

49 PAGE DOCUMENT

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
WATER'S EDGE SUBDIVISION**

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
WATER'S EDGE SUBDIVISION**

This Declaration of Covenants, Conditions, and Restrictions, hereinafter referred to as "Declaration" or "CC&Rs," is made this 29<sup>th</sup> day of October, 2007, by TML ENTERPRISES, INC. a Colorado corporation and LaDuke Enterprises, LLP, a Colorado limited liability partnership (hereinafter "Declarant").

RECITALS:

A. Declarant is the owner of certain real property situate in Mesa County, Colorado, known and described on the Plat of Water's Edge Subdivision, hereinafter referred to as the "Property". Said plat is recorded in Book 4543, Page(s) 628-629 with the Mesa County Clerk and Recorder's office.

B. Declarant intends that the Property will be a planned community and will be subject to these covenants, conditions, restrictions and easements for the benefit of all Units in the Property and the Owners thereof. A homeowners association has been established for the purpose of assessing, managing and administering the Property.

C. The name of the homeowners association created pursuant to this Declaration as a Colorado non-profit corporation shall be Water's Edge Homeowners Association (the "Association").

D. The Association will receive title to the Common Elements and Limited Common Elements, as shown on the Plat, and corresponding Association Property, prior to the conveyance of the first Lot.

E. The maximum number of lots in the planned community is forty-seven (47); as of the execution hereof, no lots are being created. Instead, what will become lots are being platted as Tracts, as shown on the plat. Each Tract will be further divided, into Lots, in the future.

F. The legal description of the Property being subjected to this Declaration is shown on Exhibit A.

G. Easements burdening the Property are as shown on the Plat of the Property.

NOW, THEREFORE, Declarant hereby declares that the Recitals are a substantive part of this Declaration and that all of the Property shall be held, used, sold, and conveyed subject to the following easements, covenants, conditions, restrictions, and equitable servitudes which are for the purpose of protecting the economic value, and habitability of the Units within the Property, and which will run with the Property and shall inure to the benefit of each Owner thereof, and

bind all persons, their heirs, successors, and assigns who hold any right, title, or interest in the Property or any part thereof.

ARTICLE 1  
DEFINITIONS

Section 1.1 Act shall mean the Colorado Common Interest Ownership Act, as set forth in § 38-33.5-101, *et seq.*, CRS.

Section 1.2 [omitted]

Section 1.3 Arbitration means the requirement under Section 10 herein that disputes regarding the Declaration and the Association be resolved by arbitration.

Section 1.4 Architectural Committee shall mean and refer to the Committee established in accordance with Article 7 of the Declaration to exercise architectural control in the Project.

Section 1.5 Articles shall mean and refer to the Articles of Incorporation of the Association and any amendments to said Articles.

Section 1.6 Association shall mean and refer to Water's Edge Homeowners' Association, a Colorado non-profit corporation, its successors and assigns.

Section 1.7 Association Property shall mean all of the Property, real and personal, owned by the Association, including all the Common Elements (*i.e.*, General Common Elements, Open Space, Private Roads and Parking Areas, Landscape Areas, Pedestrian Easements, Public Utility and Drainage Easements) and Limited Common Elements.

Section 1.8 Board, Board of Directors or Directors shall be the governing body of the Association.

Section 1.9 Boundaries, when interpreting conveyances or plans, shall mean the then existing physical boundaries of a Unit thereon whether in its original state or reconstructed in substantial accordance with the original plans. The Boundaries, as above defined, shall be conclusively presumed to be the boundaries of a Unit rather than the boundaries that are expressed in the deed or plan, regardless of settling or lateral movement of buildings, fences, or other Improvements, and regardless of minor variances between boundaries shown on the Plat or deed, and those of the Improvements.

Section 1.10 Bylaws shall mean and refer to the Bylaws of the Association and any amendments to said Bylaws.

Section 1.11 Closing shall mean the date on which a deed is Recorded conveying a Lot from Declarant to an Owner.

Section 1.12 Common Elements, sometimes Common Area, shall mean all real property or interest therein owned, leased or maintained by the Association (including the entry signage and/or monument, Private Roads and Parking, Utility, Drainage, Landscape, Pedestrian and other Easements, Garbage Container Access Area, Private Landscape Area, and open space, as the case may be, as shown on the Plat), but shall exclude Lots owned by any Owner other than the Association.

Section 1.13 Common Expenses shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves. Common Expenses shall include, but not necessarily be limited to, the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area (and any other portions of the Association Property and/or Property as expressly required hereunder); costs of any commonly metered utilities and other charges for the Common Area; compensation paid by the Association to Managers, accountants, attorneys and employees; costs of all utilities, gardening, and other services benefiting the Common Area; costs of fire, casualty and liability insurance, workers' compensation insurance, and any other insurance covering the Common Area or Property; costs of bonding the Board, Directors, Officers, Managers, or any other persons handling the funds of the Association; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Area or Property, or portions thereof; any other costs of management and administration of the Association or incurred in enforcing and administering the Declaration; and any other expenses for which the Association is responsible pursuant to the Act; and costs of any other item or items incurred by the Association for any reason whatsoever in connection with the Community, the Property, or for the benefit of the Owners.

Section 1.14 Community shall mean the units contained within the boundaries of the Property.

Section 1.15 Declarant shall mean TML Enterprises, Inc., and LaDuke Enterprises, LLP, and their successors and assigns, and any person or entity to which it shall have assigned any rights hereunder by an express written and recorded assignment (but specifically excluding Purchasers).

Section 1.16 Declarant's Rights shall mean the rights granted to the Declarant by law and pursuant to this Declaration, including without limitation, the Declarant's right to:

- (a) complete the Improvements as indicated on the Plat, plans or this Declaration;
- (b) exercise any developmental rights and creating Lots, Common Elements and Limited Common Elements on the Property;

(c) maintain on the Property sales offices, models, management offices, and advertising, including signs;

(d) use of easements through the Common Elements and Limited Common Elements for the purpose of making improvements and performing maintenance in the Community;

(e) appoint or remove officers of the Association and any members of the Board during the Declarant's Control Period as described in Section 3.3; and

(f) assert statutory rights and those rights described in Section 3.3 and as otherwise reserved in the Declaration.

Section 1.17 Declaration shall mean this Declaration of Covenants, Conditions, and Restrictions.

Section 1.18 Dwelling shall mean a building located on a Lot that is designed and intended for use and occupancy as a residence by a single Family.

Section 1.19 Eligible Insurer or Guarantor shall mean an insurer or governmental guarantor who has requested notice from the Association of those matters of which such insurer or guarantor is entitled to notice by reason of this Declaration or the Bylaws.

Section 1.20 Eligible Security Holder shall mean a holder of the First Security Interest on a Lot who has requested notice from the Association of matters of which the holder is entitled to notice of by reason of this Declaration or the Bylaws.

Section 1.21 Emergency shall mean any occurrence or combination of occurrences that: (a) could not have been reasonably foreseen; (b) affects the health, welfare and safety of the Owners; (c) requires the immediate attention of, and possible action by, the Board; and (d) makes it impracticable to comply with the notice, agenda, or Owner comment requirements applicable to meetings of either the Members or the Board, as the case may be.

Section 1.22 Family shall mean a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of three (3) or fewer natural persons not all so related, but who maintain a common household in a Dwelling.

Section 1.23 [omitted]

Section 1.24 Governing Documents is a collective term that means and refers to this Declaration, the Articles, the Bylaws, and the Association's Rules and Regulations.

Section 1.25 Identifying Number shall mean the number that identifies a Lot on the Plat.

Section 1.26 Improvement (or Improvements) means any structure or appurtenance thereto of every type and kind placed in the Property, including without limitation, the construction, installation, alteration or remodeling (further including exterior painting) of the same, subject to the use restrictions set forth herein, including, but not limited to, Dwellings and other buildings, walkways, sprinkler pipes, garages, recreational facilities, streets, roads, driveways, parking areas, fences, screening walls, block walls, stairs, decks, landscaping, antennae, sky-lights, utility lines, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water-softener fixtures or equipment.

Section 1.27 Limited Common Element, if any, shall mean that portion of the Common Elements appurtenant to a Lot as shown on the Plat with which the Limited Common Element is conveyed, and which may be used by the Owner(s) only for the purposes set forth in the Declaration.

Section 1.28 Lot, as the term is used herein, has the same meaning as Tract, as shown on the plat, until each such Tract is subdivided into individual lots. Thus, at present Tract and Lot, shall each mean "Unit" and therefore shall mean that portion of the Community to be separately owned by each Owner (of a Tract, until each such Tract is divided into one or more Lots) the boundaries of which are created by the Declaration, including the Unit's identifying number. In the case of townhomes and subject to Section 2.3(b) below, the boundaries of each Lot shall be the property lines of the Lot, as shown on the Plat.

Section 1.29 [Omitted].

Section 1.30 Manager shall mean the person or entity designated by the Board to manage the affairs of the Community and to perform various other duties assigned to it by the Board by the provisions of this Declaration and the Bylaws.

Section 1.31 Member, Membership shall mean any person holding a membership in the Association, as provided in this Declaration, and shall also refer to an Owner as defined in Section 1.37. Membership shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations, including liability for Assessments, contained in the Governing Documents.

Section 1.32 Mortgage (sometimes Security Interest) shall mean and refer to a deed of trust as well as a mortgage.

Section 1.33 Mortgagee shall mean and refer to the holder of a Security Interest, whether a beneficiary or holder under a deed of trust or mortgage given for value, which encumbers any Lot.

Section 1.34 Officer shall mean a duly elected or appointed and current officer of the board of the Association.

Section 1.35 Owner (sometimes Lot Owner) shall mean and refer to a record owner, whether one or more persons or entities, of fee simple title to any Lot which is part of the Property including installment contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.36 Property shall mean that real property described in Recital A.

Section 1.37 Separation Walls means: (1) the walls, if any, serving as rear-lot walls and side-lot walls of each Lot in the Project; and (2) other yard/privacy walls and fences constructed by Declarant as part of the individual Unit construction.

Section 1.38 Person shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.39 Plat shall mean and refer to the Final Map of Water's Edge Subdivision, a Common Interest Community, as shown by the plat recorded with the Mesa County Clerk and Recorder, and any amendments or annexations thereto.

Section 1.40 Private Roads shall mean and refer to the Private Roads and Public Utility and Drainage Easements as shown of the Plat.

Section 1.41 Project, sometimes Property, shall mean the entire Community as shown by the Plat.

Section 1.42 [omitted]

Section 1.43 Record, Recorded, Filed or Recordation shall mean, with respect to any document, the recordation of such document with the Mesa County Clerk and Recorder.

Section 1.44 Residence shall mean and refer to any Dwelling constructed on a Lot in accordance with the law and this Declaration.

Section 1.45 Resident shall mean any Person who is physically residing in a Dwelling on a Lot.

Section 1.46 Rules and Regulations shall mean all rules and regulations duly adopted by the Board, as such Rules and Regulations may be amended from time to time.

Section 1.47 Security Interest shall mean and refer to the holder of a Security Interest on a Lot that by definition includes mortgages, deeds of trust, and installment contracts of sale.

## ARTICLE 2 ASSOCIATION PROPERTY

Section 2.1 Title To Association Property. Declarant hereby covenants for itself, its successors and assigns that it will, prior to the time of conveyance of the first Lot to an Owner, convey title to the Association Property (Common Elements) free and clear of all encumbrances and liens, except utility easements, covenants, conditions, and reservations then of record, including those set forth in this Declaration.

Section 2.2 Association Property. The Association shall have the following rights and duties regarding the Association Property:

- (a) Manage, maintain, repair and replace.
- (b) The right of the Association to dedicate or transfer all or substantially all or any part of the Association Property to any public agency, authority, or utility for such purposes.
- (c) A non-exclusive easement over and upon the Lots for the purpose of work on the Association Property. Any damage to any Lot caused by the gross negligence or willful misconduct of the Association or any of its agents during any entry onto any Lot shall be repaired by and at the expense of the Association.
- (d) The right of the Association, in accordance with the Articles and the Bylaws, to borrow money for the purpose of repairing and replacing the Association Property, and with the consent of the majority of the Association Members including a majority of votes of Members other than the Declarant, to hypothecate any or all real or personal property owned by the Association.

Section 2.3 Easements.

(a) Owner Easements. Every Owner of a Lot shall have a right and easement of ingress, egress, use and enjoyment in and to the Association Property which shall be appurtenant to and shall pass with the title to every such Lot, subject to the following provisions:

- (i) The right of the Association to establish uniform Rules and Regulations pertaining to the use of the Association Property.
- (ii) The right of the Association to suspend the voting rights of an Owner for any period during which any Lot assessment or installment remains unpaid for thirty (30) days past its Due Date (hereinafter called a "Delinquent Assessment"); also for a period not to exceed thirty (30) days for any infraction of its published Rules and Regulations after reasonable written notice and an opportunity for a hearing before the Board as set forth in the Bylaws.

(b) Encroachment Easement. In the event: (i) any improvement on a Lot encroaches upon an adjoining Lot or Association Property, or (ii) the Association Property encroaches upon a Lot as a result of the initial construction, or as the result of repair, shifting, settlement, or movement of any portion thereof, an easement for the encroachment and for the maintenance of

same, shall exist so long as the encroachment exists. Further, each Lot Owner and the Association are hereby granted an easement over all adjoining Lots and Association Property for the purpose of accommodating any minor encroachment, due to engineering errors, errors in original construction, settlement or shifting of the walls and fences, and architectural or other appendants.

(c) Utility Easement. Each Lot is subject to all easements appearing on the Plat, other easements of record, and easements for the use and benefit of sewer/water and other utilities created by this Declaration and which serve Lots and the Association Property. Easements may include, but are not limited to, those for cable television, sewers, water, gas, electrical, irrigation systems, landscaping, and drainage. No Owner shall interfere in any way with the initiation, installation or access to or for maintenance, replacement, or repair of said utilities, irrigation systems, landscaping, or in any manner obstruct or change the direction or flow of drainage channels in such easements.

(d) Association Landscape Easement. The Association shall have a right and easement of ingress and egress over and on each Lot for purposes of maintaining and replacing landscaping, and the Common Area. No Owner shall interfere with the Association's right to maintain the common area and landscaping, as set forth herein and elsewhere in this Declaration.

Section 2.4 Other Easements. Easements are reserved throughout the Property, including, but not limited to utility easements for utility services and right-of-way easements over the Private Streets for ingress and egress, drainage, landscape, and sight easements as described on the Plat.

Section 2.5 Special Declarant's Easements. Subject to a concomitant obligation to restore, Declarant and its agents shall have:

(a) a non-exclusive easement over the Association Property for the purpose of making repairs to the Association Property and to Lots if access thereto is not reasonably available; and

(b) the right to the non-exclusive use of the Association Property during the Declarant's Control Period for the purpose of developing of the Project. The use of the Association Property by Declarant and its agents shall not unreasonably interfere with the use thereof by any Owner.

Section 2.6 Delegation of Use. Any Owner entitled to the right of use of the Association Property may delegate that right to his/her tenants or contract purchasers who reside in the Dwelling located on Owner's Lot, subject to the Rules and Regulations prescribed by the Board by giving written notice thereof to the Association. An Owner who has so delegated his/her right shall not be entitled to use and enjoyment of the Association Property for so long as such delegation remains in effect.

### ARTICLE 3

## MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

**Section 3.1 Membership.** Every Owner of a Lot including the Declarant shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Owner is obligated to comply with the Governing Documents of the Association. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale of the Lot to which it is appurtenant, and then only to the Purchaser of the Lot. Any attempt to make a prohibited transfer is void. If the Owner of a Lot fails or refuses to transfer the Membership registered in his/her name to the Purchaser of his/her Lot, the Association shall have the right to record the transfer upon its books and thereupon the old Membership outstanding in the name of the seller shall be null and void.

**Section 3.2 Voting.** All Lot Owners shall have one vote that shall be equal in weight to all other votes. Lot Owners shall elect all members of the Board, following Declarant's Control Period. There shall be one Membership for each Lot owned within the Project. The Membership and vote shall be automatically transferred upon the conveyance of that Lot. If a Lot is owned by more than one (1) Person, those Persons shall agree among themselves how a vote for that Lot is to be cast. Individual co-owners may not cast fractional votes. A vote by a co-owner for the entire Membership interest in a Lot shall be deemed to be valid unless another co-owner of the same Lot objects at the time the vote is cast, in which case such vote for that Lot shall not be counted except for purposes of determining a quorum.

**Section 3.3 Declarant's Control Period.** (a) During the development phase of the Project (the "Declarant's Control Period") the Declarant shall have additional rights and qualifications as provided in the Act and under the Governing Documents. During the Declarant's Control Period, the Declarant, or persons designated by the Declarant, subject to certain limitations contained in this Declaration, may appoint and remove the Officers and members of the Board. The period of Declarant's control of the Association shall terminate no later than the earlier of: sixty days after conveyance of seventy-five percent of the Lots to Owners other than Declarant; or, two years after the last conveyance of a Lot by Declarant in the ordinary course of business.

(b) Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

(c) Not later than sixty days after conveyance of twenty-five percent of the Lots to Owners other than Declarant, at least one member and not less than twenty-five percent of the members of the Board shall be elected by Owners other than Declarant. Not later than sixty days after conveyance of fifty percent of the Lots to Owners other than Declarant, not less than thirty-three and one-third percents of the members of the Board shall be elected by Owners other than Declarant.

(d) Not later than the termination of Declarant's control, the Owners shall elect a Board of not less than three (3) nor more than seven (7) members, at least a majority of which shall be Owners other than Declarant or designated representatives of Owners other than the Declarant.

(e) The executive board, or Board, shall elect the officers.

(f) The Owners, by a vote of sixty-seven percent (67 %) of all persons present and entitled to vote in any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

(g) Within sixty days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including without limitation, as further detailed in Section 38-33.3-303, C.R.S.: (i) the original or a certified copy of this Declaration, the HOA's articles of incorporation, bylaw, minute books and records, and any rules or regulations that have been adopted; (ii) an accounting for HOA funds and financial statements; (iv) the HOA's funds or control thereof; (v) all of the HOA's personal property; (v) a copy of the plans and specifications used in construction of the improvements to the Common Area(s); (vi) copies of all insurance policies which name the HOA, the Owners, or the members of the Board as insured persons; (vii) copies of all certificates of occupancy for the improvements on all Common Area(s), including any other permits issued by governmental bodies applicable to the Common Area(s); (viii) any written warranties relating to property of the HOA that are still effective; (ix) a roster of Owners, mortgagees and their addresses and telephone numbers, if known, as shown on Declarant's records; (x) all employment contracts, if any, in which the HOA is a contracting party; and, (xi) All service contracts in which the HOA or the Owner's have any obligation to pay a fee to the persons performing the services.

Section 3.4 Declarant's General Rights and Reservations. Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to subdivide or re-subdivide any portion of the Property, or to complete Improvements to and on the Property owned solely or partially by Declarant, or to alter the foregoing or its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of developing the Property. The rights of Declarant hereunder shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags, and sales offices as may be reasonably necessary to conduct its business of completing the work and disposing of the Lots by sale, resale, lease, or otherwise. Each Owner by accepting a deed to a Lot hereby acknowledges that the activities of the Declarant may temporarily or permanently impair the view of such Owner and may constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairment inconvenience or nuisance. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Lot in the Project by a purchaser from Declarant to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, as may from time to time be reasonably necessary for the proper development and disposal of the Property. The Declarant may use any Lots owned by Declarant in the Project as model home complexes, real estate sales offices, or leasing offices. Declarant need not seek or obtain Architectural Committee approval

of any Improvement constructed or placed on any portion of the Property by Declarant. Any rights of the Declarant in this Declaration or in any portion of the Property may be assigned by the Declarant to any successor in interest by a written assignment in Recordable form. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as developer of the Property, will be required before any amendment to this Article shall be effective. Each Owner hereby grants, upon acceptance of his/her deed to the Lot, an irrevocable, special power of attorney to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise its rights under this Article. Declarant and prospective purchasers of Lots shall be entitled to the nonexclusive use of the Association Property and any recreational facilities thereon, without further cost for access, ingress, egress, use, or enjoyment in order to show the Property to its prospective purchasers and dispose of the Property as provided herein. Declarant, its successors, and tenants shall also be entitled to the nonexclusive use of any portions of the Property that comprise Private Streets and walkways for the purpose of ingress, egress, and accommodating vehicular and pedestrian traffic to and from the Property. The use of the Association Property by Declarant shall not unreasonably interfere with the use thereof by other Owners. The Association shall provide Declarant with all notices and other documents to which an Owner is entitled pursuant to this Declaration. The rights and reservations of Declarant set forth in this Article shall terminate upon the expiration of the Declarant's Control Period.

#### ARTICLE 4 COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 4.1 Creation of Lien and Personal Obligation of Assessment. The Declarant, for each Lot owned within the Property and each additional Lot when annexed, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and further agrees to pay to the Association:

- (a) annual assessments, which shall include an adequate reserve fund, funded on a reasonable basis, for insurance, periodic maintenance, repair, and replacement of the Association Property;
- (b) special capital assessments for capital improvements; and
- (c) special Lot assessments, all of which shall be established and collected as hereinafter provided.

The full annual and special assessments, together with late fees, interest, costs, and when applicable, reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessments are made. In the discretion of the Board, Owners of Units receiving water by way of a common meter will be billed on a pro rata basis for the water charges on such meter calculated as a fraction the numerator of which shall be the number one (1) and the denominator of which shall be the total number of Owners whose water usage is billed to the common meter. Other Owners in the Association will not be responsible for the payment of utility charges from a meter that provides water exclusively to the Units of other

Owners. The Association commits to be responsible for the repair and replacement of all roofs in the Association, regardless of whether any roof is a Limited Common Element or the exclusive property of an individual Owner. This repair obligation shall be deemed part of the Association's obligation to repair major components of the Common Elements and Limited Common Elements. Each assessment, together with late fees, interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment became due. The personal obligation for delinquent assessments shall be appurtenant to the Lot and shall pass to an Owner's successors in title, whether or not expressly assumed in writing by such successor.

(d) The Board of Directors shall prepare on an annual basis a budget for the daily operation of the Association, including reserve studies, and cause the budget to be approved by the Board and presented to the Members for approval, all as provided in the Bylaws.

(e) The Board adopt a budget in accordance with the procedures and requirements of §38-33.3-303(4)(a), C.R.S., to wit: The Board shall mail a written summary of the proposed budget (and any proposed amendment) amendment to all of the Owners, shall set a date for a meeting of the Owners to consider the budget or amendment, and shall give notice of such meeting to the Owners. The proposed budget or amendment shall be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners. If the proposed budget or amendment is vetoed, the budget last proposed by the Board and not vetoed by the Owners shall continue to apply until a subsequent budget proposed by the Board is not vetoed by the Owners. Any such special assessment shall be assessed to the Owners by dividing the total number of Lots subject to the provisions of this Declaration, unless the special assessment should be assessed to fewer than all of the Lots, and assessing the resulting amount to the Owner(s) of such Lot(s), such assessment to be paid in installments or a lump sum as the Board shall determine.

Section 4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, welfare, and common good of all the Residents in the Project and for the improvement and maintenance of any Association Property.

Section 4.3 Maximum Annual Assessment. Until January 1<sup>st</sup> of the year immediately following the conveyance of the first new Lot in the Property to an Owner, the initial annual assessments paid to the Association shall be determined by the Declarant during the period of Declarant's control, and thereafter by the Board.

(a) From and after January 1st of the year immediately following the conveyance of the first Lot in the Property to an Owner, the maximum annual assessment of the Association may, without a vote of the Membership, be increased by the Board each year thereafter not more than fifteen percent (15%) above the maximum assessment set for the previous year. This 15% increase is based on the maximum annual assessment event though the actual assessment is charged at a rate less than the maximum.

(b) From and after January 1<sup>st</sup> of the year immediately following the conveyance of the first Lot in the Property to an Owner, the maximum annual assessment may be increased above fifteen percent (15%) only by the vote or written assent of fifty-one percent (51%) of the total Voting Power (as defined in the Bylaws) of the Association.

(c) The Board of Directors may fix the annual assessment at any amount not in excess of the fifteen percent (15%) maximum.

Section 4.4 Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year. The Board may permit payment in installments beyond the assessment year only for the purpose of defraying, in whole or part, any construction, reconstruction, repair, or replacement of a capital improvement upon the Association Property, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of:

- (a) a majority of the total Voting Power of the Association;
- (b) a majority of the total Voting Power of the Members other than the Declarant; and
- (c) a majority of the total Voting Power of the affected Members or voting class of Members if any group of Members or voting class of Members is responsible for all of an assessment or a disproportionate share of an assessment.

Section 4.5 Emergency Assessments. Notwithstanding anything contained in this Article 4, the Board, without membership approval, may increase annual assessments or levy special assessments necessary for an emergency situation. For purposes of this Section 4.5, an emergency situation is one in which the Board finds one of the following:

- (a) an expense required by an order of a Court;
- (b) an expense necessary to repair or maintain Association Property or any part of it for which the Association is responsible where an imminent threat of a substantial adverse effect to personal safety of Owners, residents or other individuals on the Association's Property is discovered; or
- (c) an expense necessary to repair, maintain or cover actual Association expenses for the Community or any part of it for which the Association is responsible that could not have been reasonably foreseen for the Board in preparing and distributing the pro-forma operating budget (for example, increases in utility rates, landscape or maintenance contract services, etc.); provided, however, that prior to the imposition or collection of such emergency assessment, the Board shall pass a resolution containing written findings as to (i) the necessity of such expense, and (ii) why the expense was not or could not have been reasonably foreseen or accurately predicted in the budgeting process. The Board shall distribute the resolution to the Members

with the notice of the emergency assessment. If such expense was created by an un-budgeted utility, maintenance, etc., increase, the emergency assessment created shall be discontinued by the Board with a similar resolution, if such expense is subsequently reduced, or the succeeding annual budget incorporates the increase into the annual assessment.

**Section 4.6 Single Lot Assessment.** The Association may also levy a special assessment against any Member and Member's Lot to reimburse the Association for costs incurred in bringing a Member and Member's Lot into compliance with the provisions of the Governing Documents. The single lot assessment may be levied upon the vote of the Board after notice and the opportunity to be heard.

**Section 4.7 Membership Approval.** Any action authorized under Sections 4.3 or 4.4 above which requires Owner approval shall be taken at a meeting called for that purpose, written notice of which must state the time, place, and the items to be considered at the meeting shall be given to all Members by first class mail, or personal service, not less than twenty-one (21) days nor more than sixty (60) days before the meeting. A quorum for such meeting shall be a majority of the Voting Power of the Membership of the Association (or voting class of Members or affected Members, if applicable). If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty percent (20%) of the Voting Power of the Membership of the Association; provided, however, if

(a) the meeting so adjourned is an annual meeting, and

(b) the adjourned annual meeting is actually attended, in person or by proxy, by less than thirty-three and one-third percent (33 1/3%) of the Voting Power of the Membership of the Association (or voting class of Members or affected Members, if applicable), then the only matters which may be voted upon thereat, are matters the general nature of which notice was duly given. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%) of the Voting Power of the Membership of the Association (or voting class of Members or affected Members, if applicable), Members who were not present in person or by proxy may give their assent in writing provided the same is obtained by the Board or its Manager not later than thirty (30) days from the date of such meeting.

**Section 4.8 Assessment Criteria.** Both annual and special assessments must be fixed at a uniform rate for all Lots; however any common expense or portion thereof benefiting fewer than all the Units must be assessed exclusively and proportionately against the Units benefited. The assessments shall be collected monthly. Surplus funds remaining after payment of provisions for Common Expenses shall be retained by the Association as a capital and replacement reserve. The language of this subsection 4.8 shall control in the event of any conflict with language contained elsewhere in this Declaration.

Any assessment not paid within thirty (30) days after the due date shall be delinquent and shall bear interest at the rate of eighteen percent (18%) per annum from the due date until paid. A late charge of ten percent (10%) of the delinquent assessment shall be due for any payment made later than thirty (30) days after its due date. If an Owner shall be in default in the payment of an assessment installment, the Board may accelerate the remaining installments of the assessment upon notice thereof to the Owner, and thereupon, the unpaid balance of the assessment shall become due on the date stated in the notice.

Section 4.9 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the recording of this Declaration. During the Declarant's Control Period, the Declarant may pay one-half (1/2) of the regular monthly assessments on annexed and unsold Lots owned by it in each phase as such phase is annexed in to the Project, but not less than an amount sufficient to cover the Common Expenses applicable to the annexed and unsold Lot for the Common Elements and Association Property, commencing not later than sixty (60) days following the closing for the first Lot in each phase.

The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto.

Section 4.10 Effect of Non-payment of Assessments/Remedies of the Association. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Lot from the time the assessment is due.

(a) At any time after any assessment levied by the Association against any Lot has become delinquent, the Board may record with the Mesa County Recorder a "Notice of Delinquent Assessment and Claim of Lien" as to such Lot. A suggested form of lien is set forth as follows:

NOTICE OF DELINQUENT ASSESSMENT  
AND CLAIM OF LIEN  
WATER'S EDGE SUBDIVISION

TO: \_\_\_\_\_  
(Owner)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
Grand Junction, Colorado

The Water's Edge Subdivision ("Association") claims a lien in the sum of \$ \_\_\_\_\_ for maintenance,\* assessments with interest at eighteen percent (18%) per annum on the property owned by you, commonly known as Lot \_\_\_\_\_, Water's Edge Subdivision, Grand Junction, Colorado, as shown by the certain Plat Map entitled Water's Edge Subdivision in Book \_\_\_\_\_, Page \_\_\_\_\_, of the Mesa County Clerk and Recorder, Colorado, Recorder, for failure to pay the maintenance\* assessments due for the months of \_\_\_\_\_, and all subsequent installments, interest, accruing costs, and attorneys' fees from date hereof until paid.

(\*Revise if it is a different type of assessment, *i.e.*, capital or special Lot assessment.)

Failure to pay said assessments, all accrued interest, costs, and fees within thirty (30) days from date hereof may result in commencement of foreclosure of this lien upon your Lot, and/or filing of legal action to collect same.

Payment should be made to the Association,

\_\_\_\_\_  
(Address)  
WATER'S EDGE HOMEOWNERS ASSOCIATION

By: \_\_\_\_\_

Its \_\_\_\_\_

STATE OF COLORADO     )  
                                  ) ss.  
COUNTY OF MESA        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, personally appeared before me, a Notary Public in and for said County and State, \_\_\_\_\_ of the Water's Edge Subdivision who acknowledged to me that he/she executed the foregoing instrument freely and voluntarily and for the purposes and uses therein mentioned.

\_\_\_\_\_  
NOTARY PUBLIC

Such notice shall be signed by an Officer or Director of the Association, its Manager or attorney. A copy of said notice may be recorded and shall be or be sent by certified or registered mail, return receipt request, to the then current address of the Owner in the Association's files.

(b) Immediately upon the mailing of any notice of delinquency pursuant to this Section, the amounts delinquent and all subsequent installments, whether delinquent or not, together with costs (including attorneys' fees) and interest accruing thereon, shall be and become immediately due. The notice shall also secure all other payments and/or assessments, together with interest, costs, fines, where applicable, and attorneys' fees with respect to said Lot following such recording.

(c) In the event the delinquent assessments and all other assessments which have become due and payable with respect to the Lot, together with all costs (including attorney's fees) and accrued interest on such amounts, are fully paid or otherwise satisfied prior to the completion of the foreclosure sale, the Board shall record a signed satisfaction and release of said lien.

(d) Each assessment lien may be foreclosed as and in the same manner as the foreclosure of a deed of trust upon real property under the laws of the State of Colorado, or may be enforced by sale; to such ends a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Lot Owners, shall have the power to bid for the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage, or convey the same. Suits to recover a money judgment for unpaid assessments, rent, and attorneys' fees are permitted without foreclosing or waiving the lien securing the same.

Section 4.11 Notice to Lien Holders. A copy of the notice of default and election to sell, as well as the notice of sale, shall be mailed certified mail or registered mail, return receipt requested, to persons who have recorded requests for notice and holders of recorded liens. Notice shall be mailed to the name and address appearing on the request for notice and on recorded liens.

Section 4.12 Lien/Security Interest. The Association liens under this Section are prior to all other liens and encumbrances on a Lot except:

- (a) Liens and encumbrances recorded before the recording of the Declaration;
- (b) Liens for real estate taxes and other governmental assessments or charges against the Lot;
- (c) Other than as provided in Section 4.14, a First Security Interest on the Lot recorded before the date on which the assessment sought to be enforced became delinquent;
- (d) Mechanics and materialmen's liens; and

(e) Association liens with earlier priority.

Section 4.13 Super Priority. The lien is also prior to all Security Interests described in Sub-section 4.12(c) to the extent of the assessments for Common Expenses and Association Property based on the budget adopted by the Association would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien.

Recording of the Declaration constitutes record notice and perfection of the lien. No further recording of any claim of lien for assessment under this Section is required, except a notice of delinquent assessment must be served upon the Owner before commencement of foreclosure. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessments becomes due.

Section 4.14 Subordination of the Lien to First Security Interest. Except as provided in Section 4.13, the lien of the assessments provided for herein shall be subordinate to the lien upon any Lot of a First Security Interest recorded prior to the date the assessment sought to be enforced becomes delinquent. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a First Security Interest or any conveyance in lieu thereof shall, except pursuant to Section 4.13, extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due.

Where the holder of a recorded First Security Interest or other purchaser of a Lot obtains title to the same as a result of foreclosure or conveyance in lieu, such acquirer of title, his successors and assigns, shall not, except pursuant to Section 4.13, be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Lots including such acquirer, his successors and assigns.

Section 4.15 Estoppel Certificate. The Association shall within ten (10) business days after written request by a Lot Owner or holder of a Security Interest on a Lot, provide a certificate in recordable form signed by an officer of the Association setting forth the amount of the unpaid assessment on the Lot and whether or not it is delinquent. A properly executed certificate of the Association as to the status of any assessment on a Lot is binding upon the Association, the Board and every Lot Owner as of the date of its issuance.

Section 4.16 Personal Liability of Owner. No Owner is exempt from personal liability for assessments levied by the Association, nor is the Owner's Lot released from the liens and charges hereof by waiver of the use or enjoyment of any of the Association Property or by abandonment of the Lot.

Section 4.17 Working Capital Fund. (a) Upon acquisition of record title to a Lot from Declarant, each Owner in each Phase shall contribute to the working capital fund of the Association an amount equal to two (2) months of the then annual assessment for that Lot as determined by the Board. The working capital shall not be considered prepayment of the annual assessment. This amount shall be deposited by the Purchaser into the purchase and sale escrow and disbursed therefrom to the Association for use as working capital or for reserve fund purposes.

(b) Upon the closing of each Lot to a new Owner, the selling Owner shall receive a credit against such Owner's contributions to the working capital fund of the Association; the buying Owner shall, as an expense of the Closing, pay to the working capital fund of the Association an amount equal to two (2) months of the ten annual assessment for that Lot.

Section 4.18 Taxation of Association. If any taxes are assessed against the Common Elements or Association Property rather than against the individual Lots, said taxes shall be added to the annual assessments and, if necessary, a special assessment may be levied against the Lot in an amount equal to said taxes, thirty (30) days prior to the due date of each tax installment.

## ARTICLE 5 DUTIES AND POWERS OF THE ASSOCIATION

Section 5.1 Duties and Powers of the Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association, through the Board, shall:

(a) Own, maintain, and otherwise manage all of the Association Property and all facilities, improvements, and landscaping thereon, including the irrigation pipe and appurtenant facilities that benefit the immediately adjacent property to the south which property is currently owned by Ephemeral Resources, LLC.

(b) Pay any real and personal property taxes and other charges assessed against the Association Property.

(c) Notwithstanding Section 2.2(b) hereof, grant easements where necessary for access and for utilities and sewer facilities over, upon, and under the Association Property to serve the Property and the Lots.

(d) Maintain liability insurance and such other policy or policies of insurance as provided in Sub-Section (l)(iii) below.

(e) Have the authority to employ a Manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any such contract with a person or firm appointed shall not exceed a term of one (1) year unless approved by the vote of a majority of the Members of the Association.

(f) Enforce applicable provisions of the Governing Documents of the Association.

(g) Establish and enforce uniform Rules and Regulations regarding the Community, including the levy of reasonable fines and penalties for violation thereof.

(h) Have the right upon notice to an Owner, to enter upon any Lot (but not the interior of any Lot) where necessary in connection with construction, maintenance, or repair of a Lot per Section 4.6 or Association Property and to enforce Owners' obligations under the Governing Documents.

(i) Establish and maintain an adequate reserve fund as part of the annual assessments for the periodic maintenance, repair, and replacement of improvements to the Association Property.

(j) Cause all officers or employees having fiscal responsibilities to be bonded, if and as the Board of Directors may deem appropriate; and purchase Directors' and Officers' Liability Insurance as it deems necessary.

(k) Review annually all insurance policies and bonds maintained by the Association.

(l) Acting for itself and for all Owners, obtain and maintain at all times insurance of the type of policy and amount as set forth hereinafter for the benefit of the Owners and the Association as its interest may appear. Payments of premiums for such insurance shall be considered a purpose for which assessments may be levied by the Association pursuant to Article 4 hereof:

(i) A fire insurance policy with extended coverage and inflation guard endorsements for the full insurable replacement value of all structures and improvements located on the Association Property, if any. Such policy or policies shall provide for a maximum deductible as determined by the Board.

(ii) The Association will obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Board of Directors of the Association deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Townhomes including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the Owners.

(iii) OWNERS AND THE DECLARANT SHALL MAINTAIN AT THEIR OWN EXPENSE HAZARD (FIRE) AND LIABILITY INSURANCE ON THEIR RESPECTIVE PERSONAL PROPERTY AND UNIT CONTENTS.

(iv) The Association shall obtain a policy or policies insuring the Association, its officers and Board of Directors, Owners and employees against any liability to the public, the Owners, contract purchasers in possession, their invitees or tenants, incident to ownership or use of the Association Property. Limits of liability under such policy shall not be less than \$1,000,000.00 for personal injury and \$300,000.00 for property damage for each occurrence. Such policy or policies shall be issued on a comprehensive liability basis to provide cross-liability endorsements wherein the rights of the named insured under the policy shall not be prejudiced as respects the right of action of any such insurance against any other named insured. Said policy or policies shall include a severability of interest endorsement which will preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

(v) The Association may obtain Fidelity bond or policy insuring the Association against dishonest acts by its officers, Directors, trustees, and employees who are responsible for handling funds of the Association. Such coverage shall be not less than one hundred percent (100%)--subject to a maximum deductible of \$1,000.00, adjusted for inflation--of the estimated annual operating expenses.

(vi) All insurance policies required under this Article shall be written by a company licensed to do business in Colorado and holding a rating of Class VI or better by Best's Insurance Reports or equivalent report.

(vii) Exclusive authority to adjust losses under policies obtained by the Association pursuant to this Article shall be vested in the Association or its authorized representatives.

(viii) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

(m) Exercise the powers provided in the Act where not in conflict with this Declaration.

(n) Have and exercise any rights or privileges given to it expressly by this Declaration, or reasonably implied from the provisions of the Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights, or privileges.

(o) Section 38-33.3-303, C.R.S. provides for the exercise of care in the performance of the duties of the officers and members of the Board of the HOA: (i) If appointed by the Declarant, the officers and members of the Board are required to exercise the care required of fiduciaries of the Owners; (ii) for officers and members of the Board not appointed by Declarant, no members of the Board and no officer shall be liable for actions taken or omissions made in the performance of the such member's duties except for wanton and willful acts or omissions. Except as provided otherwise by the foregoing sentence, and except as provided for in §7-128-402, C.R.S., the Association shall

indemnify and hold harmless Declarant and any member of the Board, and any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages, charges, liabilities, obligations, fines, penalties, claims, demands, or judgments and any and all expenses, including, without limitation, attorney's fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person, or of the Association, the Board, or any committee of the Association, provided that such person has acted in conformity with applicable law, including the provisions of said Sections 38-33.3-303 and 7-128-402, C.R.S. and § 7-128-403, C.R.S.

(p) Within ninety days after assuming control from Declarant, the Board shall make available to Owners upon reasonable notice. In addition, if the Association's address, registered agent, or manager changes, the Association shall make updated information available within 90 days of the change:

- (i) The name of the association;
- (ii) The name of the association's designated agent or management company, if any;
- (iii) A valid physical address and telephone number for both the association and the designated agent or management company, if any;
- (iv) The name of the common interest community;
- (v) The initial date of recording of the declaration; and
- (vi) The reception number or book and page for the main document that constitutes the declaration.

- (q) To promote responsible governance, the association shall:
- (i) Maintain accurate and complete accounting records;
  - (ii) Adopt policies, procedures, and rules and regulations concerning:
  - (iii) Investment of reserve funds;
  - (iv) Procedures for the adoption and amendment of policies, procedures, and rules; and
  - (v) Procedures for addressing disputes arising between the association and unit owners.

ARTICLE 6

## MAINTENANCE AND REPAIR OBLIGATIONS

**Section 6.1 Exterior of Units/Association Maintenance.** The Association shall provide exterior maintenance upon each Unit only as follows: the Association shall maintain, paint, repair, or replace roofs, gutters, down spouts, and exterior building surfaces, also pole lighting, frontscape and sprinkler systems. Exterior maintenance does not include sewer or utility lines, doors, including garage doors, windows, glass, or outside lighting, other than pole lighting, or improvements installed by Owners in or on the Dwelling, including, but not limited to, structural repairs within the Limited Common Element appurtenant to the Owner's Unit.

**Section 6.2 Owner Maintenance.** Owners, at their expense, shall maintain, repair, replace, and restore all Improvements in or about the Unit not the responsibility of the Association, including the fixtures thereof, keeping the same in good condition and repair, painted (if a painted area), neat and clean at all times. All fixtures and equipment installed servicing the Lot, including, but not limited to, electrical, plumbing and gas shall be maintained and kept in good condition and repair by the Owner thereof. Owner will promptly repair and replace any broken or cracked glass in windows and doors and any exterior portion of the Lot. An Owner or Occupant shall be responsible for the heating and cooling system in the Lot. Each Owner or Occupant shall keep the Limited Common Element (balcony or patio) and outside areas adjacent to the Lot clean and neat at all times. No exterior maintenance, repairs or painting that changes the color, design, or appearance of a Lot shall be done by an Owner without the consent of the Association.

If any Owner shall permit any Residence, or Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which it may have to correct the situation. In addition, the Board shall have the right, but not the duty, after notice and hearing as provided in the Bylaws, to enter upon such Owner's Lot to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Single Lot Assessment enforceable as set forth in this Declaration.

**Section 6.3 Damage to Association Property by Owner.** The cost of any maintenance, repairs, or replacements by the Association on the Association Property or to landscaping on an Owner's Lot maintained by the Association arising out of or caused by the willful or negligent act of an Owner, his/her tenants, or their Families, guests, or invitees shall, after notice and hearing, be levied by the Board as a single lot assessment against such Owner.

To the extent permitted by Colorado law, each Member shall be liable to the Association for any damage to the Association Property not fully reimbursed to the Association by insurance (including without limitation any deductible amounts under any insurance policies against which the Association files a claim for such damage) if the damage is sustained because of the negligence, willful misconduct or unauthorized or improper

installation or maintenance of any Improvements by the Member, his/her guests, tenants or invitees, or any other persons deriving their right and easement of use and enjoyment of the Association Property from the Member, or his/her or their respective family, guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right, after notice and hearing as provided in the Bylaws, to levy a single lot assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the member may be liable as described above. In the case of joint ownership of a Lot, the liability of the Owners shall be joint and severable, except to the extent the Association shall have previously contracted in writing with the joint Owners to the contrary. After notice and hearing as provided in the Bylaws, the cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a single lot assessment against such Member's Lot, and may be enforced as provided herein.

Section 6.4 Damage and Destruction Affecting Dwelling Lots - Duty to Rebuild. If all or any portion of any Lot or Improvement thereon is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Lot to diligently rebuild, repair, or reconstruct the same in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty as approved by the Architectural Committee. The Owner shall cause reconstruction to commence within three (3) months after the damage occurs and to be completed within nine (9) months after damage occurs, unless prevented by causes beyond his/her reasonable control. A transferee of title to the Lot that is damaged shall commence and complete reconstruction in the respective periods that would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot.

## ARTICLE 7 ARCHITECTURAL COMMITTEE

### Section 7.1 Architectural Committee Approval of Improvements.

(a) Approval Generally. Before commencing construction or installation of any Improvement within the Community other than the initial construction of Lots by the Declarant, the Owner planning such Improvement must submit to the Association's Architectural Committee (or "ACCO") a written request for approval. The Owner's request shall include color schemes, exterior finish, structural plans, specifications, and plot plans satisfying the requirements of this Article and Section. Unless the Architectural Committee's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Architectural Committee shall base its decision to approve, disapprove, or conditionally approve the proposed Improvement on the criteria described in this Article and Section.

(b) Modification to Approved Plans Must Also be Approved. Once a work of Improvement has been duly approved by the Architectural Committee, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration,

relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate written submission to, and review and approval by, the Architectural Committee. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Architectural Committee, in its discretion, may order the Owner, or Owner's contractors and agents, to cease working not only on the modified component of the Improvement, but also on any other affected component.

Section 7.2 Committee Membership. The Architectural Committee shall be the Board or three (3) members of the Association appointed by the Board. Until the expiration of the Declarant's Control Period, the Declarant shall elect all members of the Architectural Committee. In selecting members for the Architectural Committee, the Board of Directors shall, when available, endeavor to select persons whose occupations or education will provide technical knowledge and expertise relevant to matters within the Architectural Committee's jurisdiction. Architectural Committee members shall serve for one (1) year terms, subject to the Board's power to remove any Architectural Committee member and to appoint a successor. Members of the Architectural Committee shall not be entitled to any compensation for services performed pursuant hereto.

Section 7.3 Duties of Architectural Committee. It shall be the duty of the Architectural Committee to consider and act upon the proposals and plans submitted to it pursuant to this Declaration, to adopt Architectural Rules pursuant to this Article, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

Section 7.4 Meetings. The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Architectural Committee members shall constitute the action of the Architectural Committee, and the Architectural Committee shall keep and maintain a written record of all actions taken.

The Owner-Applicant may appear at any meeting of the Architectural Committee at which the Owner's proposal has been scheduled for review and consideration. The Owner shall be entitled to be heard on the matter and may be accompanied by an architect, engineer, and/or contractor. Other Owners whose properties may be affected by the proposed Improvement in terms of the structural integrity of any adjoining Lot, view, privacy, or solar access of the Applicant's or any adjacent Lot, noise, or other considerations shall also be entitled to attend the meeting.

Reasonable notice of the time, place, and proposed agenda for Architectural Committee meetings shall be communicated before the date of the meeting to any Owner-Applicant whose application is scheduled to be heard.

Section 7.5 Architectural Rules. The Architectural Committee may, from time to time with approval of the Board of Directors, adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the

provisions hereof by setting forth: (a) the standards and procedures for Architectural Committee review, including the required content of Improvement plans and specifications; (b) guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use within the Project; and (c) the criteria and procedures for requesting variances from any property use restrictions that would otherwise apply to the proposed Improvement under the Governing Documents.

**Section 7.6 Basis for Approval of Improvements.** When a proposed Improvement is submitted to the Architectural Committee for review, the Architectural Committee shall grant the requested approval only if the Architectural Committee, in its sole discretion, finds that all of the following provisions have been satisfied:

- (a) The Owner has complied with those provisions of the Architectural Rules pertaining to the content and procedures for submissions of plans and specifications;
- (b) The Owner's plans and specifications: (i) conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Architectural Committee; (ii) will result in the construction of an Improvement that is in harmony with the external design of other structures and/or landscaping within the Project; and (iii) will not interfere with the reasonable enjoyment of any other Owner of his/her Unit; and
- (c) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Project and with the overall plan and scheme of the development and the purposes of this Declaration.

The Architectural Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar Improvement or component has previously been approved for use at another Lot within the Project if prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement, or its use at other locations within the Project mitigate against erection of the Improvement or use of a particular component thereof on the Lot involved in the Owner's submission. It is expressly agreed that the Architectural Committee shall be entitled to make subjective judgments and consider the aesthetics of a proposal when considering an Owner's request so long as the Architectural Committee acts reasonably and in good faith.

**Section 7.7 Proceeding With Work.** Upon receipt of approval of an Improvement from the Architectural Committee, the Owner shall, as soon as practicable, diligently proceed with the construction, if required, pursuant to said approval. Work on an Improvement project shall commence within three (3) months from the date of such approval and be completed within one (1) year. If the Owner fails to comply with this Section, any approval given pursuant to this Article 8 shall be deemed revoked unless the Architectural Committee, upon written request of

the Owner prior to the expiration of the initial one (1) year period, extends the time for commencement or completion.

Section 7.8 Enforcement.

(a) In addition to other enforcement remedies set forth in this Declaration, the Architectural Committee shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity. In addition, the Architectural Committee shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Architectural Committee or if it does not conform to the plans and specifications submitted to the Architectural Committee. No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

(b) If the Owner fails to remedy any noticed noncompliance within thirty (30) days from the date of such notification, the Architectural Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall not be more than thirty (30) days nor less than fifteen (15) days after the notice of the noncompliance is issued by the Board to the Owner, to the Architectural Committee and, in the discretion of the Board, to any other interested party.

(c) At the hearing, the Owner, a representative(s) of the Architectural Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance and if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, at its discretion, may grant. If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board at its option, may either cause the removal of the non-complying Improvement or remedy the noncompliance and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not properly repaid by the Owner to the Association, the Board shall recover such expenses through the levy of a Single Lot Assessment against such Owner.

(d) The approval by the Architectural Committee of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval by the same or some other Owner.

**Section 7.9 Variances.** The Architectural Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article, or in any land use restriction specified in Article 8 to overcome practical difficulties, avoid unnecessary expenses, or prevent unnecessary hardship to Owner-applicants, provided that the Architectural Committee is able to make a good faith written determination that the variance is consistent with one or more of the following criteria: (i) the requested variance will not constitute a material deviation from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; (ii) the variance relates to a land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect to any other Lot or Common Area within the Project.

**Section 7.10 Limitation on Liability.** Neither the Association, its Architectural Committee, nor any member thereof shall be liable to any Owner for any damage, loss, or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of: (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (b) the construction or performance of any work of Improvement, whether or not pursuant to approved plans, drawings, or specifications; (c) the execution and filing of a notice of noncompliance pursuant to Section 7.9 above whether or not the facts therein are correct, provided that such member has acted in good faith upon the basis of such information as may be possessed by him or her.

**Section 7.11 Compliance with Government Regulations.** Review and approval by the Architectural Committee of any proposals, plans, or other submissions pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall rest solely with the Owner who desires to construct, install, or modify the Improvement. Furthermore, such approval shall not be deemed to constitute a determination of the Architectural Committee or the Association that such proposals, plans, or other submissions pertaining to Improvements are safe or adequate for the Owner's intended purpose.

**Section 7.12 Appeals.** Appeals from decisions of a Board appointed Architectural Committee may be made to the Board of Directors, which may elect, in its discretion, to hear the appeal or, in the alternative, to affirm the decision of the Architectural Committee. The Association Rules shall contain procedures to process appeals pursuant to this Section.

**Section 7.13 Handicapped.** Notwithstanding any other Rule or Regulation, the Board of Directors shall make reasonable accommodations in the Rules and Regulations if those accommodations may be necessary or be required by law to afford a handicapped person equal opportunity to use and enjoy his or her Lot.

Section 7.14 Declarant Exception. The provisions of this Article shall not apply to the initial construction by the Declarant of Residences or other Improvements to the Property, and neither the Board nor any Committee appointed by the Board shall have any authority or right to approve or disapprove the initial construction by the Declarant of Residences or other Improvements to the Property.

ARTICLE 8  
USE RESTRICTIONS/DECLARANT'S EXCEPTIONS

Section 8.1 Alterations. No Improvement to any landscaping, the exterior of a Dwelling, garage, or other structure on a Lot may be altered, remodeled, or modified in any other way except with the prior written approval of the Architectural Committee.

Section 8.2 Declarant's Exceptions. The Declarant (and its sales agents and representatives) may maintain signs, sales and management offices, and models within the Project until the earlier of the sale of the last Lot in the Project or seven (7) years from recording of this Declaration. No provision contained in this Article 8 shall be applicable to or prohibit any acts or activities by the Declarant (and its agents, suppliers, and contractors) in connection with or incidental to the Declarant's improvement and development of the Property during the Declarant's Control Period.

Section 8.3 No Parking Areas. Other than guests or service vehicles that are parked on a short term basis (no longer than 48 hours) there shall be absolutely no parking along any curb on any private street, except in designated parking places, if any, except that the parking of a motor vehicle by the occupant of a unit on a street, driveway, or guest parking area in the subdivision is allowed if the vehicle is required to be available at designated periods at such occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

- (a) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;
- (b) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services;
- (c) The vehicle bears an official emblem or other visible designation of the emergency service provider; and
- (d) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other unit owners or occupants to use streets, driveways, and guest parking spaces within the planned community.

The Owner of any vehicle that is parked in violation of these rules is subject to sanctions imposed by the Board, in accordance with adopted Board rules and applicable state laws. All parking violations shall be reported to the Association or Manager. The owners of any vehicle which is found to be in violation and thereafter towed shall be responsible for all fines and costs associated with such towing as established by the towing company.

Section 8.4 Garages. Garages shall be kept closed at all times, except as reasonably required for ingress to and egress from the interior of the garages. No Owner shall remodel a garage or use a garage on any Lot for residential purposes.

Section 8.5 Landscape. (a) The Association shall be responsible for the maintenance, repair and appearance of landscaping in the Common Area and the front yard areas of the Lots. (b) Owners shall keep and maintain in good repair and appearance the rear areas enclosed by fencing and all portions of the Lot and Residence thereon; in the event such owner fails to so maintain such rear areas, the Association shall have the right to do so, and the costs thereof shall be assessed against such lot and Residence as a special assessment. (c) The Association shall maintain all landscaping in Common Areas, including the detention facility (Tract A), and required landscaping in adjacent public rights-of-way. (d) The Association shall also maintain, and cut weeds (if any), in the portion of the D Road right-of-way that is adjacent to the Property, in accordance with the City's ordinances.

Section 8.6 Lease. Each Owner shall have the right to lease his/her Lot, provided such lease is in writing and that it provides that the tenant shall be bound by and obligated to the provisions of the Governing Documents. Failure to comply with the provisions of the Governing Documents shall be a default of the lease allowing the Association the same rights of action as the Owner against the tenant. For the purpose of exercising such rights, the Owner grants to the Association a special power of attorney, which includes the power of eviction against the tenant as well as the Owner because of the default. No Owner shall lease his/her Lot for transient or hotel purposes. Any Lease which is either for a period of less than six (6) months or pursuant to which the Owner provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes. A signed lease shall be filed with the Association within five (5) days of request by the Association.

Section 8.7 Prohibited Structures. No sheds, outbuildings or the like are allowed after the initial construction on a lot, without the prior written approval of the Architectural Control Committee.

Section 8.8 Nuisance. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within the Project, and no odor shall be permitted to arise therefrom so as to render the Project or any portion thereof unsanitary, unsightly, or offensive. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Lot so as to be offensive or detrimental to any other Lot or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles, or other items which may unreasonably disturb other Owners or their tenants shall be located, used, or placed on any portion of the Project. Front yard and porch areas shall not be used for storage purposes or for accumulation of garbage. Alarm devices used exclusively to protect the security of a Lot and its contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms. Nothing other than draperies and window covering as permitted by this Declaration may be installed on any Lot so

as to be visible from the exterior of the Lot without the prior written approval of the Architectural Committee. No clothing or household fabrics shall be hung, dried, or aired in a manner that is visible from any street.

Section 8.9 Outside Antenna/Satellite Dishes. Other than satellite dishes exempted by the FCC, no television, radio, or other electronic antenna, dish or device of any type shall be erected, constructed, placed, or permitted to remain on any of the Lots or buildings constructed on the Lots unless and until the same shall have been approved in writing by the Architectural Committee. To the extent practical, satellite dishes shall be located on the rear facia of the Unit if possible or on the side facia of a Unit as far back from the street as possible. Use of electronic devices that interfere with the operation of the garage door openers, television reception and cellular phones, and the like are prohibited.

Section 8.10 Parking and Vehicular Restrictions. Except as provided in Section 8.3, Owners shall not park, store, or keep on their driveway or on any street (public or private) within the Property any large commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck, or delivery truck); any recreational vehicle (including, but not limited to, any camper, travel trailer, utility trailer, work trailer, motorcycle trailer, or motor home); any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home; or any inoperable vehicle. No Owner shall park, store, or keep anywhere within the Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board.

Section 8.11 Pets. Animals, livestock, and poultry shall not be raised, bred or kept on any Lot, except domestic household pets (*e.g.*, cats and dogs) not exceeding a total of two (2), may be kept on each Lot, provided it is not kept, bred or maintained for any commercial purpose, and provided that the Owner of the Lot is the resident of the Lot. Any renter, occupant or lessee that is not the Owner of a Lot shall not be allowed to have a pet. Any allowed pets shall be kept on the Lot, except when under leash or when being transported to or from the Lot in a motor vehicle. Owners will be responsible for removal of their pet's feces. If a pet becomes a nuisance or an annoyance to the other Owners, the Board may, after appropriate notice and a hearing, confine or remove the animal at the Owner's expense. The Board may adopt rules and regulations regulating the keeping of animals and pets that are either hazardous to any Owner, guest or invitee, or the keeping of which will tend to raise the costs of insurance for any other Owner or the Association.

Section 8.12 Playground Equipment. All bicycles, tricycles, scooters, skateboards, and other play equipment, wading pools, baby strollers, and similar items shall be stored within the Dwelling when not in use. Basketball backboards shall not be placed or stored in the street or on a sidewalk.

Section 8.13 Residential Use Only. Other than the Declarant's exceptions per Section 8.2, no part of the Project shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing,

vending, or other such non-residential purposes. The provisions of this Section shall not preclude a home occupation as authorized by the ordinances of the City of Grand Junction.

Section 8.14 Security Interest Liens. Breach of any of the covenants in this Article 8 shall not defeat or render invalid the lien of any First Security Interest made in good faith and for value as to said Lots or Property, or any part thereof, but such provisions, restrictions, or covenants shall be binding and effective against any Owner whose title thereto is acquired by foreclosure, Trustee's sale or otherwise.

Section 8.15 Signs. (a) Section 38-33.3-106.5, C.R.S., limits the HOA regarding: (i) the display of the American flag; (ii) the display of service flag bearing a star denoting the service of the owner or occupant of a lot or of a member of the owner's or occupant's immediate family; and (b) the display of certain political signs. (c) Subject to compliance with such overriding laws, the following shall apply: (i) With the exception of one "for sale" sign per Lot, which shall not be larger than twelve (12) square feet (and the only message thereon shall either be: the name, address and contact information of the listing real estate company; or if for sale by owner, limited to the words "For Sale By Owner" and the selling owner's telephone number or other contact information), and except for signs used by Declarant for subdivision advertisement of the Property and each Lot owned by Declarant, no signs, advertising devices or bill boards shall be displayed within the Property unless written approval therefor is granted by the Declarant.

Section 8.16 Timeshare. No Lot shall be made subject to any time share program, interval ownership, or similar program whereby the right to exclusive use of the Lot rotates among multiple owners or members of the program on a fixed or floating time schedule over a period of years.

Section 8.17 Trash. All rubbish, trash and garbage shall be placed in garbage dumpsters that will be placed on Association property for use by the Owners. No individual garbage containers are allowed. All clotheslines, refuse containers, woodpiles, storage area, and machinery and equipment shall be prohibited upon any Lot, unless obscured from view at ground level of adjoining Lots and streets, by an appropriate screen approved by the Architectural Committee.

Section 8.18 Vehicle Repair. No Owner or Occupant shall conduct repairs or any kind or restorations of any motor vehicles, boat, trailer, aircraft or other vehicle upon any portion of the Property. Parking spaces shall be used for parking purposes only.

Section 8.19 Window Coverings. Within thirty (30) days from the date of becoming an Owner, such Owner shall install draperies and/or window coverings for all windows and glass doors in the Dwelling on the Lot. Reflective window coverings are prohibited.

Section 8.20 Firearms, Fireworks, *etc.* No firearms, illegal fireworks, explosives, air rifles, BB guns, slingshots, paintball guns, crossbows or similar devices shall be discharged on the Property.

Section 8.21 Limited Common Elements, if any.

(a) The right to use a Limited Common Element, if any, shall be used only by the Owner(s) of the Unit appurtenant thereto and /or said Owner's tenants and licensee(s) and shall be terminated upon conveyance. No Limited Common Element or any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from conveyance of the Unit to which it is appurtenant. Each Limited Common Element shall be deemed to be Common Elements, for all those purposes set forth in this Declaration that are not inconsistent with this Section 8.21.

(b) Subject to the review of the Architectural Review Committee, where applicable, each Owner shall have the following rights with regard to the Limited Common Elements, which the Owner has the exclusive right to use:

- (i) to place furniture and plants upon said area;
- (ii) to plant flowers and shrubs which do not unreasonably interfere with the enjoyment of the Owners of adjacent Units and Limited Common Elements; and
- (iii) to repair and maintain, in a neat, clean condition and not store flammable, volatile or hazardous liquids or materials within or upon the Limited Common Element.

## ARTICLE 9 RIGHTS OF ELIGIBLE SECURITY INTEREST

Section 9.1 Rights of Eligible Security Interest. No breach of the covenants, conditions, and restrictions in this Declaration, nor the enforcement thereof or of any lien provision, except as provided in Section 4.15, shall defeat or render invalid the lien of any Security held by an Eligible Security Interest made in good faith and for value. However, all of the covenants, conditions, and restrictions in this Declaration shall be binding upon any Owner whose title is derived through foreclosure or exercise of power of sale, or otherwise.

Section 9.2 Notice to Eligible Security Interest.

(a) Notice of Action. Upon written request to the Association, identifying the name and address of the Eligible Security Holder, Eligible Insurer or Guarantor, and the Lot number or address, any such Eligible Security Holder or Eligible Insurer, or Guarantor will be entitled to timely notice of:

(i) Any delinquency in the payments of assessments or charges owned by an Owner of a Lot subject to an eligible mortgage held, insured, or guaranteed by such Eligible Security Holder, Eligible Insurer, or Guarantor, which remains uncured for a period of sixty (60) days;

(ii) Condemnation or casualty loss that effects a material portion of the Project.

Section 9.3 Time of Notice to Security Interest. The Board shall give thirty (30) days prior written notice to each Eligible Security Interest represented in the real property of any amendment or alteration of the Declaration or Articles. In addition, the Board shall give each Security Holder, who requests same in writing, a copy of notices of liens filed against any Lot.

Section 9.4 Condemnation. If any Lot or portion thereof or the Association Property and facilities or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding, no provision of this Declaration, Articles, Bylaws, or equivalent documents will entitle the Owner of a Lot or other party to priority over an institutional Holder of any First Security Interest or equivalent security interest on a Lot with respect to any distribution to such Lot of the proceeds of any award or settlement.

## ARTICLE 10 DISPUTES

Section 10.1 Legal Proceedings. The Board shall not institute any civil action<sup>1</sup> or administrative proceeding against any person, including the Declarant, without complying with the requirements of Section 10.2 and 10.4. The provisions of this Section do not apply to a civil action that is commenced:

- (a) To enforce the payment of an assessment;
- (b) To enforce the Declaration, Bylaws, or Rules of the Association;
- (c) To proceed with a counterclaim; or
- (d) To protect the health, safety, and welfare of the Members of the Association;

Section 10.2 Arbitration/Mediation. The Declarant, the Association (including its officers, Directors and committee members), all Owners and other persons subject to this Declaration, and any other person not otherwise subject to this Declaration who agrees to submit to this Section ("Bound Party" or collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property, without the emotional and financial costs of

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<sup>1</sup>Defined as an action for damages. The term does not include an action for injunctive relief in which there is an immediate threat of irreparable harm, or relating to title to real property.

litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances, or disputes described in Section 10.3 below ("Claims") shall be resolved by arbitration using the procedures set forth in Section 10.4 in lieu of filing suit in any court.

Section 10.3 Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Association's governing documents (*i.e.*, Articles, Bylaws, Declaration, *etc.*) or the rights, obligations, and duties of any Bound Party under the Association's governing documents or relating to the design or construction of the Improvements on the Property shall be subject to the provisions of this Section 10. However, matters of aesthetic judgment shall be governed by Article 9, and shall not constitute a Claim.

Notwithstanding the foregoing, unless all parties thereto otherwise agree, the following shall not constitute Claims and shall not be subject to the provisions of Section 10.4:

- (a) any suit by the Association against a Bound Party to enforce the provisions of Article 4;
- (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Articles 8 and 9;
- (c) any suit between Owners, which does not include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (d) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 10.4(a), unless a party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article 10.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 10.4.

#### Section 10.4 Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (i) the nature of the Claim, including the persons/parties involved and Respondent's role in the Claim;

- (ii) the legal basis of the Claim (*i.e.*, the specific legal authority out of which the Claim arises);
- (iii) Claimant's proposed remedy; and
- (iv) that Claimant will meet with Respondent to discuss good faith ways to resolve the Claim.

(b) Negotiation and Mediation. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to arbitration as provided herein.

If Claimant does not submit the Claim to arbitration within such time, or does not appear for the arbitration, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than Claimant.

Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse, the date that mediation was terminated, and shall state that arbitration under this section is mandatory and final.

Within five (5) days of the Termination of Mediation, Claimant shall make a final written settlement demand ("Settlement Demand") to Respondent, and Respondent shall make a final written settlement offer ("Settlement Offer") to Claimant. If Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Bound Parties agree to the following arbitration process to resolve all Claims, after Mediation efforts have failed. Bound Parties agree that no court shall have jurisdiction in the absence of compliance with the provisions in this Section 10.

(i) Within ten (10) business days of delivery of the Termination of Mediation Notice, Claimant and Respondent shall attempt to agree upon one person to arbitrate the

dispute/Claim. If the parties cannot agree on one such person, each party shall within twenty (20) of delivery of the Termination of Mediation Notice designate a person other than themselves to act on their behalf; Within an additional ten (10) business days thereafter, the two designees shall attempt to agree upon a third-party who is experienced in dispute resolution to arbitrate the dispute. If an arbitrator is not agreed upon within said period, each party shall, within an additional five (5) business day period, submit the name of a person experienced in dispute resolution to the District Court for Mesa County, and shall request that the Court appoint an arbitrator from the names submitted;

(ii) The parties and the arbitrator shall schedule arbitration as soon as possible; if the parties cannot agree, the arbitrator shall set the time and place for the arbitration which in any event shall be scheduled within ten business days of the appointment/selection of an arbitrator, or such other time as the arbitrator decides.

(iii) At the arbitration hearing, each party shall have two hours to present their case; the arbitrator may ask such questions and review such documents as the arbitrator deems appropriate, but shall endeavor to do so within one additional hour; the arbitrator shall issue his written decision within ten business days;

(iv) The arbitrator may allocate the costs of the arbitration, including accounting/legal fees and experts, to the parties equally or otherwise as the arbitrator deems fair and reasonable;

(v) During the fifteen days prior to the arbitration, the arbitrator may make such rulings and requirements regarding access to records, allocation of the costs of documents, and similar matters, including allocating the costs thereof as the arbitrator deems reasonable and/or fair. If either party is not given suitable access to said information, the arbitrator may delay the date of the arbitration and the costs associated with such a delay shall be allocated as the arbitrator deems reasonable and/or fair.

(vi) If either party fails to timely designate an arbitrator or designee or fails to timely submit a name to the Court, that party shall be deemed to have: accepted the arbitrator designated; accepted the name submitted to the Court by the other party; or, accepted the choice of the designee named by the other party.

(vii) All decisions of the arbitrator shall be final.

Section 10.5 Allocation of Costs of Resolving Claims. Subject to Section 10.4(b), each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) ("Post Mediation Costs").

Section 10.6 Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 10.4. In such event, the Party taking action to enforce the

agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

Section 10.7 Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in the Association's governing documents, the Party prevailing in such action shall be entitled to recover from the other Party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a single lot assessment with respect to the Lot(s) involved in the action.

## ARTICLE 11 GENERAL PROVISIONS

Section 11.1 Non-Waiver. Failure by the Association, the Declarant, or any Owner to enforce any covenant, condition, restriction or reservation contained in this Declaration shall not be deemed a waiver of the right to do so thereafter.

Section 11.2 Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

Section 11.3 Amendments. This Declaration may be amended by an instrument approved by sixty-seven percent (67%) of the Members of the Association. The amendment shall become effective upon its recording in the Office of the County Recorder of Mesa County, Colorado.

In the event this Declaration is amended, as provided herein, the Secretary of the Association shall, within thirty (30) days of the adoption of such amendment, prepare a copy of the amendment that was made and cause it to be hand-delivered or sent prepaid, by United States mail to the mailing address of each Residence, or to any other mailing address designated in writing by a Lot Owner.

(a) Except as provided elsewhere, this Declaration may be amended during the first fifteen (15) year period, and during subsequent extensions thereof, by the affirmative vote or agreement of Owners to which more than sixty-seven percent (67 %) of the votes in the HOA are allocated. The consent of first mortgagees is not required to amend this Declaration. Such amendment shall be effective when duly recorded with the County Clerk and Recorder. The HOA may, acting through the Board, petition the district court for Mesa County, Colorado, for an order amending the Declaration, as provided for and pursuant to the provisions of § 38-33.3-217(7), C.R.S.

(b) In addition, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any

agency, Declarant shall have and is hereby specifically granted the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to termination of the Declarant's control of the Association.

(c) Further, Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, Articles of Incorporation or Bylaws of the Association at any time prior to the termination of Declarant's control of the Association, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of any such document.

Section 11.4 Extension of Declaration. Each and all of these covenants, conditions, and restrictions shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which date they shall automatically be extended for successive periods of ten (10) years unless they are canceled in writing by Owners of at least fifty-one percent (51%) of the Voting Power of the Association. All amendments must be recorded in the Office of the County Recorder of Mesa County, Colorado.

## ARTICLE 12 ANNEXATION

Section 12.1 Annexation of Additional Property by Association. Upon approval in writing of the Association, pursuant to two-thirds (2/3) of a majority of the Voting Power of its Members, or the written assent of such Members, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file or record a Declaration of Annexation which shall extend the scheme of this Declaration to such Project.

Section 12.2 Annexation by Declarant. If within seven (7) years from the date of the recording of this Amended and Restated Declaration with the Mesa County, Colorado, Recorder, the Declarant should develop the additional Phases, such additional Phases or any portion thereof may be added to the Property and be subject to this Declaration and included within the jurisdiction of the Association by action of the Declarant without the assent of Members of the Association; provided, however, that the development of the additional land shall be consistent with Improvements in the initial Phase of development in terms of quality of construction. All Improvements in each Phase will be substantially completed prior to annexation.

Said annexation may be accomplished by the recording of a Declaration of Annexation or separate Declaration of Restrictions which requires Lot Owners therein to be Members of the Association. At the time of recording of the Declaration of Annexation, Declarant shall also by deed transfer to the Association the Association Property in the area being annexed.

The obligation of Lot Owner to pay dues to the Association and the right of such Lot Owners to exercise voting rights in the Association in such annexed property shall not commence

until the first day of the month following close of the first sale of a Lot by the Declarant in that particular Phase of development.

Subject to annexation of additional property as set forth in this subsection:

(a) The Declarant hereby reserves for the benefit of and appurtenant to subsequent Phases described in the Recitals above, the non-exclusive easements to use the Association Property on the Property, until such time as all Phases are annexed pursuant to this Section, or until expiration of the right to annex.

(b) The Declarant hereby reserves the right to grant, until expiration of the right to annex, for the benefit of and appurtenant to each Lot in the Property in Phase 1 a non-exclusive easement to use the Association Property in the Phased Areas not yet annexed pursuant to the provisions of and in the same manner prescribed by this Declaration to the same extent and with the same effect as if each of the Owners of Lots in Phase 1 owned a Lot in the Association Property of the Phased Areas to be annexed.

These reciprocal cross-easements shall be effective as to each Phase, and as to the Property, only until such time as each Phase has been annexed by the recording of a Declaration of Annexation or a separate Declaration of Covenants, Conditions, and Restrictions by the Declarant, or expiration of the right to annex pursuant to this Article.

Section 12.3 De-annexation. The Declarant may delete all or any portion of a Phase of development from coverage of this Declaration and the jurisdiction of the Association, so long as the Declarant is the Owner of all of said Phase or Phases to be annexed, and provided that:

(a) The Notice of De-Annexation is recorded in the same manner as the applicable Declaration of Annexation was recorded;

(b) The Declarant has not exercised any Association vote with respect to any portion of such Phase;

(c) Assessments have not yet commenced with respect to any portion of such Phase;

(d) No Lot has been sold in said Phase to a member of the general public; and

(e) The Association has not made any expenditures of any obligation respecting any portion of said Phase.

### ARTICLE 13 PHASING OF CONSTRUCTION OF THE PLANNED COMMUNITY

Section 13.1 Phasing of Construction. Declarant reserves the right, without in any way being bound to do so, to construct the Units within the Property in such phases as may be

approved by the City of Grand Junction. For instance, if the Plat, as initially recorded or as may be amended by the Declarant from time-to-time, provides for one or more buildings to be constructed as the initial phase and shows the balance of the Property as being for "future phase" or "future development," or words of equivalent effect, Declarant may phase the construction of the buildings on the Property, in accordance with City of Grand Junction approval. In such event, Declarant shall record an amended Plat that indicates each phase to be construction, and indicates on which portion of the Property such phase and/or buildings shall be constructed.

**Section 13.2 Use of Tracts A-F for Buildings.** Notwithstanding any provision herein to the contrary, in the event that Declarant determines to construct the buildings in the Property in phases, and notwithstanding that the Plat for the Property indicates that such phase(s) and/or building(s) will be located on Tracts A through F, inclusive, Declarant reserves the right, without needing to obtain the written consent of any Owner, to modify the boundary of one or more of said Tracts A through F, to allow such construction to occur. Any such modification of Tracts A-F shall be accomplished by the recording of an amended Plat executed by Declarant, after the City of Grand Junction approval is obtained.

**Section 13.3. Successive Declarations.** Declarant's rights to construct the buildings in phases may be accomplished in stages by successive supplements and/or amendments to this Declaration.

**Section 13.4 Consistent Style.** All improvements and buildings constructed within the Property, whether built all at once or in phases, shall be consistent in style and quality of construction.

**Section 13.5 Later Owners are Members.** Each Owner of a Unit which has been brought into the Planned Community by a supplemental or amended Declaration shall be a member of the Association. Each such Owner shall be entitled to the same privileges, and bound by the same duties and responsibilities, as the Owners of the portion of the Property that was made subject to this Declaration at the time of the initial phase. Whenever such additional Units and/or phases are brought into the Planned Community, the applicable assessments of each such Owner shall be determined on the basis of a fraction, the numerator of which is one and the denominator of which is the total number of Units then within the Planned Community.

**Section 13.6. Liens.** Liens arising out of the construction of buildings and/or Units in later phases shall not extend into prior phases and shall not adversely affect the rights of Owners or the Association, or the priority of first mortgagees and deeds of trust on any Lot or common area platted in a prior phase.

**Section 13.7. Project Treated as a Whole.** Each of the phases of the Planned Community, if the Planned Community is not constructed in one phase, shall be treated as a part of the Planned Community developed as a whole from the beginning, except as necessarily required due to the nature of the phasing.

ARTICLE 14  
SPECIAL DECLARANT'S RIGHTS

Section 14.1 Special Declarant's Rights. Any provision herein notwithstanding, Declarant reserves the following Special Declarant's rights, on the terms and conditions and subject to the expiration deadlines, if any set forth below:

(a) Right to Complete Improvement and Construction Easement. Declarant hereby reserves the right (but not the obligation), for a period terminating on the seventh (7<sup>th</sup>) anniversary of the Recordation of this Declaration, to complete the construction of improvements on the Properties, and an easement over the Properties for the purpose of doing so; provided, however, that if Declarant still owns any property in the Properties on such seventh (7<sup>th</sup>) anniversary date, such rights and reservations shall continue for one additional successive period of seven (7) years. Any damage caused to a Lot or the Common Area by Declarant or its agents in the use or exercise of such right and/or easement shall be repaired by and at the expense of Declarant.

(b) Offices, Model Homes and Promotional Sign. Declarant reserves the right to maintain offices for sales and management, models, signs, flags and/or flagpoles on the Common Area and in any Lot owned or leased by Declarant, for so long as Declarant owns or leases any Lot. Declarant shall have access to all Common Area (and sufficient parking for Declarant's guests and business invitees) for Declarant's sales activities. Declarant's rights under this Section 14.1 shall terminate not later than the end of the Declarant Control Period.

(c) Appointment and Removal of Directors. Declarant reserves the right to appoint and remove a majority of the Board, as set forth in Article 3 above, for the time period set forth herein.

Section 14.2 Exemption of Declarant. Notwithstanding anything to the contrary in this Declaration, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Properties, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Properties for so long as any Lot owned by Declarant remains unsold.

(b) This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utilities companies), or to others, as from time to time may be reasonably necessary to the proper development and disposal of Lots.

(c) Prospective purchasers and Declarant shall have the right to use all and any

portion of the Common Area for access to the sales facilities of Declarant and for placement of Declarant's signs.

(d) Declarant may use any structures owned or leased by Declarant, as model home complexes or real estate sales or management offices, subject to the time limitations set forth herein, after which time, Declarant shall restore the Improvement to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity.

(e) Declarant shall maintain the right (but not the obligation) to enforce the Association's maintenance and repair obligations under this Declaration.

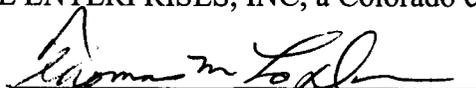
(f) All or any portion of the rights of Declarant in this Declaration may be assigned by Declarant to any successor in interest, by an express and written Recorded assignment which specifies the rights of Declarant so assigned.

(g) The prior written approval of Declarant (which shall not be unreasonable withheld), as developer of the Property, will be required before any amendment to the Declaration affecting Declarant's rights or interests (including, without limitation this Article 14) can be effective.

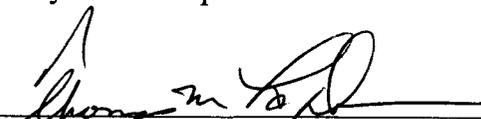
(h) The rights and reservations of Declarant referred to herein, if not earlier terminated by Declarant or pursuant to the Declaration, shall terminate on the date set forth in Section 14.1(a) above.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first above written.

DECLARANT:  
TML ENTERPRISES, INC, a Colorado corporation

BY:   
ITS: President

LADUKE ENTERPRISES, a Colorado Limited  
Liability Partnership

BY:   
Thomas M. LaDuke

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

On this 29th day of October, 2007, before me personally appeared Thomas M. LaDuke as President of TML Enterprises, Inc., a Colorado corporation and LaDuke Enterprises, a Colorado limited Liability Partnership, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose.

Gayleen Henderson  
NOTARY PUBLIC



*expiration 10/29/2009*