment or if such encroachment occurred due to willful and knowing misconduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.



5.4 Easements Benefiting Declarant. Declarant hereby reserves to itself, such easements over and across the Common Elements, which easements will exist for the duration of the Development Period, as may be reasonably necessary for Declarant's exercise of any Special Declarant Right, performance of any of Declarant's obligations hereunder, and the showing of the Property to prospective purchasers. In addition, and without limiting the easements reserved in the preceding sentence, Declarant reserves an easement over the Property for the purpose of Declarant's use and enjoyment of any water or water rights appurtenant to or associated with the Property (including, without limitation, all adjudicated, non-adjudicated, decreed, non-decreed, tributary, non-tributary and not non-tributary water rights, ditch rights and well permits) owned by Declarant.

5.5 Easements for Utilities. Declarant reserves for itself and its successors, assigns and designees, (including, without limitation and if so designated, the Association and its successors, assigns and designees), perpetual non-exclusive easements upon, across, over and under all of the Property (but not through any structures) to the extent reasonably necessary for the purposes of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals, and all utilities, including, without limitation, water, sewer, telephone, gas and electricity and storm and surface water drainage, and for installing any of the foregoing on property which Declarant, or the Association, respectively, owns or within easements designated for such purposes on the Plat. This reserved right must be exercised no later than the expiration of the Development Period. The designees of Declarant and the Association may include, without limitation, any governmental or quasi-governmental entity or utility company. Declarant specifically grants to the local water supplier, sanitary and/or storm sewer district, telephone company, cable television provider, electric company and natural gas supplier easements across the Property for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. The easement provided for in this Section 5.5 shall in no way affect, avoid, extinguish or modify any other Recorded easement on the Property. Any damage to a Lot resulting from the exercise of the easements described in this Section 5.5 shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of such easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot.

5.6 Right of Entry. Declarant reserves for the Association and other Persons described below an easement for the right, but not the obligation, to enter upon any Lot: (i) for emergency, security and safety reasons; (ii) to inspect any Lot for the purpose of ensuring compliance with this Declaration, the Bylaws and the Rules; and (iii) to remove nonconforming Improvements as provided in Section 11.7. Such right may be exercised by any member of the Board and the Association's officers, agents, employees and managers, the members of the Architectural Review Committee pursuant to Article XI, and, for emergency, security and safety purposes, all police, fire and ambulance personnel and other similar emergency personnel in the performance of their duties. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure such condition within a reasonable time after requested by the Board, but shall not authorize entry into any residence located on a Lot without permission of the occupant, except by emergency personnel acting in their official capacities.



5.7 Additional Easements.

(a) Declarant’s Right to Grant Easement. Declarant hereby reserves the non-exclusive right and power to grant, during the Development Period, such additional specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any of the Property.

(b) Association’s Right to Grant Easements. Notwithstanding anything to the contrary in Sections 13.3, 15.3 or other Sections of this Declaration, the Association, acting through the Board and without the approval of the members of the Association, may grant easements over the Common Elements for installation and maintenance of utilities, drainage facilities and roads and for other purposes not inconsistent with the intended use of the Common Elements.

5.8 Shared Driveways. Certain Lots within the Community have shared driveways with adjacent Lots. Declarant hereby grants to each Owner of a Lot with a shared driveway a nonexclusive easement over and across the adjacent Lot's driveway for the sole purpose of vehicular access to the applicable Lot. Such easement shall not include the right to park a vehicle on the adjacent Lot. Further, each Owner shall use best efforts to minimize any impact to the adjacent Lot due to use of the easement. All maintenance costs for all driveways within the Community, including shared driveways, shall be borne exclusively by the Owner of the applicable Lot.

5.9 Easements Run with Land. Except as otherwise provided in this Article V, all easements established and granted pursuant to this Article V are appurtenant to and run with the Property and will be perpetually in full force and effect so long as this Declaration is in force and will inure to the benefit of and be binding upon Declarant, the Association, Owners, Permittees and any other Persons having any interest in the Property or any part thereof. The Lots and the Common Elements will be conveyed and encumbered subject to all easements set forth in this Article V, whether or not specifically mentioned in such conveyance or encumbrance.

ARTICLE VI
SPECIAL DECLARANT RIGHTS

6.1 Special Declarant Rights. In addition to and without limiting any other right reserved by or for the benefit of Declarant in this Declaration or by operation of the Act (all of which shall also be Special Declarant Rights), Declarant reserves the following Special Declarant Rights, which, except as expressly provided below, may be exercised by Declarant for the duration of the Development Period, with no limitations on the extent to, or the order in which, such rights are exercised:

(a) To complete any Common Elements Improvements described on or in the Plat or this Declaration;

(b) To exercise any of the Development Rights;



(c) To maintain sales offices, management offices and advertising signs on the Property as set forth in Section 6.3;

(d) To merge or consolidate the Association with another common interest community of the same form of ownership; and

(e) To appoint and remove the Directors and the officers of the Association during the Declarant Control Period to the extent permitted by the Act and in accordance with Section 8.2.

6.2 Transfer of Special Declarant Rights. Declarant may transfer any or all of the Special Declarant Rights in accordance with Section 304 of the Act and Section 4.6 of this Declaration.

6.3 Models and Offices. During the Development Period, Declarant may maintain and carry on upon any Lot owned by Declarant (or any other Lot with consent of its Owner) or any portion of the Common Elements such facilities and activities as, in the reasonable opinion of Declarant may be required, convenient or incidental to the development of, construction of Improvements on, or sale of Lots or other real property owned by Declarant including, without limitation, business offices, signs, model units and sales offices. Such facilities may be of a number, size and location which Declarant reasonably determines shall adequately accommodate Declarant's development, sale and marketing of the Lots and the Property. Notwithstanding anything in this Declaration to the contrary, Declarant shall have the right to maintain models and sales offices on any Lot owned by Declarant.

6.4 Other Covenants. During the Development Period, no Person shall Record any declaration of covenants, conditions and restrictions, declaration of condominium or similar instrument affecting any portion of the Property, without Declarant's review and written consent as to the form and content of such instrument. Any attempted Recording of such an instrument without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by a written consent signed by Declarant.

ARTICLE VII
BOUNDARY RELOCATION AND SUBDIVISION OF LOTS

7.1 Relocation of Boundaries Between Adjoining Lots.

(a) Requirements. The boundaries between adjoining Lots may be relocated by a Supplemental Declaration upon application to the Association by the Owners of such Lots pursuant to this Section 7.1. In order to relocate the boundaries between adjoining Lots, the Owners of those Lots, as the applicant, must submit an application to the Board, which application shall be executed by those Owners and shall include:

(i) Evidence demonstrating to the Board that the applicant has complied, and that the proposed boundary relocation will comply with all applicable rules, regulations and ordinances of the City and that the proposed boundary relocation will not violate the terms of any Mortgage;



(ii) The proposed reallocation of Common Allocations among the Lots, if applicable;

(iii) The proposed form of Supplemental Declaration, including amendments to the Plat, as may be necessary to show the altered boundaries between adjoining Lots, and their dimensions and identifying numbers, and any other information required pursuant to the Act;

(iv) A deposit against attorneys fees and other costs that the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board; and

(v) Such other information as may be reasonably requested by the Board.

(b) Approval of Relocation. The Board shall approve any application for relocation of boundaries between adjoining Lots properly made under this Section 7.1 if: (i) the application satisfies the requirements of Section 7.1(a); (ii) the proposed relocation of boundaries in fact will comply with all applicable rules, regulations and ordinances of the City and will not violate the terms of any Mortgage; and (iii) the form of Supplemental Declaration submitted by the applicant is sufficient to effectuate the proposed relocation of boundaries in compliance with the terms of this Declaration and the Act. During the Development Period any proposed relocation of boundaries between adjoining Lots shall also require the written consent of Declarant, which consent shall not be withheld so long as the proposed relocation satisfies the requirements of clauses (i), (ii) and (iii) of this Section 7.1(b).

(c) Execution and Recording. No relocation of boundaries between adjoining Lots shall become effective until a Supplemental Declaration and, if necessary, an amendment to the Plat meeting the requirements of the Act have been executed and Recorded pursuant to Sections 217(3) and (5) of the Act.

(d) Costs. All costs and attorneys fees incurred by the Association as a result of an application for relocation of boundaries between adjoining Lots shall be the sole obligation of the Owner or Owners requesting such relocation and may be assessed against the Lot(s) of such Owner or Owners as a Specific Assessment.

7.2 Subdivision of Lots. Except as provided in Section 4.1(d), no Lot may be subdivided into two or more Lots.

7.3 No Limitation of Development Rights. Nothing in this Article VII is intended or shall be deemed to limit Declarant's rights under Section 4.1(d) or Section 4.2.

ARTICLE VIII
THE ASSOCIATION

8.1 Formation; Membership. The Association will be formed promptly after the recording of this Declaration. Every Owner, including Declarant, shall be a Member of the Association. When an Owner consists of more than one Person, all such Persons will,



collectively, constitute one Member of the Association and all such Persons shall be jointly and severally obligated to perform the responsibilities of Owner. Following a termination of this Declaration, the Association will consist of all Owners entitled to share in the distribution of proceeds of a sale of the Property. Membership in the Association will automatically terminate when a Person ceases to be an Owner, whether through sale, intestate succession, testamentary disposition, foreclosure or otherwise. The Association will recognize a new Owner as a Member upon presentation of satisfactory evidence of the sale, transfer, succession, disposition, foreclosure or other transfer of a Lot to such Owner. Membership in the Association may not be transferred, pledged or alienated in any way, except to a new Owner upon conveyance of a Lot. Any attempted prohibited transfer of a membership in the Association will be void and will not be recognized by the Association.

8.2 Board of Directors. The affairs of the Association shall be governed by the Board of Directors, which may, by resolution, delegate any portion of its authority to an executive committee or an officer, managing agent or Director of the Association. Except as otherwise specifically provided by law or in this Declaration, the Articles or the Bylaws, the Board may exercise all rights and powers of the Association (including, without limitation, those powers itemized in Section 8.3) without a vote of the Members. Subject to Section 6.1(e) and the provisions of this Section, the qualifications and number of Directors, the term of office of Directors, the manner in which Directors shall be appointed or elected and the manner in which Directors shall be replaced upon removal or resignation shall be as set forth in the Bylaws. In the performance of their duties, the Directors will act according to their ordinary business judgment, except to the extent the Act requires a greater standard of care.

8.3 Association Powers. Subject to the rights, powers and authority reserved by and conferred upon Declarant pursuant to this Declaration or the Act, the Association will serve as the governing body of the Community and shall have the powers and duties set forth in this Declaration and the Bylaws. The Association may:

(a) adopt and amend the Bylaws, and make and enforce the Rules, consistent with the rights, duties, terms and conditions established by this Declaration and the Bylaws;

(b) subject to Section 9.1(d), adopt and amend budgets for revenues, expenditures and reserves and assess and collect any Assessments and any other amounts due from Owners or others to the Association;

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

(d) except as otherwise provided in Section 11.2, appoint the members of the Architectural Review Committee;

(e) exercise any of the enforcement powers set forth in Section 8.5 or elsewhere in this Declaration;



(f) institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Property;

(g) make contracts and incur liabilities in accordance with the properly adopted and ratified budget;

(h) borrow funds to cover Association expenditures and pledge Association assets as security therefor, provided that Common Elements may be subjected to a security interest only pursuant to Section 15.3;

(i) regulate the use, maintenance, repair, replacement and modification of the Common Elements in accordance with the properly adopted and ratified budget or otherwise in accordance with this Declaration;

(j) cause additional improvements to be made as a part of the Common Elements in accordance with the properly ratified budget, or otherwise in accordance with this Declaration;

(k) acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property (including, without limitation, one or more Lots), provided that Common Elements may be conveyed or encumbered only pursuant to Section 15.3;

(l) grant easements, leases, licenses, and concessions through or over the Common Elements;

(m) impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements and for any services provided to Owners;

(n) impose charges for late payment of Assessments, recover reasonable attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after providing notice and an opportunity to be heard, as provided in the Bylaws, levy reasonable fines for violations of this Declaration, the Bylaws or the Rules;

(o) impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments;

(p) provide for the indemnification of its officers and Directors as provided in the Bylaws or the Articles and maintain directors' and officers' liability insurance;

(q) assign its right to future income, including the right to receive Assessments;

(r) exercise any other powers expressly conferred by this Declaration, the Bylaws or the Act or reasonably implied from or necessary to effectuate such powers;



(s) except as prohibited by the Act, exercise all other powers that may be exercised in the State of Colorado by a nonprofit corporation; and

(t) exercise any other powers necessary and proper for the governance and operation of the Association.

This Declaration may not and is not intended to impose any limitations on the powers of the Association to deal with the Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with any other Person.

8.4 Bylaws. The Association may adopt Bylaws for the regulation and management of the Association, provided that the provisions of the Bylaws will not be inconsistent with the provisions of this Declaration or the Act. The Bylaws may include, without limitation, provisions regarding the voting rights of the Owners, the appointment or election of the Board, and the appointment or election of officers of the Association.

8.5 Enforcement.

(a) Sanctions and Self-Help. After notice and an opportunity to be heard to the extent required by the Act, the Association, acting through the Board or any authorized agent, may: (i) impose sanctions (including, without limitation, reasonable monetary fines) for violations of this Declaration, the Bylaws or the Rules; (ii) exercise self-help to cure any violations of this Declaration, the Bylaws or the Rules that an Owner of Permittee fails or refuses to cure; and (iii) suspend any services it provides to any Owner who is more than 15 days delinquent in paying any Assessment or other charge due to the Association. All of the remedies set forth in this Declaration and the Bylaws shall be cumulative of each other and any other remedies available at law or in equity. If the Association prevails in any action to enforce the provisions of this Declaration, the Bylaws or the Rules, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred by it in such action.

(b) No Waiver. In no event shall the Association's failure to enforce any covenant, restriction or rule provided for in this Declaration, the Bylaws or the Rules constitute a waiver of the Association's right to later enforce such provision or any other covenant, restriction or rule.

ARTICLE IX
FINANCIAL MATTERS AND ASSESSMENTS

9.1 Financial Matters. The Board, on behalf of the Association, will discharge the following obligations with respect to financial matters:

(a) Books and Records. The Board will cause to be maintained full and complete books and records of the Association's business and operations, including, without limitation, current copies of this Declaration and all amendments hereto, the Bylaws, the Rules, the approved budget for the current fiscal year, financial statements, books and records reflecting all assets, liabilities, capital, income and expenses of the Association, and supporting materials, such as bank statements and invoices, for at least the shorter of (i) the prior three fiscal years or



(ii) all of the fiscal years in which the Association has been in existence. All of such books and records will be made available for inspection by any Owner or Eligible Holder or their respective authorized representatives during normal business hours upon reasonable prior written request.

(b) Returns. The Board will cause to be prepared and filed before delinquency any and all tax, corporate or similar returns or reports that the Association is required by law to prepare and file.

(c) Preparation of Budget. The Board may, and if levying Assessments shall, cause to be prepared and adopt annually, not less than 45 days prior to the beginning of each fiscal year of the Association, a proposed budget for the Association.

(d) Ratification of Budget. Within 45 days after adoption by the Board of any proposed budget for the Association, the Board will send by ordinary first-class mail or otherwise deliver to all Owners a summary of the proposed budget and will set a date for a meeting of the Owners to consider ratification of the proposed budget not less than 14 nor more than 60 days after mailing or other delivery of the summary. The Board will give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Board does not require the affirmative approval of the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by more than 50% of the total number of Owners, whether or not a Quorum is present. In the event that the proposed budget is vetoed, the budget last proposed by the Board and not vetoed by the Owners will continue in effect until such time as a subsequent budget proposed by the Board is not vetoed by the Owners as described above. For the first fiscal year of the Association, the Board may adopt the Declarant's estimated budget for the Association and assess Common Assessments pursuant to Section 9.3, provided that the Board submits such budget to the Owners in accordance with the foregoing provisions after adopting the same.

(e) Annual Financial Statements. With respect to each fiscal year in which the Association levies Assessments, the Board will cause to be prepared annually a report that fairly represents the financial condition of the Association. Such report shall consist of a balance sheet as of the end of the preceding fiscal year, an operating (income) statement for such fiscal year and a statement of changes in the Association's financial position for such fiscal year. A copy of such annual report will be distributed to each Owner within 120 days after the close of the fiscal year.

(f) Reserve Accounts. The Board shall cause the Reserve Fund to be maintained in a bank account or bank accounts that is or are separate from the bank account used for the Association's ordinary receipts and disbursements.

9.2 Creation of Assessments. There are hereby created assessments for such Association expenses as may be authorized from time to time pursuant to this Declaration. There shall be three types of Assessments: (a) Common Assessments as described in Section 9.3; (b) Special Assessments as described in Section 9.4; and (c) Specific Assessments as described in Section 9.5. Each Owner, by accepting a deed for any Lot, is deemed to covenant and agree to pay these Assessments pursuant to the terms and conditions of this Declaration.



9.3 Common Assessments. Subject to Section 9.10, each Lot is subject to Common Assessments for the Lot's share of the Common Expenses as allocated pursuant to Section 3.4(b). Common Assessments will be calculated, paid, adjusted and reconciled in accordance with the following provisions:

(a) Budget and Payment. The Association shall set the Common Assessments for each fiscal year at a level which is reasonably expected to produce total income for the Association for such fiscal year equal to the total Common Expenses set forth in the budget adopted by the Board and ratified by the Owners pursuant to Section 9.1(d). In determining the total funds to be generated through the levy of Common Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any Assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to Common Assessments during the fiscal year.

(b) Adjustment. To the extent that the Common Assessments the Board determines will be received for the balance of any fiscal year will be inadequate, or more than required, to meet the Association's obligations intended to be covered by such Common Assessments, the Board may amend the budget and increase or decrease the Common Assessments for the balance of such fiscal year upon not less than 30 days' prior notice to all Owners. Notwithstanding the foregoing, however, if any such amendment individually or in the aggregate with all previous amendments within any fiscal year would cause the Common Assessments levied against any Lot to increase for such fiscal year by more than 10% over the amount called for pursuant to the budget previously ratified by the Owners pursuant to Section 9.1(d), then prior to increasing the Common Assessments based on such amended budget the Board must submit the same for ratification by the Owners using the procedures set forth in Section 9.1(d).

(c) Reconciliation. As soon as reasonably possible after the end of each fiscal year, the Board will cause the actual Common Expenses incurred by the Association during such fiscal year to be reconciled against the Common Assessments received by the Association from the Owners. To the extent that any Owner has paid more than its Common Allocation of such actual Common Expenses, the Board may either refund the overpayment to the Owner or credit such overpayment against such Owner's obligation for Common Assessments for the next ensuing fiscal year. To the extent any Owner has underpaid its Common Allocation of such actual Common Expenses, the Board may either demand in writing that such Owner pay the amount of such underpayment of Common Assessments to the Association within a specified period of time, as determined by the Board, after the Board notifies such Owner of such underpayment (which period of time may not be less than thirty (30) days), or the Board may include such underpayment in such Owner's obligations for Common Assessments for the next ensuing fiscal year.

9.4 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the Reserve Fund. Subject to Section 9.10, each Lot is subject to Special



Assessments for the Lot's Common Allocation of the total Special Assessment levied by the Association. Except as otherwise specifically provided in this Declaration, no Special Assessment shall require the approval of the Members, but if such Special Assessment is levied during the Development Period, the consent of Declarant shall be required. 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. Without limiting the generality of the foregoing, the Board may levy Special Assessments to cover certain costs of restoration or replacement of Common Elements in the event of damage, destruction or Taking of such Common Elements, as set forth in Sections 13.2(a)(v) and 13.3.

9.5 Specific Assessments. The Association shall have the power to levy Specific Assessments against one or more particular Lot(s) as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items or services to such Lot or occupants thereof upon request of the Owner of such Lot pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which may include, without limitation, landscape maintenance and snow removal), which Specific Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Association;

(b) to cover liabilities and costs (including, without limitation, attorneys' fees) incurred in bringing the Lot into compliance with the terms of this Declaration, the Bylaws or the Rules, or costs incurred as a consequence of the conduct of the Owner or such Owner's Permittees (including, without limitation, any costs incurred at the election of Declarant or the Association to cure a breach or violation of any provision of this Declaration, the Bylaws or the Rules by such Owner or Permittees); provided, however, the Board shall give the Owner of such Lot notice and an opportunity to be heard as provided in the Bylaws before levying any Specific Assessment under this Section 9.5(b); and

(c) to cover costs and expenses incurred by the Association that may be levied as Specific Assessments pursuant to the express terms of this Declaration.

9.6 Working Capital Fund. An initial Working Capital Fund will be established for the Association in an amount equal to one-fourth (1/4) of the annual Common Assessment for each Lot (based on Declarant's estimated budget for the Association, or, if available, the annual, properly ratified budget of the Association). For each Lot, the contribution to the Working Capital Fund shall be due on the closing of the sale of the Lot to an Owner. An Owner's contribution to the Working Capital Fund will be collected by Declarant on behalf of the Association at the closing of such Owner's purchase of its Lot. Any contribution to the Working Capital Fund shall be in addition to, not in lieu of, the annual Common Assessment and shall not be considered an advance payment of such Common Assessment. The Working Capital Fund may not be used to defray any of Declarant's expenses, reserve contributions or construction costs or to make up any budget deficits incurred by the Association during the Declarant Control Period.



9.7 Owners' Obligations for Assessments.

(a) Personal Obligation. Each Assessment, together with interest computed from the due date of such Assessment at 21% per annum or such lower rate set by the Board, late charges in such amount as the Board may establish by resolution, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which the Assessment is made until paid, as more particularly provided in Section 9.9. Without limiting Section 15.2, each such Assessment, together with such interest, late charges, costs and reasonable attorneys' fees, and any other obligations or liabilities imposed by or pursuant to this Declaration, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment, obligation or liability arose. No holder of a First Mortgage who becomes the Owner of a Lot by exercising the remedies provided in its Mortgage shall be personally liable for unpaid Assessments which accrued prior to such acquisition of title. Nothing in this Declaration is intended or shall be construed to limit the liability of a First Mortgagee (or its foreclosure purchaser or other successors in interest) who becomes the Owner of a Lot for any Assessments levied against such Lot while such First Mortgagee is the Owner of it.

(b) Terms of Payment. Except for Specific Assessments, which shall be paid in the manner determined by the Board, Assessments shall be paid in equal monthly, quarterly or annual installments on or before the first day of each month, quarter or fiscal year, as applicable, or in such other reasonable manner as the Board may establish. The Board may grant discounts for early payment, require advance payment of Assessments at closing of the transfer of title to a Lot, and impose special requirements upon Owners with a history of delinquent payment.

(c) No Set-Off or Abatement. No Owner may exempt himself or herself from liability for Assessments by non-use of Common Elements, abandonment of his or her Lot or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or the Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action by the Association or the Board.

(i) Estoppel Certificate. Within 14 business days after receipt of a written request from any Owner or Mortgagee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, the Association shall furnish to such Owner or Mortgagee, by personal delivery or certified mail, first-class postage prepaid, return receipt requested, an estoppel certificate in writing signed by an Association officer and addressed to such Owner or Mortgagee, or the designee of either, stating any then unpaid Assessments due from, or other known defaults by, the requesting Owner or the Owner of the Lot encumbered by such Mortgagee's Mortgage, or stating that there are no unpaid Assessments due from, or other known defaults by, such Owner, as the case may be. Such an estoppel certificate executed in favor of an Owner, Mortgagee or other Persons named therein who rely thereon in good faith will be conclusive upon the Association as to the matters set forth therein and such Owner's Lot will not be subject to a lien for any unpaid Assessments against such Lot arising before the date of such certificate and in excess of any unpaid amounts



stated in such certificate. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

9.8 Declarant's Obligation for Assessments. Until the Association levies Assessments, Declarant shall pay the Association's costs and expenses. After Assessments commence as provided in Section 9.10, Declarant's obligations for Assessments may be satisfied in the form of cash or by "in kind" contributions of services or materials to the Association, or by any combination of these.

9.9 Lien for Assessments.

(a) Perfection and Priority of Lien. The Association shall have a lien against each Lot to secure payment of delinquent Assessments, as well as interest (computed from the due date of such Assessment at a rate of 21% per annum or such lower rate set by the Board), late charges in such amount as the Board may establish by resolution, costs and reasonable attorneys' fees. Such lien shall be perfected upon the Recording of this Declaration and no further claim of lien shall be required. Notwithstanding the foregoing and without limitation on the effectiveness or perfection of the lien against each Lot, the Association shall have the right, but not the obligation, to prepare and Record a "Notice of Lien" in a form satisfactory to the Board which may set forth (i) the amount of any Assessment, charge, fine or other amount due and owing to the Association; (ii) the date such amount was due and payable and the date from which interest accrues; (iii) a recitation of the costs and expenses (including reasonable attorneys' fees) incurred in attempting to collect the unpaid amount as of the date of recording of such Notice of Lien; (iv) the Lot encumbered by the lien; and (v) the name or names, last known to the Association, of the Owner of the Lot. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law are superior, and (b) the lien or charge of any First Mortgage made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments shall be prior to a First Mortgage to the extent provided by the Act.

(b) Enforcement of Lien. Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of mortgages under the laws of the State of Colorado. The Association may bid for a Lot at any foreclosure sale and acquire, hold, lease, mortgage and convey such Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on behalf of the Association as Owner of such Lot; (b) no Assessments shall be levied against such Lot; and (c) each other Lot shall be charged, in addition to its usual Assessments, its pro rata share of the Assessments that would have been charged the Lot acquired by foreclosure had such Lot not been acquired by the Association. The Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(c) Transfer of Lot. The sale or transfer of any Lot shall not affect an existing lien for previous Assessments or relieve such Lot from any lien for subsequent Assessments. Upon sale or transfer of a Lot pursuant to foreclosure of a First Mortgage, the amount of Assessments included in any lien extinguished by foreclosure of a First Mortgage shall become Common Expenses collectible as Common Assessments levied against the Lots



subject to Common Assessments, excluding, however, the Lot acquired through the foreclosed First Mortgage.

9.10 Commencement of Assessments. Provided the Association has taken necessary action to levy Assessments pursuant to this Article IX, Common Assessments and Special Assessments shall commence for each Lot at the closing of the sale of the Lot with a completed house thereon to an Owner. Such amounts will be collected by Declarant on behalf of the Association at the closing of such Owner’s purchase of its Lot. The obligation to pay Specific Assessments shall commence as to any Lot when the Association levies the Specific Assessments against the Lot pursuant to this Declaration. The first annual Common Assessments and Special Assessments levied on each Lot shall be prorated according to the number of months remaining in the Fiscal Year at the time Assessments commence on the Lot.

9.11 Failure to Assess. Failure of the Board to fix Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification or release of any Owner’s obligation to pay Assessments. In such event, each Owner shall continue to pay Common Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

9.12 Exempt Property. The following property shall be exempt from payment of Assessments: (i) all Common Elements owned in fee simple by the Association and (ii) any property dedicated to and accepted by any governmental authority or public utility.

ARTICLE X
MAINTENANCE

10.1 Association’s Responsibilities.

(a) Maintenance of Common Elements. The Association shall maintain and keep in good condition, repair and working order the Common Elements, which maintenance may pertain, without limitation, to:

(i) all landscaping and other flora, parks, ditches and gullies and other Improvements, including any private streets and bike and pedestrian pathways/trails, situated upon the Common Elements;

(ii) landscaping within public rights-of-way that abut or provide access to the Property (unless maintained by any public entity);

(iii) all ponds, streams and wetlands owned by the Association and located on the Property which serve as part of the drainage and storm water retention system for the Property, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits and similar equipment installed therein or used in connection therewith; and

(iv) all fencing installed by Declarant or the Association situated upon the Common Elements.



(b) Maintenance of Other Property. The Association may maintain other property which it does not own, including, without limitation, any property that has been transferred to the City, other quasi governmental entity, or dedicated to the public, if the Board determines that such maintenance is necessary or desirable.

(c) Operation of Facilities. The Association shall maintain the facilities and equipment within the Common Elements in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, or unless Members representing 80% of the total vote in the Association agree in writing to discontinue such operation.

(d) Election to Perform Owners' Duties. The Association may elect to maintain or repair any Lot or portion thereof, the maintenance or repair of which is the responsibility of an Owner pursuant to Section 10.2, if (i) such Owner has failed, for more than thirty (30) days after notice from the Association, to perform its responsibilities under this Declaration with respect to the maintenance or repair of its Lot, and (ii) such failure has a material effect on the appearance of such Lot when viewed from any area outside such Lot or has a material adverse effect on the use of another Lot or any Common Element for its permitted and intended use; provided, however, that if such failure is not susceptible of being cured within such 30-day period, the Association will not be entitled to perform any repairs or maintenance if such Owner commences performance of its obligations within such 30-day period and thereafter diligently completes such performance. Such Owner will pay all costs (including, without limitation, reasonable attorneys fees) incurred by the Association in exercising its rights under this Section 10.1(d), and such costs shall be levied against such Owner as a Specific Assessment. Such payment will be made upon receipt of a demand from the Association therefor. If an Owner fails to make such payment within 30 days of receipt of a demand therefor, the Association will be entitled to take whatever lawful action it deems necessary to collect such payment including, without limitation, foreclosing its lien or instituting an action at law or in equity.

10.2 Owners' Maintenance Responsibility. Each Owner shall maintain such Owner's Lot and the Improvements thereon in a clean, safe, attractive and orderly manner and shall perform all necessary repairs of such Lot and Improvements, unless such maintenance responsibility is otherwise assumed by the Association pursuant to this Declaration.

ARTICLE XI
ARCHITECTURAL STANDARDS

11.1 General.

(a) Compliance and Approval. Subject to Section 11.1(b) and Section 11.8, no Improvements shall be constructed, installed, modified or renovated on any Lot, except in compliance with the Design Criteria and with the prior approval of the Architectural Review Committee pursuant to this Article XI.

(b) Interior Modifications; Modifications in Accordance with Original Plans. Any Owner may remodel, paint or redecorate the interior of structures on a Lot without



approval of the Architectural Review Committee pursuant to this Article XI. However, modifications to the interior of screened porches, patios and similar portions of structures on a Lot visible from outside such structures shall be subject to such approval. No approval shall be required to repair the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(c) Use of Licensed Architects. All dwellings constructed on any portion of the Property shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer; provided, however, that the Architectural Review Committee may waive this requirement for one or more Lots or Owners in its sole discretion.

(d) Declarant and Common Elements Exempt; Declarant Approvals. Notwithstanding any provisions to the contrary contained in this Declaration, this Article XI shall not apply to the activities of Declarant or to the construction, modification or removal of Improvements on the Common Elements by or on behalf of the Association. Furthermore, in the event that Declarant, before the formation of the Architectural Review Committee or at any time during the Declarant Control Period, renders any written approval of any specified Improvements at the request of and for the benefit of any Owner, the Architectural Review Committee shall be bound by that approval as if it had given such approval in the first instance pursuant to the terms of this Declaration.

(e) No Amendment without Declarant's Consent. This Article XI may be amended during the Development Period only with Declarant's written consent.

11.2 Architectural Review Committee. Responsibility for promulgating and enforcing the Design Criteria and review of all applications for Improvements subject to review under this Article XI is vested in the Architectural Review Committee. The Architectural Review Committee shall consist of either three or five members, who shall be natural Persons. During the Development Period, Declarant shall have the exclusive right, in its full discretion, to appoint and remove all members of the Architectural Review Committee. Declarant may surrender its right to appoint the members of the Architectural Review Committee by a Recorded instrument executed by Declarant. After the Development Period or upon Declarant's earlier surrender of its right to appoint and remove the members of the Architectural Review Committee, the Board shall have the exclusive right, in its full discretion, to appoint and remove the members of the Architectural Review Committee. The members of the Architectural Review Committee need not be Owners or representatives of Owners, and may, without limitation, be architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Architectural Review Committee may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the Architectural Review Committee in having any application reviewed by architects, engineers or other professionals and may vary between Lots and types of Lots.



11.3 Design Criteria.

(a) Generally. The Architectural Review Committee may adopt Design Criteria at its initial organizational meeting or at any time thereafter. The Design Criteria may contain general provisions applicable to all of the Property, as well as specific provisions that vary according to land use and from one portion of the Property to another depending upon location, unique characteristics and intended use. The Design Criteria shall provide guidance to Owners regarding matters of particular concern to the Architectural Review Committee in considering applications hereunder. The Design Criteria are not the exclusive basis for decisions of the Architectural Review Committee and compliance with the Design Criteria does not guarantee approval of any application.

(b) Amendment. The Architectural Review Committee shall have sole and full authority to amend the Design Criteria. Any amendments to the Design Criteria shall be prospective only and shall not apply to require modifications to plans or removal of structures previously approved by the Architectural Review Committee. There shall be no limitation on the scope of amendments to the Design Criteria; the Architectural Review Committee is expressly authorized to amend the Design Criteria to remove requirements previously imposed and otherwise make the Design Criteria less restrictive.

(c) Availability; Effect of Recording. The Architectural Review Committee shall make the Design Criteria available to Owners who seek to engage in development or construction on a Lot. In the Architectural Review Committee's discretion, such Design Criteria may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Criteria was in effect at any particular time.

(d) Other Recorded Documents. The Design Criteria shall automatically be deemed to include any other design, construction, use or landscaping guidelines, requirements or restrictions contained in any other Recorded documents affecting all or substantially all of the Property, including, without limitation, the Final Plan and the Plat.

11.4 Procedures.

(a) Submission of Plans. Plans and specifications showing the nature, kind, shape, color, size, materials and location of all proposed Improvements shall be submitted to the Architectural Review Committee for review and approval or disapproval prior to the commencement of construction of such Improvements. In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. The Architectural Review Committee may condition its approval on such changes in the plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving the material submitted. In reviewing each submission, the Architectural Review Committee may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography and finish grade elevation, among other things. Decisions of the Architectural Review Committee may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic



matters are subjective and may vary as Architectural Review Committee members change over time.

(b) Decisions. The Architectural Review Committee shall meet from time to time as necessary to perform its duties hereunder. The vote of the majority of all of the members of the Architectural Review Committee, or the written consent of a majority of all of such members, shall constitute an act of the Architectural Review Committee. In the event that the Architectural Review Committee fails to approve or disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be materially inconsistent with the Design Criteria unless a variance has been granted in writing by the Architectural Review Committee pursuant to Section 11.8.

11.5 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

11.6 Limitation of Liability. Review and approval of any application pursuant to this Article XI are made on the basis of aesthetic considerations only and the Architectural Review Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, for ensuring that the proposed improvements do not interfere or encroach upon property boundaries, easements or setbacks, for changes in drainage on either the Owner's Lot or any adjacent property, or for ensuring compliance of such improvements with any specific requirements of this Declaration (e.g., restrictions on altering established drainage). Neither Declarant, the Association, the Board, the Architectural Review Committee, nor any member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the Architectural Review Committee and its members shall be defended and indemnified by the Association as provided in the Articles.

11.7 Enforcement.

(a) Removal of Improvements. Any Improvement constructed, installed, modified or renovated on or to any Lot in violation of this Article XI shall be deemed to be nonconforming. Upon written request from the Architectural Review Committee, the Owner of the Lot on which such Improvement is located shall, at such Owner's own cost and expense, remove such Improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming work or, if applicable, cure such nonconformance by bringing the Improvement into compliance with the requirements of the Architectural Review Committee. Should an Owner fail to remove and restore or cure as required, then either Declarant or the Association shall have the right to enter the Lot, remove the nonconforming Improvement, and restore the Lot to substantially the same condition as previously existed. If the Association undertakes such right of entry and cure, then all costs of any such entry, removal and restoration,



together with interest at the maximum rate then allowed by law, may be assessed against the subject Lot and collected as a Specific Assessment.

(b) Completion of Work. Unless otherwise specified in writing by the Architectural Review Committee, any approval granted under this Article XI shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, either the Declarant or the Association, shall be authorized to enter upon the Lot and remove or complete any incomplete work. If the Association undertakes such right of entry and cure, then it may assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment.

(c) Exclusion from Property. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article XI and the Design Criteria may be excluded from the Property, subject to the notice and hearing procedures contained in the Bylaws. Neither Declarant, the Association, nor the officers, Directors or committee members of either, shall be held liable to any Person for exercising the rights granted by this Section 11.7(c).

(d) Legal and Equitable Remedies. In addition to the foregoing, Declarant and the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article XI and the decisions of the Architectural Review Committee.

11.8 Variances, Exemptions and Delegation. The Architectural Review Committee, in its sole discretion, may: (a) permit variances from the substantive or procedural provisions of the Design Criteria with respect to any application submitted pursuant to Section 11.4(a); and (b) exempt any Lot from the requirements of the Design Criteria.

ARTICLE XII
USE RESTRICTIONS

12.1 Residential and Business Uses.

(a) Residential Use. Except as set forth in this Section 12.1, the Property shall be used only for residential, recreational and related purposes consistent with this Declaration.

(b) Conduct of Business Activities. No business or trade, may be conducted in or from any Lot, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activities is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all applicable zoning and other legal requirements; (c) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a



nuisance or a hazardous or offensive use or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

(c) “Business or Trade”. The terms “business” and “trade,” as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full- or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

(d) Exceptions. Notwithstanding the above, the leasing of a Lot or any portion thereof and the management of such Lot as rental property shall not be considered a business or trade within the meaning of this Section 12.1. This Section 12.1 shall not apply to any activity conducted by Declarant with respect to the development or sale of the Property, or to any activity conducted by Declarant or the Association that relates to the performance of their respective rights or obligations under this Declaration or otherwise benefits the Owners.

12.2 Leasing of Lots. “Leasing,” for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot or any portion thereof by any person or persons other than the Owner, for which the Owner receives any consideration or benefit including, without limitation, a rent, fee, service, gratuity or emolument. Any lease must be in writing. The Owner must make available to the lessee copies of this Declaration, the Bylaws and the Rules.

12.3 Subdivision of Lot; Time-Sharing. No Lot shall be subdivided or its boundary lines changed except pursuant to the terms and limitations of Article VII or the exercise of Development Rights by Declarant. No Lot shall be made subject to any type of time-sharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

12.4 Water and Mineral Operations. No oil or water drilling, oil or water development operations, oil refining, quarrying or mining operations of any kind shall be permitted on the Property except by Declarant or by a party acting under written authorization of Declarant.

12.5 Unightly or Unkempt Conditions. All portions of a Lot outside of enclosed structures shall be kept in a clean and tidy condition at all times. Nothing shall be done, maintained, stored or kept outside of enclosed structures on a Lot which, in the determination of the Board, causes an unclean, unhealthy or untidy condition to exist or is obnoxious to the senses. Any structures, equipment or other items which may be permitted to be erected or placed on the exterior portions of Lots shall be kept in a neat, clean and attractive condition and shall promptly be removed upon request of the Board if, in the judgment of the Board, they have become rusty or dilapidated or have otherwise fallen into disrepair. The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unightly or unkempt conditions is prohibited, unless either conducted entirely within an enclosed garage or, if



conducted outside, begun and completed within twelve (12) hours, and not done on a regular or frequent basis. No Owner or Permittee shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances in any drainage ditch, stream, pond or lake or elsewhere on the Property, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff and such application complies with applicable law.

12.6 Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot that emits foul or noxious odors outside the Lot or creates noise or other conditions that tend to disturb the peace, quiet, safety, comfort or serenity of the occupants and invitees of other Lots. The following activities are prohibited on the Property: illegal activities, and any activities which, in the reasonable determination of the Board, tend to cause embarrassment, discomfort, annoyance or nuisance to persons using the Common Elements or to the occupants and Permittees of other Lots.

12.7 Prohibited Conditions. The following conditions, structures and activities are prohibited on the Property unless prior approval in writing is obtained from the Architectural Review Committee:

(a) Antennas. No exterior antennas of any kind, including, without limitation, satellite dishes, shall be permitted except with the approval of the Association, which approval may be granted in blanket form by the Rules with respect to particular types of antennas or satellite dishes;

(b) Tree Removal. No trees or shrubs shall be removed except in compliance with Article XI;

(c) Air-Conditioning Units. No window air-conditioning units or evaporative coolers shall be installed;

(d) Lighting. Exterior lighting visible from the street shall not be permitted except for (i) lighting approved for installation on a Lot pursuant to Article XI; (ii) street lights in conformity with an established street lighting program approved by the City; and (iii) reasonable seasonal decorative lights during the holiday season;

(e) Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation or similar items shall be permitted outside of any structure on a Lot, including, without limitation, fountains or clotheslines;

(f) Energy Conservation Equipment. Subject to the provisions of C.R.S. § 38-30-168, no solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure and approved by the Architectural Review Committee;

(g) Signs. No sign of any kind, including, without limitation, banners or similar items advertising or providing directional information, shall be erected on the Property without the written consent of the Board, except entry and directional signs installed by



Declarant and signs erected pursuant to Section 6.3 and except for one (1) sign, not to exceed two (2) feet by three (3) feet in dimensions, which may be used in connection with the sale of a Lot; provided, however, that if permission is granted to any Person to erect a sign on the Property, the Board reserves the right to restrict the size, color, lettering and placement of such sign;

(h) Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted, except for temporary lines as required during construction and lines installed by or at the request of Declarant; and

(i) Doors and Windows. No “burglar bars,” steel or wrought iron bars or similar fixtures, whether designed for decorative, security or other purposes, shall be installed on the exterior of any windows or doors of any building.

12.8 Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Property, except that a reasonable number of dogs, cats or other usual and common household pets may be kept on a Lot, subject to the following provisions and in accordance with applicable law. Any pet which is permitted to roam free, or which, in the sole discretion of the Association, makes objectionable noise or endangers the health of or constitutes a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Property, shall be removed upon request of the Board. If the Owner responsible for such pet fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. All pets shall be kept under the control of their Owner at all times, whether on or off such Owner’s Lot. Dogs shall be permitted off-leash on Lots only within portions of the Lot which are enclosed by a traditional or buried electric pet control fences. Any dog that is outside the Lot on which it resides or is in a portion of such Lot which is not enclosed by a traditional or buried electric pet control fence shall be confined on a leash held by a responsible person. Any Owner or Permittee who walks his or her dog on portions of the Property other than the Lot occupied by such Person shall immediately remove any excrement deposited by the dog on such other portions of the Property. The Board shall have the authority to restrict or prohibit the keeping of breeds of dogs with a known history of dangerous or vicious behavior. All such animals shall be licensed according to City ordinance requirements.

12.9 Parking and Prohibited Vehicles.

(a) Parking. Vehicles shall be parked only in the garages, in the driveways, if any, serving the Lots or in appropriate spaces or areas designated by the Board. Vehicles shall be subject to such reasonable rules and regulations as the Board may adopt. Declarant and/or the Association may designate certain parking areas for visitors or guests and may adopt reasonable rules governing the use of such areas.

(b) Prohibited Vehicles. Except as otherwise set forth in the Rules, commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or specific areas, if any, designated by the



Board. Stored vehicles and vehicles which either for more than seven consecutive days are obviously inoperable or do not have current operating licenses shall not be permitted on the Property except within enclosed garages. For purposes of this Section 12.9, a vehicle shall be considered "stored" if it is up on blocks or covered with a tarpaulin and remains on blocks or so covered for seven consecutive days without the prior approval of the Board. Service, construction and delivery vehicles may be parked on the Property for such periods of time as are reasonably necessary to provide services or to make deliveries to the Property. Any vehicle parked in violation of this Section 12.9 or parking rules promulgated by the Board may be towed at the direction of the Association and at the expense of the Owner of the affected Lot or the owner of the vehicle.

12.10 Fencing. Declarant may construct entryways, fences, fence pillars or walls on the Common Elements or those portions the Property owned by Declarant. No other Owners shall construct, modify, replace, paint or obstruct any fence, fence pillars or walls except in accordance with Article XI. For purposes of this section, hedges shall be considered to be the same as fences and subject to the same restrictions. (The term "wall" as used in this section shall mean walls which are free-standing and intended to enclose the areas outside a structure.) Material for containment of any pets permitted by this Declaration may be added to perimeter fencing in accordance with Article XI.

12.11 Irrigation. Except as approved and provided by the Association, no sprinkler or irrigation system of any type which draws upon water from creeks, streams, rivers, ponds, wetlands, canals or other ground or surface waters on the Property shall be installed, constructed or operated on the Property. However, Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Common Elements and other purposes consistent with their respective rights and obligations under this Declaration. All sprinkler and irrigation systems serving Lots shall draw upon public water supplies only and shall be subject to approval in accordance with Article XI of this Declaration. Private irrigation wells are prohibited on the Lots. All landscaping irrigation by an Owner shall be limited in amount and frequency to that which is reasonably necessary and appropriate, and shall not result in flooding, saturation or other adverse effects of, on or to other property. In addition, Owners must comply with the irrigation design criteria set forth in Municipal Code Section 26-1-5.

12.12 Landscaping. In accordance with the requirements set forth in Municipal Code Section 26-1-5 (d)(1) and (3), Owners shall comply with the following minimum landscaping requirements:

(a) Owners must plant at least one deciduous or ornamental street tree for every forty linear feet of street frontage or portion thereof, within the lawn portion of the right-of-way with adequate spacing to allow for the mature spread of the trees or ten feet of the back of the curb if no lawn tree is provided.

(b) Owners must provide landscaping in the front yard of each Lot. Specifically, seventy five percent of the gross front yard area, excluding driveways, must be landscaped with live plant materials.



(c) Owners must install landscaping within the side and rear yard and are encouraged to plant additional trees, shrubs and flowers using waterwise principles.

(d) Owners must maintain all landscaping in good condition and maintain the landscaping within the adjacent right-of-way, if any.

(e) If the initial sale of the Lot to Owner occurs between April to October, Owners must complete the landscaping within the front, side and rear yards within sixty days such purchase. If the initial sale of the Lot to Owner occurs between November to March, Owners must complete the landscaping for the front, side and rear yards by no later than June 1st of the corresponding year.

12.13 Grading. No Person shall alter the grading of any Lot without prior approval pursuant to Article XI of this Declaration. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers or storm drains.

12.14 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

12.15 Tents, Mobile Homes and Temporary Structures. Except as provided below, no tent, shack, mobile home or other structure of a temporary nature shall be placed upon a Lot or any part of the Property. This prohibition shall not apply to restrict the construction or installation of: (a) temporary construction trailers or similar temporary structures used in connection with development of the Property; or (b) a single utility or similar outbuilding to be permanently located on a Lot or other portion of the Property, provided it receives the prior approval of the Architectural Review Committee in accordance with Article XI.

12.16 Firearms. The discharge of firearms on the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

12.17 Roads. No motor vehicles may be driven or operated upon any portion of the Property except for roads which have been platted on a subdivision plan or plat which is of Record; provided that Declarant and the Association shall be permitted to operate motor vehicles on the Property in connection with their respective activities under this Declaration.

12.18 Laws and Ordinances. Every Owner and Permittee shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Property. Any violation may be considered a violation of this Declaration. However, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

12.19 Occupants Bound. All provisions of this Declaration, the Bylaws and the Rules shall also apply to all occupants of any Lot and to Permittees of any Owner or occupant.



Every Owner shall cause all occupants of its Lot and its Permittees to comply with this Declaration, the Bylaws and the Rules.

ARTICLE XIII
INSURANCE, DAMAGE AND TAKINGS

13.1 Association's Insurance. The Association has the following responsibilities with respect to insurance and, except as otherwise expressly provided in this Declaration, the cost of all insurance maintained by the Association under this Section 13.1 will be included in Common Expenses:

(a) Property Insurance. The Association will maintain property insurance in amounts, against risks, and containing provisions as the Board reasonably determines from time to time. At a minimum, the Association's insurance will insure against all risks of direct physical loss for 100% of the full replacement cost (at the time the insurance is purchased and at each renewal date) of (1) the insurable Common Elements and all fixtures, Improvements and alterations situated on or constituting a part of the Common Elements, and (2) any personal property of the Association situated in the Common Elements or used in the operation or maintenance of the Common Elements. The Association's insurance may exclude land, excavations, foundations and other items normally excluded from property policies and may provide for a deductible in an amount not to exceed a reasonable and prudent amount as determined by the Board. The Association's property insurance will be maintained in the name of the Association, for the use and benefit of all Owners, who shall be named as additional insureds, and Eligible Holders, who may be named as additional insureds, as their interests may appear. To the extent available such property insurance also will (i) contain no provisions by which the insurer may impose a so-called "co-insurance" penalty; (ii) permit a waiver of claims by the Association, and provide for a waiver of subrogation rights by the insurer as to claims, against each Owner and the members of the Owner's household; (iii) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner carries; (iv) provide that, notwithstanding any provision that gives the insurer an option to restore damage in lieu of making a cash settlement, the option may not be exercised if the proper party(ies) elect(s) not to restore the damage in accordance with the provisions of this Declaration or the Act; (v) provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (vi) provide that it may not be canceled, nor may coverage be reduced, without 30 days prior notice to the Association and all additional insureds named in the policy; and (vii) include so-called "inflation guard," "building ordinance or law" and "steam boiler and machinery coverage" endorsements.

(b) Liability Insurance. The Association will maintain bodily injury and property damage liability insurance for the benefit of the Association and its officers, directors, agents and employees in amounts and with coverage as determined from time to time by the Board. All Owners shall be named as additional insureds for claims and liabilities arising in connection with the ownership, use or management of the Common Elements. Such liability insurance will have a combined single occurrence limit of not less than \$1,000,000 and, to the extent available on reasonable terms, will (i) be on a commercial general liability form; (ii) contain a "severability of interest" or "cross-liability" endorsement which precludes the



insurer from denying the claim of any named or additional insured due to the negligent acts, errors or omissions of any other named or additional insured; (iii) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner may carry; (iv) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (v) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use, ownership or maintenance of the Common Elements; and (vi) provide that it may not be canceled, nor may coverage be reduced, without 30 days' prior notice to the Association and all additional insureds named in the policy. The liability insurance required to be maintained under this Section will not include coverage for any liability arising out of the operation, use, ownership or maintenance of any Lot.

(c) Worker's Compensation and Employer's Liability. The Association will maintain worker's compensation and employer's liability insurance as determined from time to time by the Board. At a minimum, the Association will maintain such insurance in amounts and with coverages required by applicable law.

(d) Automobile Insurance. If the Association operates owned, hired or non-owned vehicles, the Association will maintain comprehensive automobile liability insurance at a limit of liability of not less than \$500,000 for combined bodily injury and property damage.

(e) Directors' and Officers' Insurance. The Association will maintain directors' and officers' liability coverage in the amount it determines from time to time.

(f) Fidelity Insurance. The Association will maintain fidelity insurance covering losses resulting from dishonest or fraudulent acts committed by the Association's directors, officers, managing agents, trustees, employees or volunteers who manage the funds collected and held for the benefit of the Association. The policy will name the Association as the insured, include a provision requiring at least 10 days' written notice to the Association before any cancellation of, or material modification in, the policy, and provide coverage in an amount equal to at least three months' Common Assessments against all Lots, based on the Common Assessments most recently approved by the Board. If the Association engages a managing agent that handles funds of the Association, the managing agent will also maintain fidelity insurance satisfying the foregoing requirements of this Section and the Act and provide evidence of the coverage to the Board.

(g) Other Insurance. The Association may procure and maintain other insurance as the Board from time to time deems appropriate to protect the Association or the Owners.

(h) Licensed Insurers. All policies of insurance required to be maintained by the Association will be placed with insurers licensed in the State of Colorado.



13.2 Damage and Destruction.

(a) Property Insured by Association.

(i) Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means the repair or restoration of the damaged property to substantially the condition in which it existed prior to the damage, allowing for changes necessitated by changes in applicable building codes.

(ii) Any damage to or destruction of the Common Elements shall be repaired or reconstructed unless, within 60 days after the loss, a decision not to repair or reconstruct is made by Members representing at least 80% of the votes in the Association and, if the damage or destruction occurs during the Development Period, the vote of Declarant. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60 day period, then such period shall be extended until such funds and information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction to the Common Elements shall be repaired or reconstructed.

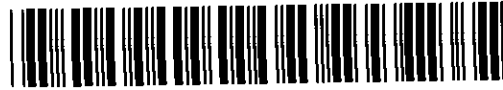
(iii) If a decision not to repair or reconstruct the damage or destruction to the Common Elements is made pursuant to Section 13.2(a)(ii) and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive landscaped condition.

(iv) Any insurance proceeds attributable to damage to Common Elements shall be applied to the costs of repair or reconstruction and then, if any insurance proceeds remain, distributed among the Owners in proportion to the Common Allocation for each of their Lots.

(v) If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may levy Assessments to cover the shortfall pursuant to Section 9.4.

(vi) Each Lot will continue to be subject to Assessments following any damage to any portion of the Common Elements, without abatement as a result of such damage.

(b) Property Insured by Owners. Each Owner covenants and agrees that in the event of damage or destruction to structures on or comprising his Lot, the Owner shall proceed promptly to either: (i) repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI, or (ii) clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive landscaped condition. The Owner shall pay any costs of such repair and reconstruction or clearing and maintenance which are not covered by insurance proceeds.



13.3 Takings.

(a) Taking of Lots. In the event of a Taking of all or any part of any Lot, the Owner thereof will be solely responsible for negotiating with the condemning authority concerning the award for such Taking and will be entitled to receive such award after the liens of all Mortgagees on the affected Lot or portion thereof have been satisfied or otherwise discharged. If only part of a Lot is acquired by a Taking, the Owner of such Lot will be responsible for the restoration of its Lot as necessary to return the Lot to a safe and lawful condition that does not adversely affect the use or enjoyment of the other Lots or Common Elements or detract from the general character or appearance of the Property. Any such restoration must be completed in accordance with the provisions of Article XI. If a Taking occurs by which the condemning authority acquires all or any part of one or more Lot(s) in such a manner that such Lot(s) is or are no longer subject to this Declaration, then the Association will consider and pass an amendment to this Declaration revising the allocations made among the various Lots hereunder.

(b) Taking of Common Elements.

(i) The Board will be solely responsible for negotiating, and is hereby authorized to negotiate with the condemning authority on behalf of the Owners concerning, the amount of the award for any Taking by which a condemning authority acquires 100% of the interests in and to any Common Elements owned in fee simple by the Association without also acquiring 100% of the Lots, and the acceptance of such award by the Board will be binding on all Owners. Any award made for such a Taking shall be payable to the Association as trustee for the Owners and shall be disbursed as set forth in Sections 13.3(b)(ii) and 13.3(b)(iii). Notwithstanding the foregoing, no Common Elements shall be conveyed in lieu of and under threat of condemnation except in accordance with Section 15.3 and, during the Development Period, with the consent of Declarant.

(ii) If a Taking involves a portion of the Common Elements on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Elements to the extent feasible and economically cost-efficient, unless within 60 days after such Taking Members representing at least 80% of the total votes of the Association and, if the Taking occurs during the Development Period, Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. If the award made for such Taking is insufficient to cover the costs of restoration or replacement, the Board of Directors may levy Special Assessments to cover the shortfall pursuant to Section 9.4.

(iii) If the Taking involves property owned by the Association but not any Improvements on the Common Elements, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.



**ARTICLE XIV
MORTGAGEE PROVISIONS**

The following provisions are for the benefit of First Mortgagees and holders, insurers and guarantors of First Mortgages on Lots. The provisions of this Article XIV apply to both this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

14.1 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a Taking of the Common Elements.

14.2 Notice to Mortgagees. Upon receipt by the Association of the notice described in Section 2.22, any Eligible Holder who provides such notice will be entitled to prompt written notice of:

(a) Any condemnation loss or casualty loss that affects a material portion of the Property or that affects any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of Assessments or charges levied against a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days after notice of such delinquency has been delivered to the Owner, or any other violation of this Declaration or the Bylaws relating to such Lot or the Owner or occupant thereof which is not cured within sixty (60) days of notice of such violation;

(c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association and required by the Act.

**ARTICLE XV
CONVEYANCING AND ENCUMBRANCING**

15.1 Lots. A description of any Lot in accordance with the requirements of Colorado law for the conveyance of real property will, if included in an otherwise proper instrument, be sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only such Lot but also all Easements, rights and other benefits appurtenant thereto as provided in this Declaration. A Person who becomes an Owner will promptly notify the Association of his or her ownership of a Lot. An Owner may encumber his or her Lot as he or she sees fit, subject to the provisions of this Declaration.

15.2 Transferee Liability. In the event of any voluntary or involuntary transfer of a Lot to any Person (other than a Person taking title through a foreclosure of a First Mortgage), the transferee will be jointly and severally liable with the transferor of such Lot for all unpaid Assessments against such Lot up to the time of transfer, without prejudice to such transferee's right to recover from the transferor any amounts paid by such transferee hereunder.

15.3 Common Elements. The Common Elements or portions thereof may be conveyed or subjected to a security interest by the Association pursuant to the minimum



requirements of Section 312(1) of the Act. Any net proceeds from the sale of any portion of the Common Elements will be distributed to the Owners as if such amounts were an award paid as a result of the Taking of such portion of the Common Elements.

ARTICLE XVI

GENERAL PROVISIONS

16.1 Amendment.

(a) Amendment by Declarant. Declarant may unilaterally amend this Declaration during the Development Period in the exercise of its respective Development Rights to the extent permitted by the Act. Additionally, notwithstanding any contrary provision contained in this Declaration, Declarant may unilaterally amend this Declaration, the Final Plan and/or the Plat to correct any clerical, typographical or technical errors, and may amend this Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association.

(b) Amendment by Association. Except in the case of amendments which may be executed unilaterally by Declarant as set forth in Section 16.1(a), amendments which may be executed by the Association without a vote of the Members as provided in the Act, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the total votes in the Association and, if such amendment occurs during the Development Period, with the consent of Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under such clause. Amendments to this Declaration shall be prepared, executed, Recorded and certified by the President of the Association.

(c) Consent of Declarant. During the Development Period, no amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant, as applicable.

(d) Consent of Owner. Any amendment of this Declaration made in conformity with this Declaration and the Act shall be conclusively presumed to have received the consent of each Owner and such Owner's Mortgagee, if applicable, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

(e) Effective Date; Change in Conditions. Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one (1) year of its Recording or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.



16.2 Duration and Termination.

(a) Perpetual Duration. Unless terminated as provided in Section 16.2(b), this Declaration shall have perpetual duration. If Colorado law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein.

(b) Termination. This Declaration may not be terminated within 30 years of the date of Recording without the consent of all the Owners and, during the Declarant Control Period, the consent of Declarant. Thereafter, it may be terminated only by an instrument signed by Owners who represent at least 67% of the votes in the Association or such lesser percentage permitted by the Act as it may be amended from time to time. Any termination instrument shall be Recorded and must comply with the termination procedures set forth in the Act. Nothing in this Section 16.2(b) shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

16.3 Litigation. Except as provided below and subject to Section 16.16, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Members entitled to cast 75% of the votes in the Association. This Section 16.3 shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of Assessments as provided in Article IX; (c) proceedings involving challenges to ad valorem taxation; and (d) counterclaims brought by the Association in proceedings instituted against it. This Section 16.3 may be amended only by a vote of Members entitled to cast 75% of the votes in the Association.

16.4 Indemnity. No Owner will hold or attempt to hold the Association or its employees or agents liable for, and each Owner shall indemnify and hold harmless the Association, its employees and agents from and against, any and all demands, claims, liens (including, without limitation, mechanics' and materialmen's liens and claims), causes of action, fines, penalties, damages, liabilities, judgments, costs and expenses (including, without limitation, attorneys' fees and costs of litigation) incurred in connection with or arising from:

(a) the use or occupancy or manner of use or occupancy of the Common Elements (or any other property owned by the Association) by such Owner or such Owner's Permittees;

(b) any activity, work or thing done, permitted or suffered by such Owner in or about the Common Elements or any other property owned by the Association; or

(c) any acts, omissions or negligence of such Owner or such Owner's Permittees;

except to the extent that any injury or damage to persons or property on the Common Elements or any other property owned by the Association is proximately caused by or results proximately from the negligence or deliberate act of the Association or its agents or employees.



Nothing contained in this Section 16.4 will be construed to provide for any indemnification which would violate applicable laws, void any or all of the provisions of this Section 16.4, or negate, abridge, eliminate or otherwise reduce any other indemnification or right which the Association or the Owners have by law.

16.5 Use of the Word "Mid Town". No Person shall use the word "Mid Town" or any derivative in any printed or promotional material without Declarant's prior written consent. However, Owners may use the term "Mid Town" in printed or promotional matter where such term is used solely to specify that a particular property is located within Mid Town and the Association shall be entitled to use the word "Mid Town" in its name.

16.6 Owner Enforcement. Except as necessary to prevent a violation or attempted violation that results or would result in direct and immediate physical damage to an Owner's Lot or the Improvements thereon, no Owner may prosecute any proceeding at law or in equity to enforce the provisions of this Declaration. Except as provided above with respect to threatened immediate physical damage, the Association, acting through the Board, shall have the exclusive right, power and authority to enforce the provisions of this Declaration. In the event the preceding provisions of this Section 16.6 are adjudged to be unenforceable, an Owner may institute a proceeding to enforce a provision of this Declaration only if the Board does not, at its election, take action to enforce such provisions within 60 days after the Owner gives written notice to the Board specifying the violation or attempted violation of the provisions of this Declaration, the facts and circumstances surrounding the violation, and the name of the Person alleged to have violated or attempted to violate the provisions of this Declaration. Nothing in this Section 16.6 is intended or shall be construed to limit the Declarant's exercise or enjoyment of any rights reserved or granted to Declarant pursuant to this Declaration or the Act.

16.7 Mold Disclosure. Mold, mildew, fungi, bacteria and microbiologic organisms (collectively, "Mold") are present in soil, air and elsewhere in the environment. Mold can proliferate in various environments, including, among others, damp areas such as bathrooms and within walls and partitions. Certain parties have expressed concerns about the possible adverse effects on human health from exposure to Mold. Due to various reasons, including the varying sensitivities of different individuals to various types of Mold and other contaminants, as of the date of this Declaration, no state or federal standards regarding acceptable levels of exposure to Mold exist. According to the Consumer Product Safety Commission and the American Lung Association, some diseases or illnesses have been linked with biological pollutants in the indoor environment, including some forms of Mold. However, it is believed that many of these conditions may also have causes unrelated to the indoor environment. Therefore, as of the date of this Declaration, it is unknown how many potential health problems relate primarily or exclusively to indoor air quality or Mold. Each Owner, by taking title to a Lot, is advised that Declarant and the Association are not qualified and have not undertaken to evaluate all aspects of this very complex issue. Each Owner, by taking title to a Lot, acknowledges that Declarant and/or the Association have not performed any testing or evaluation of, and make no representations or warranties, express or implied, concerning, the past, current or future presence or absence of Mold within the dwelling unit located on a Lot, any Common Elements or in the vicinity of the Lot, in the vicinity of any Common Elements or within the vicinity of the Community. Declarant and the Association recommend that each Owner, at the Owner's expense, conduct its own investigation and consult with such experts as the Owner



deems appropriate regarding the occurrence and effects of Mold, the potential sensitivity or special risk the Owner, his or her family members, and others individuals who will occupy or use the dwelling unit located on a Lot, or any party structures located on a Lot, may have with respect to Mold, and methods to reduce or limit Mold within the dwelling unit located on a Lot.

When excessive moisture or water accumulates indoors, Mold growth can and will occur, particularly if the moisture problem remains unaddressed. There is no practical way to eliminate all Mold in an indoor environment. The key to controlling indoor Mold growth is to control moisture. Each Owner, by taking title to a Lot, agrees to maintain the dwelling unit located on the Lot in such a manner as to reduce the potential for increased Mold formation or growth, including, without limitation, keeping dryer and other vents and/or fans clear and functioning, and preventing and repairing plumbing, window and other leaks and sources of moisture. Each Owner, by taking title to a Lot, agrees to make periodic inspections of the dwelling unit located on the Lot, for the presence of Mold or conditions which may increase the ability of Mold to propagate within the dwelling unit located on a Lot, and to monitor the dwelling unit located on the Lot on a continual basis for excessive moisture, water or Mold accumulation. If water or moisture is discovered in or around the dwelling unit located on the Lot, the Owner, by taking title to a Lot, agrees to immediately seek to eliminate the source of the water or moisture. Failure to eliminate the source of moisture can result in additional damage and the growth of Mold. Declarant will not be responsible for damages, and each Owner, by taking title to a Lot, hereby waives all rights to damages and subrogation of damages. Each Owner, by taking title to a Lot, agrees to indemnify Declarant and the Association and hold Declarant and the Association harmless from damages, including in all cases personal injury or property damage, caused by the presence of Mold and/or water or moisture on the Lot or other portions of the Property to the extent that the damages are caused by: (i) the Owner's negligence or failure to properly maintain and monitor the dwelling unit located on a Lot; or (ii) the Owner's failure to promptly take appropriate corrective measures and minimize any damage caused by water or moisture (including, without limitation, failure to promptly notify and engage the help of appropriate professionals or experts).

16.8 Severability. In the event any provision of this Declaration is deemed illegal or invalid by judgment or court order, a legally valid provision similar to the invalidated provision shall be substituted therefor. Invalidation of any provision of this Declaration, in whole or in part, or of any application of a provision of this Declaration, by judgment or court order shall in no way affect other provisions or applications of this Declaration.

16.9 Governing Law. This Declaration shall be governed by and construed under the laws of the State of Colorado.

16.10 Captions. The captions and headings on this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

16.11 Notices. Except for notices concerning meetings of the Association or the Board, which will be given in the manner provided in the Bylaws, any notices required or permitted hereunder or under the Bylaws to be given to any Owner, the Association, the Board or any Eligible Holder will be sent by certified mail, first-class postage prepaid, return receipt requested, to the intended recipient at, in the case of notices to an Owner, the address of such



Owner at its Lot; in the case of notices to the Association or the Board, the address of the Association's registered agent; or in the case of notices to an Eligible Holder, the address thereof most recently given to the Association by notice from such Eligible Holder. All notices will be deemed given and received three (3) business days after such mailing. Any Owner or Eligible Holder may change its address for purposes of notice by notice to the Association in accordance with this Section 16.11. The Association or the Board may change its address for purposes of notice by notice to all Owners in accordance with this Section 16.11. Any such change of address will be effective five (5) days after giving of the required notice.

16.12 Colorado Common Interest Ownership Act. This Declaration shall be subject to all mandatory requirements of the Act, as amended. In the event of any conflict between any term or provision of this Declaration and any mandatory provision of the Act, the mandatory provisions of the Act shall control in all instances, and neither the Declarant nor the Association shall have any liability to any party for actions taken in conformity with Act, notwithstanding the fact that such actions may be contrary to the provisions of this Declaration. In the event of any conflict between any term of provision of this Declaration and any permissive or non-mandatory provision of the Act, the provisions of this Declaration shall control in all instances.

16.13 FHA/VA Approval.

(a) During Declarant Control. If and to the extent required by the Fair Housing Administration (the "FHA") and the United States Department of Veterans Affairs ("VA"), during the Declarant Control Period, the following actions will require the approval of the FHA and VA: (i) annexation of additional property into the Property; (ii) amendment of this Declaration; or (iii) termination of Centennial Residential as a planned community under the Act.

(b) Amendment Cooperation. If the FHA or VA, as a condition to approving any development project on the Property for loans insured or guaranteed by them, require the Owner proposing such development project to obtain an amendment to this Declaration for the purpose of making this Declaration comply with the statutory or regulatory requirements enforced by the FHA or VA, then Declarant and the other Owners agree to cooperate reasonably with such Owner in making such amendment; provided, however, that the proposed amendment must be consistent with the Act and the Owner requesting such amendment shall pay all costs and expenses (including, without limitation, attorneys fees) reasonably incurred by Declarant and the other Owners so cooperating.

16.14 Declarant Liability. Except as otherwise provided in the Act, no Person holding the status of, or exercising any rights or performing any obligations of, Declarant under this Declaration shall be liable to any Owner or Mortgagee for any acts or omissions of another Person holding such status, or exercising any rights or performing any obligations associated with the status of Declarant.

16.15 No Merger. Notwithstanding that the Declarant currently holds title to all the Property, and notwithstanding that a subsequent Owner may own or hold title to more than one Lot, any such commonality of interests shall not result in or cause any merger and extinguishment, in whole or in part, of any provisions of this Declaration, it being intended by



Declarant, for its benefit and the benefit of its successors in interest, that the terms of this Declaration not be merged by virtue of those common ownership interests to any extent, but instead that such terms be and remain in full force and effect upon and following the making and Recording of this Declaration.

16.16 Matters of Record. The easements and other matters of Record affecting the Property as of the Recording of this Declaration are listed on Exhibit C.

16.17 Mediation and Arbitration. For the purposes of this Section 16.17, "Dispute" means any dispute, action, claim or controversy, whether sounding in law, equity, contract or tort (excluding, however, tort claims arising from physical bodily injury), that: (a) concerns or requires the application of any provision of this Declaration, the Bylaws or any related agreements or documents (collectively, the "Arbitration Documents"); (b) concerns or requires the application of any provision of the Act; (c) arises from any act, omission, transaction or occurrence in any Lot or in or on any Common Element; or (d) concerns the design, engineering or construction of any Lot or Common Element or any Improvement or item of tangible personal property in or on a Lot or Common Element. Any Dispute shall be settled by mediation under the Arbitration Rules for the Real Estate Industry (including a Mediation Alternative) of the American Arbitration Association (the "AAA"). If within 45 days after the service of a written demand for mediation, the mediation does not result in settlement of the Dispute, then any unresolved controversy or claim concerning the Dispute shall be settled by binding arbitration in accordance with the terms of this Section 16.16. A demand for the resolution of any Dispute must be made in writing and delivered to the other party(ies) and the American Arbitration Association (the "AAA") before the date when commencement of legal or equitable proceedings based on the Dispute would be barred by the applicable statute of limitations. In no event shall the demand for arbitration of a Dispute be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations. Any party who fails to submit to binding arbitration regarding a Dispute following a lawful demand by the opposing party shall bear all costs and expenses, including reasonable attorney's fees, incurred by the opposing party in compelling arbitration of such Dispute. Except as otherwise provided in this Section 16.16 or by the express written agreement of the parties, the AAA shall administer all aspects of arbitrations conducted pursuant to this Section 16.16, including the selection of arbitrator(s), pursuant to the AAA's Arbitration Rules for the Real Estate Industry. Except as provided below with respect to enforcing the decision of the arbitrator(s), once a Dispute is submitted to arbitration, the claims involved cannot later be brought, filed or pursued in any court. Disputes concerning \$10,000 or less will be resolved by one arbitrator, and Disputes of more than \$10,000 will be resolved by a majority vote of a panel of three arbitrators. Arbitrations conducted pursuant to the terms of this Section 16.16 will be governed by Colorado law, including the provisions of C.R.S. §13-22-201 et seq. and C.R.S. §13-21-102(5). Multiple Disputes or party claims not consolidated or administered as a class action pursuant to the following sentence will be subject to, and will be arbitrated individually pursuant to the terms of, this Section 16.16. Only with the written request of all parties involved, but not otherwise, the arbitrator(s) may (i) consolidate in a single arbitration proceeding any multiple Disputes or party claims that are substantially identical, or (ii) arbitrate multiple Disputes as a class action in accordance with Rule 23 of the Colorado Rules of Civil Procedure. A party will state as a counterclaim any claim that relates in any way to a Dispute and does not require the presence of a third party who could not be joined as a party



in the proceeding. The arbitrator(s) also may resolve any dispute regarding the arbitrability of any Dispute or a claim that any part of the Arbitration Documents (including this provision) is void or voidable, but will have no power to change or alter the terms of the Arbitration Documents. The decision of the arbitrator(s) shall be in writing and shall specify the factual and legal basis for the decision. Except as provided below in this Section 16.16 with regard to awards of attorneys' fees and expenses, no party shall be entitled to receive any award of damages in connection with the arbitration of a Dispute other than such party's actual damages, and Declarant, the Association and any Owner shall be deemed to have waived their right to receive any damages in a Dispute other than actual damages, including, without limitation, special damages, consequential damages, and punitive or exemplary damages. BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER HAS WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF DAMAGES IN CONNECTION WITH THE ARBITRATION OF A DISPUTE OTHER THAN SUCH OWNER'S ACTUAL DAMAGES. The arbitrator(s) shall make an award of attorneys' fees and expenses (including the fees and expenses of the arbitrator(s)) to the prevailing party, with the arbitrator(s) determining who is the prevailing party; provided, however, if the decision of the arbitrator(s) is not wholly in favor of one party, the arbitrator(s) shall allocate such fees and expenses between the parties. The results of any arbitration conducted pursuant to this Section 16.16 shall be binding and final, and the decision of the arbitrator(s) may be filed and enforced as a judgment in the District Court of the County of Boulder, Colorado.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 28th day of Sept, 2005.

DECLARANT:

Mid Town Holdings, LLC, a Colorado limited liability company

By: Russell S. White
 Name: Russell White
 Title: Manager



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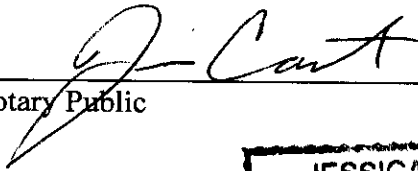
Boulder County Clerk, CO PROT CVNTS R 281.00 D 0.00

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing instrument was acknowledged before me this 21th day of September, 2005 by Russell White as Manager of Mid Town Holdings, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My Commission expires: 7-23-07



Notary Public

JESSICA CARTER
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires July 23, 2007



EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

A PARCEL OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING PART OF TRACT "A", SAINT IDA SUBDIVISION, CITY OF LAFAYETTE, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID TRACT "A"; THENCE S89°34'41"W ALONG THE SOUTH LINE OF SAID TRACT "A" A DISTANCE OF 360.28 FEET; THENCE N00°26'17"W ALONG THE WEST LINE OF SAID TRACT "A" A DISTANCE OF 943.40 FEET; THENCE N33°39'12"E A DISTANCE OF 92.47; THENCE N44°08'12"E A DISTANCE OF 10.00 FEET; THENCE N56°39'58"E A DISTANCE OF 91.76 FEET; THENCE N80°44'12"E A DISTANCE OF 86.66 FEET; THENCE N89°32'43"E A DISTANCE OF 138.50 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF BERMONT AVENUE; THENCE S00°27'17"E ALONG SAID WEST LINE A DISTANCE OF 943.80 FEET TO THE POINT OF BEGINNING:

CONTAINING 298,975 SQ. FT. OR 6.864 ACRES, MORE OR LESS.



EXHIBIT B

COMMON ELEMENTS

A. Common Elements:

Common Elements to be Owned in Fee Simple by the Association:

Outlot A and Outlot B, Mid Town Lafayette Final Plat



EXHIBIT C

RECORDED EASEMENTS AND OTHER MATTERS OF RECORD

1. ALL COAL AND TERMS THEREIN AS RESERVED BY THE UNION PACIFIC RAILWAY CO. IN DEED RECORDED MARCH 30, 1887 IN BOOK 93 AT PAGE 371.
2. REQUEST FOR NOTIFICATION OF SURFACE DEVELOPMENT AS EVIDENCED BY INSTRUMENT RECORDED MAY 17, 2002 UNDER RECEPTION NO. 2288488.
3. EASEMENT AND RIGHT OF WAY FOR RAILROAD PURPOSES AS GRANTED TO THE DENVER MARSHALL AND BOULDER RAILWAY CO. BY INSTRUMENT RECORDED AUGUST 20, 1888 IN BOOK 113 AT PAGE 86 INsofar AS THE SAME MAY AFFECT THE SUBJECT PROPERTY.
4. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF SAINT IDA SUBDIVISION-A MINOR SUBDIVISION RECORDED OCTOBER 05, 2004 UNDER RECEPTION NO. 2633828.