

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
MORNINGSIDE SUBDIVISION**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Morningside Subdivision (“Amended Declaration”) completely supersedes and entirely replaces that certain Declaration of Covenants, Conditions and Restrictions of Morningside Subdivision (the “Original Declaration”) recorded May 13, 1996, at Reception No. 1756482 in the Records of the Mesa County Clerk and Recorder (the “Clerk”), as amended.

The Original Declaration was applicable to the real property described on Exhibit A attached to the Original Declaration, defined therein as the “Properties”, which included all of that land described on that certain plat map of Morningside Subdivision recorded August 2, 1996, at Reception No. 1766623 in the records of the Clerk (the “Plat”), including Lots 1 through 31 and Out Lot A and B (collectively, the “Community”).

The Owners of Lots within the Community desire by this Amended Declaration to define the character, duration, rights, obligations and limitations of ownership of the property within the Community and is a part and in furtherance of the general plan or scheme of development represented by the Original Declaration, the Plat and the existing improvements located in the Community, for the purpose of, among other things, maintaining the value of the property, the aesthetic qualities of the Community, and access to the Common Area.

NOW, THEREFORE, the Owners hereby declare that all of the property within the Community, with all appurtenances, facilities and Improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions.

ARTICLE 1.
DEFINITIONS

The terms used herein shall have the meanings stated in the Act, except as otherwise provided:

1.1 “ACC” shall mean the architectural control committee appointed by the Association to review and approve the plans for all improvements constructed on the Property.

1.2 “Act” shall mean the Colorado Common Interest Ownership Act, § 38-33.3-101, et. seq., C.R.S., as amended and supplemented. For the avoidance of doubt, the Community is a planned community as defined by the Act, and, as a result of the express limitation of annual average common expense liability as provided in this Amended

Declaration and the Original Declaration, the Association and the Community are exempt from the Act as more fully provided in §38-33.3-116(1), C.R.S.

1.3 “Allocated Interests” shall mean and refer to the common expense liability and votes in the Association as set forth in this Amended Declaration. The formulas for the Allocated Interests are as follows:

1.3.1. *Percentage share of Common Expenses.* Each Lot shall be responsible a percentage share of the Common Expenses equal to a fraction the numerator of which is one (1) and the denominator of which is thirty-one (31).

1.3.2. *Voting.* Each Lot shall have 1 vote in the Association.

1.4 “Association” shall mean and refer to the MS Homeowners Association, Inc., Colorado nonprofit corporation.

1.5 “Board” means the Board of Directors of the Association. Except as specified herein, or in the Association’s Articles of Incorporation or Bylaws, the Board may act on behalf of the Association without any vote or consent of the Members.

1.6 “Clerk” means the Clerk and Recorder of Mesa County, Colorado.

1.7 “Common Area” means all portions of the Property in which the Association owns an interest for the common use and enjoyment of the Owners, including, without limitation, Out Lots A and B. Notwithstanding any contrary provision, any items described in C.R.S. § 38-33.3-202 and any shutters, awnings, window boxes, parking spaces, driveways, doorsteps, balconies, decks, fenced areas, chimneys, pergolas, utility lines, porches, patios, entryways, stairs, or sidewalks leading solely to a Lot that are located upon the Common Area are hereby designated as “Limited Common Area” for the exclusive use of the Owners of the Lots to which they are assigned, allocated or attached, and they shall be repaired, maintained and improved by the Association as a common expense.

1.8 “Common Expenses” means (i) all expenses expressly declared to be common expenses by this Amended Declaration; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Area or the Maintenance Area; (iii) insurance premiums; (iv) a reasonable and adequate contingency or surplus fund for insurance deductibles and general routine maintenance, repairs and replacement of Improvements within the Common Area or the Maintenance Area on a periodic basis, as needed; (v) all expenses lawfully determined to be common expenses by the Board; and (vi) other costs which the Act permits to be added to an assessment including, but not limited to, costs of collection, fines, fees, interest, and attorneys’ fees.

1.9 “Community” shall mean and refer to the common interest community described herein and created on the Property by this Amended Declaration and related Plat, known as Morningside Subdivision, which is a planned community as defined by the Act originally created in 1996 and not subject to any development rights as defined by the Act.

1.10 “Amended Declaration” means the Amended Declaration as contained herein and as it may be amended or supplemented from time to time.

1.11 “Eligible Mortgagee” means a First Mortgagee (as hereinafter defined) who (i) is also a bank, savings and loan association, insurance company, real estate mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or any other lender generally recognized as an institutional lender, and (ii) has notified the Association, in writing, of its name and address, and that it holds the First Mortgage on one or more Lots. The notice must include the Lot number and street address of the Lot on which is has such security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the information and afforded the rights described in this Amended Declaration.

1.12 “First Mortgage” shall mean a Mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). “First Mortgagee” means a mortgagee whose encumbrance is a First Mortgage. Nothing contained in this Amended Declaration shall prohibit a mortgagee under a single mortgage from being a “First Mortgagee” upon more than one Lot and from maintaining and exercising all First Mortgagee voting rights, approvals and/or consents with respect to each applicable Lot for which it is First Mortgagee.

1.13 “Governing Documents” means the basic documents creating and governing the Project, including, without limitation, this Amended Declaration, the Articles of Incorporation, the Bylaws, and any procedures, rules, regulations, policies or guidelines adopted under such documents by the Association or the Board and its authorized committees.

1.14 “Improvements” shall mean and refer to all structures, grading which affects the exterior vegetation or exterior appearance of the Property, and any appurtenances thereto or components thereof of every type or kind, including, without limitation, buildings, outbuildings, swimming pools, hot tubs, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, private streets, driveways, parking areas, concrete, paving, fences, decks, screening walls, retaining walls, pergolas, plantings, planted trees and shrubs, poles, signs, mailboxes, exterior tanks, solar equipment, satellite dishes, and exterior air conditions and water softener fixtures, and any alterations changes or

modifications to the foregoing. "Improvements" shall also mean an excavation or fill the volume of which exceeds two (2) cubic yards, and any excavation, fill ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow or any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

1.15 "Lots" shall mean and refer to any lots shown on the Plat, together with all appurtenances thereto and Improvements now or hereafter thereon. The boundaries of any Lot may be relocated as provided in this Amended Declaration.

1.16 "Maintenance Area" shall mean and refer to that portion of each Shared Wall Unit that, although not part of the Common Area, is designated to be repaired, improved, maintained and regulated by the Association as provided in this Amended Declaration. In general, the Maintenance Area shall include those portions of the exterior of the Shared Wall Unit buildings designated for Association maintenance in this Amended Declaration, and the landscaping, sidewalk, porch, utility lines and other Improvements located outside of the exterior unfinished surfaces of the Shared Wall Unit buildings but within the physical boundaries of the Unit. The Maintenance Area shall be repaired, improved, maintained and regulated by the Association as provided in this Amended Declaration. Notwithstanding anything to the contrary, the Maintenance Area for the roof of a Shared Wall Unit shall only include the waterproof barrier designed, installed or intended to prevent water intrusion into the Shared Wall Units and does not include any Improvements located thereon.

1.17 "Member" shall mean and refer to every person or entity who holds membership in the Association.

1.18 "Mortgage" means and refers to any mortgage, deed of trust or other assignment or comparable security instrument recorded in the real property records of the office of the Clerk, and by which a Lot or any part thereof is encumbered. The term shall include a "security interest" as defined by the Act. "Mortgage" shall also include any executory land sales contract in which the Administrator of Veterans Affairs ("Administrator"), an officer of the United States of America, is the original seller, regardless of whether such contract is recorded and regardless of whether such contract is owned by the Administrator, the Administrator's assignee, or a subsequent assignee who has notified the Board in writing of such assignment. If the executory contract in which the Administrator is the original seller is not recorded, then written notice of the contract shall be provided to the Board.

1.19 "Mortgagee" means any person or entity, or any successor or assign thereof, that holds or owns a Mortgage. "Mortgagee" shall also mean the Administrator and the Administrator's assigns under any executory land contract in which the Administrator is identified as the seller, regardless of whether such contract is recorded. If such executory contract is not recorded, written notice of the contract thereof shall be delivered to the Board.

“Mortgagor” shall mean a person or entity who mortgages his property to another (i.e., the maker of a Mortgage), including the Grantor of a Deed of Trust. The term “Grantor” shall be synonymous with the term “Mortgagor” and the term “Beneficiary” shall be synonymous with the term “Mortgagee.”

1.20 “Owner” means any person, corporation, partnership, association, contract seller or other legal entity or any combination thereof, who owns the record fee simple interest in one or more Lots. Owner shall also include the purchaser under any executory land sales contract in which the Administrator is the seller, regardless of whether such executory contract is recorded, and whether it is owned by the Administrator or his assigns. The term “Owner” shall further include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee as herein defined or other person or entity having an ownership interest in any Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. This term shall have the same meaning as “Lot Owner” under the Act.

1.21 “Project” means all of the Property, together with Improvements and rights, and improvements located on the Property and all rights, easements and appurtenances belonging thereto.

1.22 “Property” shall mean and refer to that certain real property described on Exhibit A hereto, together with all appurtenances thereto and all Improvements now or hereafter thereon.

1.23 “Shared Wall Unit” shall mean the residential dwelling Improvement constructed and located upon a Lot which is physically connected with the residential dwelling Improvement constructed and located upon one or more adjoining Lots. For clarity, the Lots identified as Lots 5, 6, 7, 8, 9, 15, 16, 17, 18, 19, 20, 26, 27, 28, 29, 30, and 31 are Shared Wall Units as of the date of this Amended Declaration.

ARTICLE 2.

PROPERTY RIGHTS IN THE COMMON AREA

2.1 Title to the Common Area. Subject to the limitations and restrictions of this Amended Declaration, title to the Common Area shall be held in the name of the Association.

2.2 Non-Division of Common Area. The Common Area shall remain undivided and shall not be subject to partition. By the acceptance of the deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Area. Each Owner specifically agrees not to institute any action therefore. Further, each Owner

agrees that this section may be pleaded as a bar to the maintenance of such an action. A violation of this section shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorney fees, costs and other damages the Association incurs in connection therewith. It is agreed by all Owners that the foregoing restrictions are necessary to preserve the rights of all Owners regarding the operation and management of the Common Area. Nothing contained herein shall be construed as a limitation of the right of legal partition of a Lot between the Owners thereof, but such legal partition shall not affect any other Lot, nor shall any such partition sever any part thereof from such Lots as a whole.

2.3 Owners' Common Area Easement of Enjoyment. Subject to the limitations and restrictions of this Amended Declaration, every Owner shall have an equal, nonexclusive right and easement of enjoyment in and to the Common Area, including, without limitation, the right of ingress and egress to and from the Owner's Lot, parking area, any private street, or any recreational facilities completed upon the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot without the necessity of additional reference.

2.4 Extent of Owner's Common Area Easement. The rights and easements of enjoyment created hereby shall be subject to the following:

2.4.1. The right of the Association to enforce the restrictions contained in this Amended Declaration and to promulgate and publish rules and regulations which every Owner, his invitees, guests, tenants, and contractors shall strictly comply with, including, without limitation, the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area if deemed necessary;

2.4.2. The right of the Association, as provided in its Articles or Bylaws, to suspend an Owner's voting rights and the right to use the Common Area for any period during which such Owner is in default under this Amended Declaration, including, without limitation, the nonpayment of any Assessment levied by the Association, and to make such suspensions for any infraction of its published rules and regulations;

2.4.3. The right of the Association to consent to or otherwise cause the construction of additional Improvements on the Common Areas and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Common Areas for the benefit of the Members of the Association. Further, the additional right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area. The Association shall have the right to grant easements under, over, across, through and upon the Common Area as long as the easements granted do not interfere with the use of a Lot;

2.4.4. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes, and subject to such conditions as may be imposed by the public entity;

2.4.5. The rights of the Association as set forth in the Association's Articles and Bylaws, including, without limitation, to borrow money for the purpose of improving the Common Area and to mortgage said property as security for any such loan;

2.4.6. The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;

2.4.7. The right of the Board to assign or allocate any part of the Common Area to be a Limited Common Area, for the exclusive use of particular Lots; and

2.4.8. No Owner shall be allowed to use the Common Area to conduct a business without the prior written permission of the Association.

2.5 Other Easements. In addition to the Owners' Common Area Easement, the Property shall be subject to the following:

2.5.1. *Maintenance Easement*. A non-exclusive easement is hereby granted to the Association, its respective officers, agents, employees and assigns upon, across, over, in and under the Common Area and any Lot as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Amended Declaration or otherwise, including, without limitation, any maintenance required or permitted hereunder, inspection, maintenance, repair, replacement, construction or reconstruction of any facilities or utilities on or within the Common Areas and Maintenance Area; provided, however, that entry into any Shared Wall Unit in non-emergency situations shall only be made after providing reasonable written notice and during regular business hours, and, under emergency circumstances, shall only be made after such notice, if any, as is reasonable under the circumstances.

2.5.2. *Common Wall Easement*. Each Owner of a Shared Wall Unit, his agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon adjacent Lots and in and upon adjacent Shared Wall Units for purposes of common wall repair or maintenance upon reasonable notice to the Owners thereof. Any damage occasioned to the adjacent Lot or Improvements, including the Shared Wall Units, thereon in exercising said easement shall be the responsibility of the Owner whose negligence or wrongful acts or omissions cause such damage.

2.5.3. *Easement for Encroachments.* If any part of the Common Area or any Common Area Improvement or structure encroaches upon a Lot or Lots, a valid easement for such encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Lot or any Shared Wall Unit or other structure related thereto encroaches upon the Common Area, or upon any adjoining Lot or Lots, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. In the event that a Shared Wall Unit or structure related thereto is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachment of parts of the Shared Wall Unit due to such construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Encroachments referred to herein include, without limitation, encroachments caused by error in the original construction of any Shared Wall Unit or related structure constructed on the Property, by error in the plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any portion thereof. Such encroachments and easements shall not be considered or construed to be title defects or encumbrances either on the Common Area or on the Lots. In interpreting any and all provisions of this Amended Declaration, subsequent deeds, Mortgages, or other security instruments relating to Lots and Shared Wall Units, the actual location of a Shared Wall Unit, and related structures, shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Lot, Town home, and related structure, as indicated on the plat.

2.5.4. *Easement for Foundations.* Owners of adjoining Lots shall have mutual easements of horizontal and vertical support for the foundations on which adjacent walls of their Improvements rest, and similar easements for support from the Common Area, and for the benefit of the Common Area shall also exist.

2.5.5. *Easement for Ingress and Egress.* Subject to the provisions of this Amended Declaration, each Owner, his agents and guests are hereby granted a perpetual, non-exclusive easement, over any streets, roadways, driveways, and sidewalks, which are located upon the Common Area, for the purpose of vehicular and pedestrian ingress to and egress from such Owner's Lot.

2.6 Delegation of Use. Subject to the provisions of this Amended Declaration and any rules or regulations which may be established from time to time by the Association concerning the Common Area, any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests, or contract purchasers who reside on his Lot. Each Owner shall be liable for any damage done to the Common Area by his family, tenants, guests, or contract purchasers and for any breach of the Association's rules and regulations by such persons.

2.7 Recorded Easements. The Property, and all portions thereof, shall be subject to all recorded licenses and easements including, without limitation, any as shown on the Plat, recorded now or hereafter, affecting the Property, or any portion thereof, and additionally subject to those recorded easements and matters shown or appearing of record as of the date of this Amended Declaration.

ARTICLE 3. MEMBERSHIP AND VOTING RIGHTS

3.1 Association Structure, Powers and Duties. The Association has been formed as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Amended Declaration and its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Association shall have a Board to manage its affairs. The Board shall be elected by its Members.

3.2 Membership. The following shall be members of the Association: every Owner of a Lot that is subject to Assessment hereunder. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. Except as provided herein, each Lot shall have voting rights based upon that Owner's Allocated Interest. The Association shall have one class of voting membership who shall be the Owners.

3.3 Owner Control. The Owners shall elect the members of the Board as set forth as follows:

3.3.1. Except as otherwise provided above, the Owners shall elect a Board of at least three (3) members. The Board shall appoint the officers.

3.3.2. Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause.

3.4 Nonliability of Association and Others. The Board, the officers and committees of the Association shall not be liable in damages or otherwise to any person whatsoever for any act or omission done as an officer, director, agent or representative on behalf of the Association, except for willful or reckless misconduct, and shall be indemnified from all such liability as provided in the Association's Bylaws. The Association may enter into cooperative arrangements for provision of services with other homeowner associations in the surrounding area and may assume responsibility for that part of the cost attributable to the Project.

3.5 Association Books and Records. The Association shall make the following information available to Owners: (a) the date on which the fiscal year commences; (b) its operating budget for the current fiscal year; (c) its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure; (d) the results of any financial audit or review for the fiscal year immediately preceding the current annual disclosure; (e) a list of all Association insurance policies, including, without limitation, property, general liability, Association director and officer professional liability, and fidelity policies, and which list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates; (f) all of the Association's Bylaws, Articles of Incorporation, rules and regulations; and (g) the minutes of the Executive Board and Member meetings for the fiscal year immediately preceding the current annual disclosure.

3.6 Required Disclosures to Owners. The Association shall provide to all Owners, at least once per year, a written notice stating the name of the Association, the name of the Association's designated agent or management company, if any; and a valid physical address and telephone number for both the Association and the designated agent or management company, if any. The notice shall include the name of the Project, the initial date of the recording of the Declaration, and the reception number or book and page for the main document that constitutes the Declaration. If the Association's address, designated agent, or management company changes, the Association shall provide all Owners with an amended notice within ninety (90) days after the change.

ARTICLE 4. COVENANT FOR ASSESSMENTS

4.1 Creation of the Obligation for Assessments. Each Owner, for each Lot owned within the Property, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all Assessments, charges, fees, fines and other sums which are described in this Amended Declaration and which shall be both a personal obligation of the Owner and a lien against his Lot, as provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all Assessment, charges, fees and other sums attributable to him and/or his Lot. No Owner may waive or otherwise escape personal liability for the payment of the Assessments, charges, fees, fines and other sums provided for herein by non-use of the Common Area or the facilities contained therein, by abandonment or leasing of his Lot or by asserting any claims against the Association or any other person or entity. In addition to the foregoing Assessments, charges, fees, fines and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot, as well as all charges for separately metered utilities servicing his Lot. The

charges for any utilities that are master metered shall be included in the Annual Assessments levied by the Association.

4.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and to fulfill the purpose and obligation of the Association including, without limitation, improvement and maintenance of the Project and the Common Area, the Maintenance Area, and the Lots as more specifically provided herein.

4.3 Annual Assessments. The Annual Assessment shall specifically include, without limitation, all Common Expenses as defined by the Act and the following:

4.3.1. expenses of management of the Project including management fees and the Association and its activities;

4.3.2. taxes and special assessments upon the Association's real and personal property including, without limitation, the Common Area and any Limited Common Area;

4.3.3. premiums for all insurance which the Association maintains as required or permitted under this Amended Declaration together with any sums expended by the Association for the deductible under such policies and any other expenses connected with such insurance;

4.3.4. common lighting, water and other common utility and sewer service charges; and any other common expenses including, without limitation, snow removal from private streets, driveways and public and private sidewalks to the front door or entry courtyard, and common trash collection and security monitoring, if approved by the Board;

4.3.5. landscaping and care of the Common Area and any recreational or other Association facilities or Improvements located thereon;

4.3.6. such repairs and maintenance that are the responsibility of the Association, including, without limitation, within the Maintenance Area;

4.3.7. wages for Association employees;

4.3.8. legal and accounting fees for the Association;

4.3.9. any deficit remaining from a previous Assessment year;

4.3.10. a working capital fund;

4.3.11. the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of those elements of common property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by special assessments;

4.3.12. the creation of reasonable contingency reserves for any applicable insurance deductibles; and

4.3.13. any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Amended Declaration. The Association shall also have authority, to the extent it deems proper, to provide any other services requested by particular Owners, but only on a contract basis under which those Owners pay the cost thereof. The Association may enter into cooperative arrangements for provision of services with other homeowner associations in the surrounding area and may assume responsibility for that part of the cost fairly attributable to this Project.

4.4 Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, Special Assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of an emergency situation or of any construction, reconstruction, repair or replacement or a capital improvement upon the Common Area, including fixtures and personal property related thereto, and any Improvements and fixtures upon any Lot or within the Maintenance Area, provided that any such Special Assessment shall be ratified by the Owners pursuant to the process set forth in Section 4.5.

4.5 Determination of Budgets. The total amount required to be raised by the Assessments shall be determined by the Board at least once a year and shall be based upon an annual budget to be approved by the Board and adopted by the Association annually showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated costs and expenses of the Association, an amount deemed necessary or desirable as a contingency reserve and the total amount required to be raised by Assessments to cover such estimated costs and expenses and contingency reserve. The budget shall cover all costs and expenses expected to be incurred by the Association in performing its functions, or in providing services required or permitted under this Amended Declaration, including, without limitation, all expenses required to adequately operate and maintain the Common Areas, insurance and taxes. The budget may be revised as necessary from time to time. Assessments may be raised or lowered by the Board as required to meet such revised budget. Within ninety (90) days after adoption of any proposed budget for the Association, the Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all the Owners and

shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority (i.e., more than 50%) of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

4.6 Rate of Assessment. Except as provided herein, both Annual and Special Assessments shall be set at the Owner's Allocated Interest sufficient to meet the expected needs of the Association.

4.7 Assessment Procedure.

4.7.1. *Annual Assessments.* The annual budget shall be adopted pursuant to Section 4.5. Any surplus funds of the Association remaining after the payment of or provision for Common Expenses and any prepayment of or establishment of contingency reserves shall be applied as the Board, in its sole discretion, determines appropriate. The Board shall not be required to credit or pay such surplus funds to the Owners. The Annual Assessment shall be payable in monthly installments on the first day of each successive month, unless the Board otherwise directs. The Association shall cause to be prepared, delivered or mailed to each Owner, at least thirty (30) days in advance of each Annual Assessment period, a payment statement setting forth the Annual Assessment. Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated, as of the date when said obligation first arose, in proportion to the amount of the assessment year or other period remaining after said date.

4.7.2. *Special Assessments and Other Sums.* Special assessments and other sums imposed hereunder shall be due and payable on the date specified by the Board in written notice to each Owner, but such date shall not be less than ten (10) days after such notice is sent. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of any Owner, his family, tenants or guests, or any breach by any of such parties of any of the provisions of this Amended Declaration, the Association's Bylaws or the Association's rules and regulations, and the same is not paid for by insurance, the cost thereof, after notice to the Owner and a reasonable opportunity to be heard, may be deemed to be a Special Assessment against such Owner and his Lot and shall be enforceable as provided herein. Any such sum imposed by the Board as provided hereunder shall also be deemed a Special Assessment but shall not ratification as provided by Section 4.5.

4.7.3. *Notice.* Failure of the Board to give timely notice of any Assessments provided herein shall not affect the liability of the Owner or his Lot for such Assessment, but if notice is not given, the date when payments shall be due shall be deferred to a date after such notice is given.

4.8 Certificate of Payment. Upon the payment of such reasonable fee as may be determined from time to time by the Board, and upon written request, the Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board, and every Owner. If no statement is furnished to the Owner or holder of a security interest or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid Assessments which were due as of the date of the request. Said certificate may be relied upon by all persons acting in good faith, as conclusive evidence of the payment of any Assessments therein stated to have been paid. The Association shall keep financial records sufficiently detailed to enable the Association to provide the certificates of Assessments described herein.

4.9 Effect of Non-Payment of Assessments-Remedies of the Association.

4.9.1. *General.* Any Assessments that are not paid when due shall be delinquent. If any Assessment is not paid when due, the Association may impose a late charge/administrative fee not to exceed the amount set forth in the Association's rules and regulations. Any Assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's Lot, and/or may suspend the delinquent Owner's right to vote and the right to use any recreational facilities within the Common Area for any period during which any Assessment against his Lot remains unpaid. In the event a judgment is obtained, such judgement shall include interest on the Assessment as above provided, and a reasonable attorney fees to be fixed by the court, together with the expenses, late charges, and costs of the action.

4.9.2. *Lien.* Any unpaid Assessment, charge, fee or other sums assessed against an Owner or his Lot, including, without limitation, with interest thereon at the rate of twenty-one percent (21%) per annum, late charges, court costs, and other collection costs and reasonable attorney fees, and an administrative charge not to exceed the amount set forth in the Association's rules and regulations, shall be a charge on the land and shall be a continuing lien, from and after the levy or Assessment thereof, in favor

of the Association, upon the Lot against which each such Assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, the late charge, any costs or fees, and then to the Assessment payment first due. The Board may enforce such lien by filing with the Clerk a statement of lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association and the amount of delinquent Assessments then owing. Such a claim of lien shall also secure all Assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorney fees, administrative charges and interest have been fully paid or otherwise satisfied. The Board may foreclose the lien in the same manner as provided for in the foreclosure of mortgages under the statutes and laws of the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from suing the Owner personally therefor or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessments, charges, fees or other sums which are not fully paid when due. Except to the extent that the lien of the Association is subordinated to the lien of a First Mortgage on a Lot and except as subordinated by law to the lien of real property taxes, the lien of the Association shall be deemed to have a priority date as of the date of the recording of this Amended Declaration and shall priority over all other liens and encumbrances against a Lot. Any recorded lien may be released by recording a Release of Lien executed by an officer or authorized agent of the Association. In addition, the Association shall have the right to a statutory lien under C.R.S. § 38-33.3-316.

4.9.3. *Authority.* Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same, if acquired by the Association at the foreclosure sale or by deed of trust in lieu of foreclosure. The Association shall also have the right to the appointment of a receiver for the Lot, ex parte, without notice to the Owner. Such receiver shall have the right to lease the Lot and to collect all rents and profits from the Lot during the pendency of the foreclosure.

4.10 Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of a First Mortgage recorded before the delinquent Assessment was due, except as provided by the Act, specifically, C.R.S § 38-33.3-

316(2)(b)(I). Sale or transfer of any Lot shall not affect the lien of said Assessment charges except that sale or transfer of any Lot pursuant to foreclosure or any such mortgage or any such executory land sales contract, or any proceeding in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of Assessment charges which became due prior to any acquisition of title to such Lot by the First Mortgagee pursuant to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including, without limitation, any deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract; no such sale, transfer, foreclosure, or any above described proceeding in lieu or in cancellation thereof, shall relieve any Lot from liability for any Assessment charges becoming due after such acquisition of title, nor from the lien thereof, nor the personal liability of the Owner of such Lot for Assessments due during the period of his ownership of such Lot for Assessments due during the period of his ownership nor from the provisions of C.R.S. § 38-33.3-316.

4.11 Notice to First Mortgagee and Inspection of Books. Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under this Amended Declaration and/or the Bylaws of the Association, which is not cured within sixty (60) days after the Board has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure such default. The Association shall make available to First Mortgagees current copies of the Declaration, Bylaws, other rules concerning the Project, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The Association shall provide an unaudited, annual financial statement to any First Mortgagee making a written request for it and without expense to such First Mortgagee. The First Mortgagees shall be entitled to have an audited financial statement prepared at their expense if one is not otherwise available; said financial statement shall be furnished within a reasonable time following such request. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

4.12 Homestead. The lien of the Association Assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or federal law. The acceptance of a deed to a Lot subject to this Amended Declaration shall constitute a waiver of the homestead exemption as against said Assessment lien.

4.13 Exempt Property. The following Property subject to this Amended Declaration shall be exempt from the Assessments created herein: (a) all Property dedicated to and accepted by local public authority; and (b) the Common Area.

ARTICLE 5.
MAINTENANCE

5.1 Association Maintenance. Association shall provide maintenance and repair as follows:

5.1.1. All repair, replacement, improvement and maintenance of the Common Area and the Maintenance Area, and all Improvements located thereon other than Improvements on the roof of a Shared Wall Unit, including, without limitation, any landscaping, sprinkler system, any roadways, driveways, utility lines (including any common utilities within a Lot or Shared Wall Unit which also serve another Shared Wall Unit, and also any lines located outside of the exterior walls of a Shared Wall Unit but not including any maintenance which is the responsibility of any public or private utility company or entity), any drainage structures or facilities of public improvements to the extent applicable and set forth in C.R.S. § 38-33.3-307(1.5), all water lines located within the private streets within the Project and other portions of the Common Area, any light fixtures, sidewalks, and pathways, or other Improvements located on the Common Area. Except as provided herein, an Owner shall keep Limited Common Areas cleaned and in good condition; provided, an Owner shall not alter, paint, change, modify, expand, restrict, remove or construct such Improvements nor otherwise modify the Common Area or the Maintenance Area of the exterior appearance of the Lot, nor shall any Owner install fences or other Improvements on such areas, without the prior written approval of the ACC.

5.1.2. The Association shall maintain the landscaping and drainage systems in good condition functional for their intended purposes as originally installed. The Association may also undertake, but shall have absolutely no obligation to undertake, maintenance of sprinkler systems in good condition functional for their intended purposes as originally installed. Such maintenance shall include, where necessary, the removal or replacement of improperly functioning landscaping, drainage, or sprinkler system elements and shall also include preventing ponding and regrading and resurfacing where necessary to provide for adequate drainage and preventing Owners from installing landscaping or using water on the Lots in such a way as to endanger the structural integrity or the stability of any of the landscaping, drainage or sprinkler systems, the Shared Wall Unit or the other Improvements upon the Lots or Common Area.

5.1.3. The Association may also undertake, but shall have absolutely no obligation to undertake, such emergency repairs as the Board believes necessary to prevent imminent danger to life or property.

5.2 Willful or Negligent Damage. In the event that the need for maintenance or repair described in Section 5.1 is caused, in the sole discretionary determination of the Board, after providing notice to the Owner and an opportunity to be heard, through the willful or negligent acts or omissions of any Owner, his family, guests, tenants, contractors, or invitees, or other persons or parties acting with the consent of any of the foregoing, including, without limitation any pets or animals of those persons or parties, the cost of such maintenance shall be the personal obligation of such Owner, shall be added to and become part of the Assessment to which the Lot of such Owner is subject, and shall become a lien against such Owner's Lot as provided in this Amended Declaration.

5.3 Access at Reasonable Hours. For the purpose of performing the maintenance referred to in Section 5.1 and inspections related thereto, the Board, through its duly authorized agents, contractors or employees shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Lot and Improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Board or its agents, contractors or employees may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its action, except of its gross negligence or willful misconduct.

5.4 Owner Maintenance. Except as provided in Section 5.1, the Owner shall be responsible for all other maintenance and repairs, including, without limitation, maintenance of his Lot, Shared Wall Unit, and any fixtures, furnishings, equipment and appliances located thereon. All utilities, fixtures and equipment installed within a Shared Wall Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of such Shared Wall Unit, shall be maintained and kept in repair by the Owner thereof, except for any common utilities serving other Shared Wall Units which shall be the Association's responsibility as provided in Section 5.1. An Owner shall do no act or any work that will impair any easement or utility service, nor do any act nor allow any condition to exist which will adversely affect the use and enjoyment of the other Lots or the provision of utility services to such Lots. No Owner shall, in whole or in part, change the landscaping adjacent to or upon his Lot by the addition or removal of any items thereon, including fences, without the prior written approval of the Board. If Owner fails to fulfill his responsibilities under this section, the Board, at its option, may take such action as it deems appropriate, including, without limitation, performing the Owner's obligations, after ten (10) days' notice to such Owner, except in emergencies, and any costs resulting therefrom shall be an Assessment against such Owner and his Lot and shall be due and payable by the Owner thereof.

5.5 Party Walls.

5.5.1. *General Rules of Law to Apply.* Each wall which is built as a part of the original construction of the Shared Wall Units and placed on or immediately adjacent to the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

5.5.2. *Sharing of Repair and Maintenance.* The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

5.5.3. *Destruction by Fire or Other Casualty.* If a party wall is destroyed or damaged by fire or other casualty and if the Association does not restore such wall with insurance proceeds or a Special Assessment, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

5.5.4. *Weatherproofing.* Notwithstanding any other provisions of this section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

5.5.5. *Right to Contribution Runs With Land.* The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

5.5.6. *Arbitration.* In the event of any dispute arising concerning a party wall, or under the provisions of this section, each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decisions shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by an Owner, the Board shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorney fees.

5.6 Management Agreements and Other Contracts. The Association may enter into agreements for professional management of the Association's business. Each Owner shall be bound by the terms and conditions of any management agreement entered into by the Association. Any agreement for professional management of the Association's business shall

provide for termination by either party with or without cause and without payment of a termination fee upon thirty (30) days' prior written notice, and shall have a maximum term of one (1) year. If professional management has been previously in effect after being required by any holder, insurer or guarantor at that time or later, any decision to terminate professional management and to establish self-management by the Association shall require the prior consent of sixty-four percent (64%) of the Eligible Mortgagees (based upon one (1) vote for each Eligible Mortgagee held) and vote or agreement of Owners of Lots to which at least sixty-four percent (64%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose.

ARTICLE 6. ARCHITECTURAL REVIEW

6.1 Composition of Committee. The ACC shall consist of any three (3) persons appointed by the Board. A majority of the ACC may designate a representative to act for it. It shall be the duty of the ACC, and it shall have the power, by the exercise of its best judgment, to determine that all structures, Improvements, construction, decoration and landscaping on the Property conform to and harmonize with the existing surroundings and structures.

6.2 ACC Review. No Improvements shall be constructed or maintained upon the Property; no alterations to re-staining or repainting of the exterior of a Shared Wall Unit or Lot shall be made; no landscaping performed; and no Owner shall enclose, by means of screens, fences or otherwise any Lot, balcony, porch or patio, unless the following, if applicable, shall have been submitted to and approved in writing by the ACC: complete plans, specifications, and Lot plans therefor, showing the exterior design, height, square footage, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, walls and windbreaks, and grading plan. A copy of such plans and specifications as finally approved shall be deposited with the ACC.

6.3 Procedures.

6.3.1. Any Owner who submits a matter to the ACC for approval shall be required to pay to the ACC, at the time the request is submitted, the then applicable application fee, which fee shall be as established from time to time by the ACC. The application fee shall be \$0.00 as of the date of recording of this Amended Declaration and shall be subject to change by the ACC from time to time. The ACC shall approve or disapprove all plans and requests within sixty (60) days after requests have been submitted. In the event the ACC fails to take action within sixty (60) days after plans have been received by the ACC, approval will not be required, and this Article will be deemed to have been fully complied with. A majority vote of the members of the ACC is required for approval or disapproval of proposed Improvements. The ACC shall

maintain written records of all applications submitted to it and of all action taken. In approving or disapproving the plans submitted to it, the ACC shall take into consideration the design, style and construction of the proposed Improvements or alteration, its location upon the Property, the harmony of its design, architecture and location with the terrain and surrounding neighborhood, and shall determine whether such proposed Improvements or alteration is consistent with the general terrain, the architecture of other Improvements located upon the Property subject to this Amended Declaration and whether or not the construction or alteration of said Improvements will adversely affect or decrease the value of other Lots and/or dwellings because of its design, location, height or type of material used in construction. The ACC may make reasonable requirements of the Lot Owner, including the submission of additional plans, to ensure conformance of such Improvements or alteration when erected with these restrictions and covenants and with the plans submitted and approved. All construction or alterations performed on any Lot or the Common Area will conform to the approved plans and specifications. The ACC may require such changes as may be necessary to conform to the general purposes as herein expressed. The ACC shall be responsible for enforcing compliance of the approved plans with these covenants and restrictions.

6.3.2. The ACC shall have authority to grant variances from the provisions of this Amended Declaration in cases of conditions wherein the strict enforcement of these restrictions would result in unusual hardship. The ACC shall be the sole and exclusive judge of whether or not said hardship exists.

6.3.3. Whenever the ACC disapproves of any proposed plans or specifications, it shall state in writing its reason for such disapproval in general terms so that the objections can be met by alterations acceptable to the ACC.

6.3.4. All plans submitted to the ACC shall be left on file with the ACC.

6.3.5. It is the intent of this Amended Declaration that the ACC shall exercise broad discretionary powers hereunder and its decisions shall be final and conclusive except for an arbitrary abuse of its discretion or an excess of its authority.

6.3.6. The ACC shall resolve all questions of interpretation under this Article. They shall be interpreted in accordance with their general purposes and intent as herein expressed.

6.3.7. If the ACC denies or disapproves a request or submission under this Article, such matter may not be resubmitted to the ACC for one (1) year following the date of the denial or disapproval, unless the ACC consents in writing to the re-submittal and if resubmitted without the approval of the ACC, such request shall be automatically

deemed denied. The ACC may in its sole discretion waive this requirement to permit resubmission of plans and specifications with revisions to conform with matters identified by the ACC in its disapproval of the originally submitted plans and specifications.

6.3.8. In the event that a request or submission is approved, construction shall promptly commence and shall be completed within one (1) year after the date of approval. All construction shall be in strict compliance with the approved plans and specifications.

6.3.9. The approval of the ACC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matter subsequently or additionally submitted for approval or consent.

6.3.10. The members of the ACC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

6.3.11. Decisions concerning the approval or denial of an application for architectural or landscaping changes shall be made in accordance with standards and procedures set forth in the Declaration or in duly adopted rules and regulations or bylaws of the Association, and shall not be made arbitrarily or capriciously.

6.4 Remedy Violations. The ACC, may give notice to the Owner of the Lot where a violation of the Governing Documents occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intent of the ACC to invoke this section unless within a period stated in the notice (not less than ten (10) calendar days), the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the ACC may cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry on Owner's property as necessary for such purpose shall not be deemed a trespass. Each Owner of a Lot hereby grants a license to the ACC for the purpose of entering on a Lot to remedy violations or breaches of the Governing Documents. The cost so incurred by the ACC shall be paid by the Lot Owner and the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of twenty-one percent (21%) per annum and costs of collection, shall be a lien on the ownership interest in the Lot (including Improvements thereon) and shall in all respects be the personal obligation of the Owner. The ACC may bring an action at law for

recovery of the costs so incurred by it, plus interest and costs of collection against the Owner and may bring an action to foreclose the lien against the Lot and Improvements subject to the lien and there shall be added to the amount of such obligation the costs of collection, and the judgment in any such action shall include interest as above provided and the costs of collection. The foregoing specified rights and remedies shall not limit the right of any Lot Owner to enforce the Governing Documents or as otherwise may be provided by law or equity; provided, however, that only the ACC shall have the right to proceed under this section. In the event that the ACC elects to exercise the right to enter upon a Lot to remedy a violation of these covenants, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless damage is caused to the Lot or Improvements thereon that is unrelated to the remediation of the breach of the Governing Documents and is caused by the willful and wanton acts of the ACC. In no event shall there be any liability for damage to a structure that is in violation of the Governing Documents.

ARTICLE 7. RESTRICTIONS

7.1 Leases. Any lease agreements between an Owner and a tenant shall provide that the term of such lease shall be subject in all respects to the provisions of this Amended Declaration and the Articles of Incorporation and Bylaws of the Association, and that any failure by tenant to comply with the terms and provisions of such documents shall be a default under the lease. Further, all leases shall be in writing, and the Board may require the use of its approved form or the insertion of particular provisions, and a copy of any lease shall be provided to the Board by the Owner. After notice and an opportunity for hearing, the Board may require an Owner to evict any tenant who has repeatedly violated any provision of this Amended Declaration, the Articles of Incorporation or the Bylaws. This section shall also apply to all vacation rental by owner (VRBO), air bed and breakfast (Airbnb), and other short-term rental agreements relating to a Lot.

7.2 Residential Use. Each Lot shall be occupied and used as a private dwelling for the Owner, and members of his family, guests and tenants for residential purposes only. Other than the rental of private dwellings for residential purposes, no Lot shall be used for any business, manufacturing or commercial purpose; provided, however, if the appropriate zoning so allows and the use otherwise complies with this Amended Declaration, Bylaws, and Policies, a specifically designated portion of a Lot may be used as a home business office.

7.3 Animals. Each Lot shall be entitled to a maximum of no more than two (2) dogs or cats (or one of each) and a reasonable number of other "Household Pets" (meaning generally recognized household pets such as fish, birds, rodents, and non-poisonous reptiles), so long as such dogs, cats and other Household Pets are not kept for any commercial purpose, are not kept in unreasonable numbers, do not cause an unreasonable amount of noise or odor, and do not otherwise become a nuisance or threat to other Owners or occupants. Permitted dogs, cats

and other Household Pets must be fenced or restrained at all times within the Owner's Lot, and shall not be permitted outside such Lot except when leashed and accompanied by the pet's owner or the owner's representative. All dogs, cats, and other Household Pets shall be properly immunized and otherwise maintained and cared for as required by applicable laws. The Owner of a Lot where a dog, cat or other Household Pet is kept, as well as the legal owner of the pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the pet, and of any clean-up of the Owner's Lot and of the streets, sidewalks, Common Area, or other Lots necessitated by such pet. The Board shall be responsible for enforcing the restrictions set forth in this section, and shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats and other Household Pets are being kept for commercial purposes, or are being kept in unreasonable numbers, or are causing an unreasonable amount of noise or odor, or are otherwise a nuisance or threat to the Owners or occupants, or that a Lot, Owner or occupant is otherwise in violation of this section, and to take such action or actions as it deems reasonably necessary to remedy the violation, including, without limitation, the levying of fines or assessments. Also without limiting the generality of the foregoing, the Board may require the owner or custodian of a dog that barks or howls excessively, or a dog, cat or other Household Pet with other offensive habits or threatening behavior, to confine such animal indoors, or to permanently remove such animal from the Property. Further, the Board may institute such rules as it deems advisable for the control of pets, including, without limitation, prohibitions and restrictions (including the right to establish further limits on the number, weight and size of the pets that may be kept, and the right to prohibit particular breeds of dogs in order to comply with the Association's liability insurance requirements).

7.4 Structures. All buildings or structures erected upon the Property shall be new, and no pre-fabricated buildings or structures shall be moved from other locations onto the Property. No temporary house, trailer, tent, shed, garage or outbuilding shall be placed or erected upon any Lot, and no residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth. The work of constructing, altering, or remodeling any structure on any part of any Lot shall be prosecuted diligently from the commencement thereof until the completion thereof.

7.5 Signs. With the exception of one entry/identification sign per Lot during the period of actual construction on the Lot, no sign, poster, billboard or advertising device of any kind shall be allowed or displayed upon any Lot or any Common Area within the Community except: (a) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (b) such signs as may be required for traffic control and regulation of the Common Area; (c) neighborhood monuments (e.g., entrance and directional signs); (d) one security company sign; and (e) one "For Sale" or "For Rent" sign on any Lot. The Board may adopt reasonable rules regulating the location, placement and display of all signs.

7.6 Lots to be Maintained. Each Lot at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot so that same are visible from any neighboring Lot or street. No condition shall be permitted within any Shared Wall Unit, balcony, porch, patio or deck which is visible from other Shared Wall Units or the Common Area and which is inconsistent with the design integrity of the Project as determined by the Board in its sole discretion; such conditions include, without limitation, window treatments, draperies, shades and hangings, and articles on balconies, porches, patios, decks or Common Area or visible through a window. The Board may regulate by rule the color and appearance of drapes, shades, blinds and window coverings. Notwithstanding the foregoing, this section shall not prohibit the display of the American flag or of a military service flag as provided by C.R.S. § 38-33.3-106.5 of the Act. The Board may adopt reasonable rules regulating the location, placement and display of such flags in compliance with the Act.

7.7 Fences. On Lots where boundary fences are permitted, the fences shall be no taller than forty-two (42) inches and may only be constructed upon the prior written approval of the ACC. On Lots where privacy fences, security fences, and fences for screening purposes are permitted, such fences may only be constructed upon the prior written approval of the ACC. The ACC shall have the right to designate the specific type, material and style of all fences installed on the Property, along with the dimensions and locations for such fences.

7.8 Lots Not to be Subdivided. No Lot or Lots shall be subdivided, except for the purpose of combining portions with an adjoining Lot, provided that no additional building site is created thereby. No less than one entire Lot, as conveyed, shall be used as a building site. Upon two or more Lots being combined into a single Lot, the Owner thereof shall continue to be responsible for all Assessments related to each Lot so combined and not merely the resulting "combined Lot." Such Owner shall also continue to have the votes related to each Lot so combined.

7.9 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot that is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others.

7.10 No Antennae or Devices. Except as may otherwise be permitted by the ACC, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot or the Common Area. Notwithstanding the foregoing, neither the restrictions nor the requirements of this section shall apply to antennas (which may include some satellite dishes and other devices) that are specifically covered by the Telecommunications Act of 1996, as amended from time to time. As to antenna which are specifically covered by the Telecommunications Act of 1996,

as amended, the Association shall be empowered to adopt rules and regulations governing the types of antenna that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

7.11 No Hazardous Activities. No activities shall be conducted on the Property and on Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property or might cause the cancellation or diminution of insurance or an increase in insurance premiums. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Property and no open fires shall be lighted or permitted on the Property except in a contained barbeque Lot while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or except such campfire or picnic fires in an area designated for such by the Association.

7.12 No Annoying Light, Sounds or Odors. No light shall be emitted from any Lot that is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot that is unreasonably loud or annoying; and no odor shall be emitted on any Lot that is noxious or offensive to others.

7.13 Restrictions on Parking and Storage.

7.13.1. Except as specifically authorized by the Board, no part of the Property, including, without limitation, public or private streets, drives, or parking areas, and no part of the streets adjoining the Property shall be used as a parking, storage, display, or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, trucks larger than one (1) ton, bus, or self-contained motorized recreational vehicle, except as temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Property that are necessary for the construction of Shared Wall Units or the maintenance of the Common Area or Lots or making deliveries or performing services. Notwithstanding the foregoing, the Association may not prohibit the parking of some motor vehicles by certain emergency service providers under the criteria set forth by the Act.

7.13.2. No abandoned vehicles shall be stored or parked upon any part of the Property or any street adjoining the Property, but excluding any area designated for such purpose by the Board. In the event that the Board shall determine in its sole discretion that a vehicle is an abandoned vehicle, then a written notice describing the vehicle will be personally delivered to the Owner thereof (if such Owner can be reasonably ascertained) or will be conspicuously placed on the unused vehicle (if the Owner thereof cannot be reasonably ascertained, and if the unused vehicle is not removed within seventy-two (72) hours thereafter, the Board shall have the right to

remove the vehicle at the sole expense of the Owner thereof. For the purpose of this section, an “abandoned vehicle” is any automobile, truck, motorcycle, motor bike, boat, trailer, camper, motor home, house trailer or other similar vehicle which has not been driven under its own propulsion, or has not been moved for a period of two (2) days or longer.

7.13.3. The Board may make rules and restrictions regarding parking and vehicular traffic on the Property, and the Board may also designate any parking spaces as solely for the use of visitors or others and may require that all Owners park their vehicles in their assigned parking spaces or inside their garages, rather than in driveways, streets or other parts of the Property. Owners are encouraged to park their vehicles in their garage in order to preserve the property values. Garages are intended for the purpose of parking rather than storage. Neither Owners, tenants, guests, family nor other invitees shall park within or obstruct any prohibited area, including, without limitation, any fire lane. Any vehicle or other item that is parked in violation of any rules or restrictions shall be subject to immediate removal by the Board or its agents at the expense of the Owner of such vehicle. Notwithstanding any other provision contained herein, no vehicles of any type shall be parked on any private street within the Property.

7.14 Clotheslines and Storage. There shall be no outside clotheslines, except as shall be approved and permitted by the Association acting in accordance with C.R.S. § 38-33.3-106.7 of the Act. Basketball hoops (whether on buildings or free-standing), storage sheds, patio covers or similar structures, wood piles or outside storage areas shall not be allowed unless approved in writing by the ACC in its sole discretion. Service or storage areas shall be so located as not be visible from a street or road; there shall be no storage under any deck, unless or with the prior written approval of the ACC.

7.15 Garbage and Refuse Disposal. No garbage, refuse, rubbish or cuttings shall be deposited on any street, on the Common Area, or on any Lots unless placed in an appropriate, clean container suitably located, solely for the purpose of garbage pick-up. all trash and refuse containers, except when placed as noted above as the sole purpose of garbage pick-up, will be kept inside the Shared Wall Units. The burning of trash in outside incinerators, barbeque pits or the like is prohibited, it being intended that all refuse, trash, garbage and the like shall be hauled from the Property.

7.16 Repair. No activity, including, without limitation, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers, boats, or vans may be performed on any Lot unless it is done within completely enclosed structures located on the Lot that screen the sight and sound of the activity from the street and from adjoining Lots and the Common Area. The foregoing restriction shall not be deemed to prevent washing

and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities nominally incident and necessary to such washing and polishing.

7.17 Tanks. No tanks of any kind, elevated or buried, shall be erected, placed or permitted upon any Lot, except for customary barbeque grill tanks or tanks inside of Shared Wall Units.

7.18 Underground Electric Lines. All electric, television, radio and telephone line installations and connections which shall be placed on the Property after the recording of this Amended Declaration shall be placed underground, except for power substations and switching stations which shall be adequately screened from view and except for customary surface devices for access or control and except that during the construction of a residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

7.19 Use of Common Area.

7.19.1. No use shall be made of the Common Area that will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Area.

7.19.2. The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board.

7.19.3. No use shall ever be made of the Common Area which will deny ingress and egress for a substantial period of time to those Owners having access to a public street, to their Lots, to their parking areas, or to any recreational facilities completed upon the Common Area.

ARTICLE 8. INSURANCE

8.1 Common Insurance. The Association shall obtain and maintain at all times, to the extent reasonably obtainable, insurance policies covering the following risks:

8.1.1. *Casualty*. A policy of property insurance covering the following: the Lots and all insurable Improvements thereon including the Shared Wall Units, except for the value of the land, foundation, excavation, and other items normally excluded; and all insurable personal property owned by the Association, and all insurable Improvements located upon the Common Area, together with all fixtures and appliances attached thereto except for the value of the land, foundation, excavation and

other items normally excluded. Such policy shall include a “Replacement Cost Endorsement” providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, an “Inflation Guard Endorsement” and an “Agreed Amount Endorsement”. The Association may also purchase a “Demolition Endorsement” and “Increased Cost of Construction Endorsement” and/or a “Contingent Liability from Operation of Building Laws Endorsement” or the equivalent. Such insurance as maintained by the Association pursuant to this section shall afford protection against at least the following:

- (a) loss or damage by fire and other hazards covered by the standard all risk form, including, without limitation, endorsements for vandalism and malicious mischief, and
- (b) such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

8.1.2. *Public Liability.* Comprehensive general liability and property damage insurance in such limits as the Board may, from time to time, determine, but not in an amount less than \$500,000.00 for bodily injury, per person, per occurrence and umbrella liability limits of \$1,000,000.00 per occurrence covering claims for bodily injury and \$50,000.00 for property damage arising out of one occurrence or \$1,000,000.00 combined single limit coverage. To the extent reasonably obtainable, coverage shall include, without limitation, liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Common Area and the Shared Wall Units by the Association, off-premises employee coverage, its officers, directors, agents, employees, representatives and the Owners, water damage liability, contractual liability, and liability for property of others.

8.1.3. *Workmen’s Compensation.* Workmen’s Compensation and employer’s liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

8.1.4. *Fidelity Insurance.* The Association shall purchase, in an amount equal to the maximum amount of funds in the Association’s custody at any one time, but not less than the greater of either any sum required under C.R.S. § 38-33.3-306(3) or the sum of three (3) months’ Assessments on the entire Project, plus reserves, blanket fidelity insurance covering losses resulting from dishonest or fraudulent acts or omissions committed by the Association’s directors, managers, including, without limitation, any person employed as an independent contractor for the purpose of managing the Association and any employee thereof, trustees, employees, volunteers, or anyone who manages the funds collected and held for the benefit of the Owners,

provided however, any managing agent which handles funds of the Association should be covered by its own fidelity insurance policy, which must provide the same coverage required of the Association. Such policy shall also cover destruction or disappearance of money or securities and forgery. Such policy shall cover any person or entity handling funds of the Association, including, without limitation, employees of the professional manager, which should also be covered by its own fidelity bond and submit evidence thereof to the Association. Such fidelity coverage or bonds shall name the Association as the named insured and as obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

8.1.5. *Officers' and Directors' Personal Liability Insurance.* To the extent obtainable, appropriate officers' and directors' personal liability insurance shall be obtained by the Association to protect the officers and directors and the ACC from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

8.1.6. *Flood.* If the Property is located in an area identified by the Secretary of Housing and Urban Development or the Director of the Federal Emergency Management Agency as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Property in an amount which is the lesser of (i) the maximum amount of insurance available under the Act or (ii) the aggregate replacement value of the Improvements located upon the Property.

8.1.7. *Other Insurance.* In addition, the Board may obtain any other insurance against such other risks, of a similar or dissimilar nature, which the Board shall deem appropriate with respect to the Property.

8.2 Notice of Unavailability. If any insurance described in this Amended Declaration is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepared by United States mail to all Owners and Eligible Mortgagees as provided herein.

8.3 Annual Review. At least annually and prior to obtaining any insurance policy required by this Amended Declaration, the Board shall obtain an estimate of the full replacement value of all Improvements on each Lot, including all buildings, fixtures, improvements and service equipment located thereon, and of the Common Area Improvements including landscaping and underground facilities, without deduction for depreciation, for the purpose of determining the amount of insurance required. The amount of such insurance shall be shown in the Association's annual report. Upon written challenge by the Owners of twenty

percent (20%) or more Lots that the Association's estimate of maximum replacement value is too low, the Association will secure a certified appraisal of replacement value prepared by an M.A.I. appraiser and will conform the hazard insurance to the value indicated by that appraisal.

8.4 Form of Insurance.

8.4.1. The property insurance shall be carried in blanket policy form, shall name the Association as the insured, as trustee and attorney-in-fact, and shall provide that the proceeds shall be paid to the Association for the benefit of and in trust for the Association, the Owners and their First Mortgagees, as their interests may appear, shall additionally insure and identify the interests of each Owner and the First Mortgagee, and shall provide a standard, non-contributory mortgage clause in favor of each First Mortgagee.

8.4.2. To the extent possible, all insurance policies shall:

(a) be obtained from responsible companies duly authorized and licensed to do insurance business in the State of Colorado, and having at least a "8" general policyholder's rating or a financial performance index of six (6) or better in the Best's Key Rating Guide;

(b) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, its Owners and members of their households;

(c) provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees and agents;

(d) provide for a waiver of any defense based on co-insurance;

(e) provide that the policy of insurance shall not be permitted to lapse, be terminated, canceled or materially or substantially changed or modified without at least thirty (30) days' prior written notice to the Association, the Owners and the Eligible Mortgagees;

(f) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(g) provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and

(h) provide that no Assessments therefore may be made against First Mortgagees and any such Assessments made against someone other than First Mortgagees shall not become a lien on the Property superior to the First Mortgagee.

8.4.3. On written request the Association shall furnish, by certificate or otherwise, a copy of any insurance policy, identifying the interest of the Owner in question, to any Owner or First Mortgagee, together with proofs of payment of premiums. Further, the Association may require the insurer to furnish to each Owner and First Mortgagee a certificate of insurance.

8.4.4. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice. Any loss falling within the deductible portion of the policy shall be borne by the Association, except as otherwise provided in this Amended Declaration.

8.4.5. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustments. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Lot Owner a pro-rata share of any deductible paid by the Association.

8.5 Owner's Personal Property and Liability Insurance. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Each Owner shall be solely responsible, at his expense, for all insurance covering all loss or damage to any and all fixtures, appliances, furniture, furnishings or other personal property supplied, maintained or installed by the Owner and covering liability for injury, death or damage occurring within his Shared Wall Unit. Such insurance shall contain waivers of subrogation and shall be so written that the insurance obtained by the Association shall be affected or diminished thereby. The Association shall have no responsibility regarding the obtaining or continuation of any such insurance. If at any time of any loss under any policy which is in the name of the Association there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy such Association policy shall be primary insurance not contributing with any of such other insurance.

ARTICLE 9.
DAMAGE, DESTRUCTION, CONDEMNATION AND MERGER

9.1 Attorney-in-Fact. All of the Owners and First Mortgagees irrevocably constitute and appoint the Association as insurance trustee under C.R.S. § 38-33.3-313(5) and (9) and under this Amended Declaration and as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Property in the event of their destruction, damage, condemnation, or liquidation of all or a part of the Project or from the termination of the Project, including, without limitation, the repair, replacement and improvement of any buildings, fixtures, Improvements and service equipment located on the Property (but excluding any furniture, furnishings or other personal property installed by the Owners). Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance shall constitute appointment of the attorney-in-fact herein provided. As attorney-in-fact, the Association, by its president and secretary or assistant secretary or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the power herein granted and to represent the Owners in any proceedings, negotiations, settlements or agreements. The proceeds of any insurance collected shall be payable to the Association, for the benefit of the Association, the Owners and their First Mortgagee as their interests appear, for the purpose of repair, restoration, reconstruction or replacement as provided in this Amended Declaration. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact to deal with the Project upon its destruction, damage, or condemnation shall be appointed. Said appointment must be approved by vote or agreement of Owners to which at least sixty-four percent (64%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, and at least sixty-four percent (64%) of the Eligible Mortgagees. Notwithstanding any contrary provision of this Amended Declaration, the Association's Articles of Incorporation and Bylaws, no Owner or any other party shall have priority over any rights of the First Mortgagee of the Lot pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of any Project common property.

9.2 Damage or Destruction of Common Area. Any portion of the Common Area for which insurance is required under C.R.S. § 38-33.3-313 which is damaged or destroyed must be repaired or replaced promptly by the Association, as provided by C.R.S. § 38-33.3-313(9).

9.3 Damage or Destruction of Shared Wall Units. In the event of damage to or destruction of a Shared Wall Unit, the insurance proceeds shall be applied by the Association, as attorney-in-fact to such reconstruction, and the Improvements shall be promptly repaired

and reconstructed, subject to C.R.S. § 38-33.3-313(9) of the Act. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair and restoration of the Improvements. The Annual Assessments set forth in this Amended Declaration shall not be abated during the period of insurance adjustments and repair and reconstruction.

9.3.1. If the insurance proceeds are insufficient to repair and reconstruct any or all of the damaged or destroyed Shared Wall Units, the cost of repair or replacement in excess of insurance proceeds and reserves shall be a Common Expense of the Association.

9.3.2. Notwithstanding any provision to the contrary, but subject to C.R.S. § 38-33.3-313(9) to the extent applicable, if sixty-four percent (64%) of the Eligible Mortgagees (based upon one (1) vote for each First Mortgage held) and the Owners to which at least sixty-four percent (64%) of the votes in the Association are attached, including the vote of every Eligible Mortgagee and Owner of a Shared Wall Unit that will not be rebuilt, who are voting in person or by proxy at a meeting duly called for that purpose or have given their prior written approval, vote not to rebuild, the Association shall provide that of any or all of the destroyed or damaged Shared Wall Units shall forthwith be demolished and all debris and rubble caused by such demolition removed from the Lot, and the Lot regraded and landscaped to the satisfaction of the Board. The cost of such demolition work and landscaping, together with all taxes, liens and encumbrances and any costs in repairing any party walls, shall be paid for by any and all available insurance proceeds, with any deficiency thereof to be a Common Expense of the Association. Any excess insurance proceeds shall be distributed pursuant to C.R.S. § 38-33.3-313(9)(b) and said Owner shall convey merchantable title to his Lot to the Association, free and clear of all liens, encumbrances, Assessments, and taxes (except as prorated), for its fair market value as determined by a M.A.I. appraisal, the cost of which shall be paid by the Owner of the applicable Shared Wall Unit, with the appraiser thereof to be named by the Association. Upon the Association's acquisition of the Lot, said Lot shall become part of the Common Area.

9.4 Condemnation. If a Lot, or any part thereof, is acquired by eminent domain, the provisions of C.R.S. § 38-33.3-107 shall apply. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Area, any part thereof or any interest therein, with a value (including loss of value to the balance of the Common Area thereon), as reasonably determined by the Association, in excess of \$5,000.00, the Association shall give prompt notice thereof, including a description of the part of or the interest in the Common Area sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, but the Association shall not enter into proceedings pursuant to which the Common Area or any part thereof or any interest therein, is relinquished without giving all Eligible Mortgagees of Lots and all Owners at least fifteen (15) days' prior written notice thereof.

9.4.1. In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Area, the award made for such taking shall be paid to the Association as provided by C.R.S. § 38-33.3-107(3) and after the approval described below, the award shall be applied toward the repair and restoration of the Common Area, the Association shall arrange for the same and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that sixty-four percent (64%) or more of the Owners and at least fifty-one percent (51%) of Eligible Mortgagees do not duly and promptly approve the repair and restoration of such Common Area, the Association shall disburse the net proceeds of such award jointly to the Owners and their respective First Mortgagees at the rate of one (1) equal share per Lot, except that any award attributable to the acquisition of a Limited Common Area shall be paid solely to the Owner thereof and that Owner's First Mortgagee.

9.5 Repair and Reconstruction. Unless otherwise agreed by sixty-four percent (64%) of the Eligible Mortgagees (based on one (1) vote for each First Mortgage held) and by vote or agreement of Owners of Lots to which at least sixty-four percent (64%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Amended Declaration and with the original plans and specifications, and shall restore any Shared Wall Unit or other Improvement partially condemned or damaged by an insurable hazard to substantially the same condition in which it existed prior to such condemnation or damage.

9.6 Excess Insurance Proceeds. With the prior written approval of sixty-four percent (64%) of the Eligible Mortgagees (based on one (1) vote for each First Mortgage held) and by vote or agreement of Owners of Lots to which at least sixty-four percent (64%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, any insurance proceeds remaining after any repairs or reconstruction are completed shall be paid to each Owner and his First Mortgagee jointly at the rate of one (1) equal share per Lot. Without such approval, any excess insurance proceeds shall be placed in the Association's reserves.

9.7 Notice of Loss to Eligible Mortgagee. In the event that there shall be any damage to or destruction of: (a) any Improvement on the Lot on which such Eligible Mortgagee holds the First Mortgage which shall be in excess of Five Thousand Dollars (\$5,000.00) and/or (b) the Common Area which shall be in excess of Five Thousand Dollars (\$5,000.00), or in the event of the condemnation of any part of the Common Area as described in Section 9.4 in excess of Five Thousand Dollars (\$5,000.00), then timely written notice of any such damage, destruction or condemnation shall be given by the Association to such Eligible Mortgagee. Notwithstanding any provision to the contrary, no provision of this Amended Declaration or

of any other document relating to the Property shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee in the case of a distribution to an Owner of Insurance proceeds or condemnation awards for loss to or taking of Lots or Common Area or both.

9.8 Merger. The Association may merge with one or more associations in the surrounding area on such terms and conditions as may be agreed to by vote or agreement of Owners of Lots to which at least sixty-four percent (64%) of the votes in the Associations are attached, who are voting in person or by proxy at a meeting duly called for that purpose, and by sixty-four percent (64%) of all Eligible Mortgagees. The surviving entity in any such merger or affiliation shall be the Association for purposes of this Amended Declaration.

ARTICLE 10.
ADDITIONAL RESTRICTIONS

10.1 Restrictions Upon Association and Owners. Unless at least sixty-four percent (64%) of the Eligible Mortgagees (based upon one (1) vote for each Lot encumbered by a First Mortgage) and the Owners by vote or agreement of Owners of Lots of which at least sixty-four percent (64%) of the votes in the Association are attached, have given their prior written approval, neither the Association nor the Owners shall be empowered or entitled to do any of the following:

10.1.1. by act or omission, seek to abandon or terminate this Amended Declaration or any scheme or architectural review, or enforcement thereof, as set forth in this Amended Declaration, regarding the architectural design, exterior appearance, or exterior maintenance of the Lots, Improvements thereon, or the Common Area, or the maintenance of the common property, party walls or common fences and roads, or the upkeep of lawns and plantings of the Project;

10.1.2. by act or omission, seek to abandon, partition, subdivide, mortgage, encumber, sell or transfer any of the Common Area, except for the granting of utility easements as provided by Section 2.5.1 hereof; any conveyance or encumbrance of the Common Area shall also comply with voting requirements of C.R.S. § 38-33.3-312;

10.1.3. fail to maintain full current replacement cost, fire, and extended insurance coverage on the Lots and Common Areas, and such other insurance as is required under this Amended Declaration;

10.1.4. use hazard insurance proceeds for loss to the Improvements for other than repair, replacement or reconstruction of such Improvements as herein provided;

10.1.5. change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner; or

10.1.6. a material change in any of the following provisions of this Amended Declaration: voting rights; Assessments, Assessment liens or the priority of Assessment liens; reserves for maintenance, repairs, and replacement of Common Areas; responsibility for maintenance and repairs; reallocation of interests in the Common Areas, or rights to their use; redefinition of any Lot boundaries; convertibility of Lots into Common Areas; expansion or contraction of the Project, or the addition, annexations, or withdrawal of Property to or from the Project; insurance or fidelity bond; leasing of Lots; imposing of any restrictions on an Owner's right to sell or transfer his Lot; a decision by the Association to establish self-management when professional management had been required previously by this Amended Declaration or by a First Mortgage holder; restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Amended Declaration; any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or any provisions that expressly benefit First Mortgage holders, insurers, or guarantors.

10.2 Implied Approval by Eligible Mortgagee. If the prior approval of Eligible Mortgagees is required pursuant to this Amended Declaration, the Association shall send a dated written notice and a copy of any proposed action or amendment by certified mail to each Eligible Mortgagee at its address of record with the Association. In addition, the Association shall cause the dated notice, together with information on how to obtain a copy of the proposed action or amendment, to be printed in full at least twice, on separate occasions at least one week apart, in a newspaper of general circulation in the County in which the Property is located. An Eligible Mortgagee that does not deliver to the Association a negative response within sixty (60) days after the date of the notice shall be deemed to have approved the proposed action or amendment.

ARTICLE 11. GENERAL PROVISIONS

11.1 Acceptance of Provision of All Documents. The conveyance or encumbrance of a Lot or the Improvements thereon shall be deemed to include the acceptance of all provisions of the Governing Documents, all of which shall be binding upon each Owner, his heirs, personal representatives, family, guests, tenants, successors and assigns, and everyone having an interest in the Lot without the necessity of inclusion of an express provision in the instrument of conveyance or encumbrance. The Association and the Owners shall obey and perform any protective or other covenants recorded against the Property prior to the recording of this Amended Declaration.

11.2 Enforcement. The Board or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Amended Declaration. Failure by the Board or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to promulgate rules and regulations to enforce or apply this Amended Declaration, and all Owners and other parties subject thereto shall strictly comply therewith. In addition to all other remedies, the Board shall have the right, after notice and an opportunity to be heard, to impose upon any Owner reasonable fines for any breach by that Owner of the provisions of this Amended Declaration, the Bylaws and/or the Association's rules and regulations. All rights and remedies provided in this Amended Declaration are distinct and cumulative to any other right or remedy hereunder or afforded by law or in equity, and may be exercised concurrently, independently or successively.

11.3 Non-Waiver. Any forbearance or failure to enforce any provision of this Amended Declaration shall not operate as a waiver of any such provision or of any other provision of this Amended Declaration or of any subsequent enforcement of any such provision. The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by law in equity and may be exercised concurrently, independently or successively without effect or impairment upon one another.

11.4 Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

11.5 Conflicts of Provisions. In case of conflict between this Amended Declaration and the Articles of Incorporation or the Bylaws, this Amended Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

11.6 Amendment and Termination. Any amendment to this Amended Declaration that would terminate the Declaration shall require the affirmative vote or written consent of the Members to whom at least eighty percent (80%) of the votes in the Association are allocated. Subject to the foregoing, this Amended Declaration may be amended by the affirmative vote or written consent of the Members to whom at least sixty-four percent (64%) of the votes in the Association are allocated.

11.6.1. An amendment to this Amended Declaration shall be effective only upon the occurrence of all of the following events:

- (a) The amendment shall have been reduced to a writing, which writing shall have been approved (by an affirmative vote or written consent) by

the applicable required percentage of Members and, if applicable, the Eligible Mortgagees;

(b) A written certificate executed and acknowledged by the president or any vice president of the Association, shall be attached to the written amendment which shall state that such amendment was approved by the applicable required percentage of Members and by all Eligible Mortgagees, if any, who are required to approve such amendment; and

(c) The approved written amendment and the certificate described in (a) and (b) above shall be recorded in the office of the Clerk, and indexed in the Grantee's index in the name of the Project and the Association and in the Grantor's index in the name of the person executing the amendment.

11.6.2. It will be a presumption subsequent to the recording of an Amendment to this Amended Declaration that all votes and consents required to pass the same pursuant to this Amended Declaration were duly obtained (at a duly called meeting of the Association, in the case of votes). Such presumption may be rebutted by an action commenced within one (1) year from the date the amendment is recorded; in the absence of any such action, such presumption shall thereafter become conclusive.

11.7 Registration by Owner of Mailing Address. Each Owner shall register his mailing address and email address, if any, with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board or the Association shall be sent by certified mail, postage prepaid to the president of the Association at its registered address according to the records of the Colorado Secretary of State, unless such address is changed by the Association and notice of such change is provided to all Owners at their registered mailing address.

11.8 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

11.9 Captions. The captions to the Articles and Sections are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of the Declaration or the intent of any provisions hereof.

11.10 Association to Resolve Ambiguities. If any doubt or question shall arise concerning the true intent or meaning of any of this Amended Declaration, the Board shall, by

State of Colorado
County of Mesa

This record was acknowledged before me on May 29th, 20 24
by James Taylor (name(s) of individual(s)).

Haley Shiner

(Notary's official signature)

Bray and Co.

(Title of office)

09/06/2026

(Commission Expiration)

HALEY F. SHINER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184035584
MY COMMISSION EXPIRES 09/06/2026

