

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
BROOKSTONE TOWNHOMES, A COMMON  
INTEREST COMMUNITY**

October 11, 2017

Lot Holding Investments, LLC, Declarant

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## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BROOKSTONE TOWNHOMES, A COMMON INTEREST COMMUNITY**

This Declaration of Covenants, Conditions and Restrictions of Brookstone Townhomes, a planned community, together with all exhibits and addenda, ("**Declaration**") is made as of this 11<sup>th</sup> day of October, 2017 by LOT HOLDING INVESTMENTS, LLC, a Colorado limited liability company, whose principal address is 301 Centennial Drive, Milliken, CO 80543 ("**Declarant**").

### **RECITALS**

A. Declarant is the owner of certain real estate located in the Town of Milliken, County of Weld, State of Colorado, which is more particularly described on the attached **Exhibit A** (the "**Property**").

B. Declarant desires to create a residential townhome common interest community on the Property to be known as "**Brookstone Townhomes**."

C. Declarant has caused "**Brookstone Townhomes Owners Association**", a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado for the purpose of exercising the owners association's rights and obligations as herein set forth.

### **ARTICLE I – DECLARATION AND SUBMISSION**

1.1 **Declaration.** Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements, which shall run with the land and be binding upon of all parties, their heirs, legal representatives, successors, and assigns, having any right, title or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property and such additional real estate as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the "**Real Estate**"), to the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as it may be amended from time to time (the "**Act**") and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Declarant hereby declares that all of the Real Estate shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Real Estate, that this Declaration shall run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns, and shall inure to the benefit of each Owner thereof.

1.2 Declarant may annex to this Declaration, as a Development Right in accordance with the provisions of the Act, additional property within the lands described on the attached **Exhibit B** until that date which is ten (10) years after the date of the recording of this Declaration.

## ARTICLE II – DEFINED TERMS

2.1 **Defined Terms.** Each capitalized term in this Declaration or in the Plat shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration.

2.1.1 “**Act**” shall mean and refer to the Colorado Common Interest Ownership Act C.R.S. §38-33.3-101, *et seq.*, as it may be amended from time to time.

2.1.2 “**Annual Assessment**” means the Assessment levied pursuant to an annual budget.

2.1.3 “**Assessment**” means the Annual, Special and Default Assessments levied pursuant to this Declaration. Assessments are also referred to as a “Common Expense Liability” as defined under the Act.

2.1.4 “**Association**” means the Brookstone Townhome Owners Association, a Colorado nonprofit corporation, and its successors.

2.1.5 “**Building**” means the building or buildings that will contain the Townhomes.

2.1.6 “**Bylaws**” means the Bylaws adopted by the Association, as amended from time to time.

2.1.7 “**Common Elements**” means the Real Estate within this Community other than the Units, including, but not limited to, private streets, perimeter fences, open space tracts, drainage facilities, and appurtenant easements, all of which shall be owned by the Association.

(i) “**General Common Elements**” means all tangible physical properties of the Project except the Limited Common Elements and the Units.

(ii) “**Limited Common Elements**” means those parts of the Common Elements which are either limited to or reserved in this Declaration, on the Plat, or by action of the Association for the exclusive common use of fewer than all Owners.

2.1.8 “**Common Expenses**” means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws; (ii) all other expenses of administering, servicing, managing, maintaining, repairing or replacing the Common Elements or of fulfilling other maintenance obligations of the Association pursuant to this Declaration or the Bylaws; (iii) insurance premiums for the insurance maintained by the Association; and (iv) all other expenses lawfully determined to be common expenses by the Executive Board.

2.1.9 “**Community**” shall mean and refer to the community known as Brookstone Townhomes, which Community is a residential phased community as defined in the Act and which Community is also a Common Interest Community as defined in the Act.

2.1.10 "**Declarant**" means the Declarant named in this Declaration, and any successor and/or assignee designated by written notice or assignment executed by the Declarant designated in this Declaration and executed by the Transferee and recorded, to the extent any rights or powers reserved to Declarant are transferred or assigned to that party.

2.1.11 "**Eligible Holder**" means the holder of a First Lien Security Interest who has notified the Association, in writing, of its name and address, and the Unit(s) and street address on which it holds a Security Interest. This notice shall be deemed a request that the Eligible Holder be given the information and afforded the rights described such Eligible Holders under this Declaration.

2.1.12 "**Executive Board**", "**Board**" or "**Board of Directors**" means the body, regardless of name, designated in this Declaration to act on behalf of the Association.

2.1.13 "**First Lien Security Interest**" means the most senior recorded mortgage or deed of trust encumbering a Unit, and an executory land sales contract where the VA Administrator is the seller (regardless of whether such contract is owned by the VA or its assigns and regardless of whether the contract is recorded).

2.1.14 "**Governing Documents**" means this Declaration, the Plat, the Articles of Incorporation for the Association, the Bylaws, and any rules and regulations of the Association, as all of the foregoing may be amended from time to time.

2.1.15 "**Improvements**" means structures installed within or upon a Unit.

2.1.16 "**Owner**" means the owner of record, whether one (1) or more persons or entities, of fee simple title to a Unit, including the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit.

2.1.17 "**Owner's Agent**" means the Owner's family members, agents, employees, invitees, licensees, guests and tenants.

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

2.1.19 "**Plat**" means the final plat recorded in connection with the Community, as the same may be amended or supplemented from time to time.

2.1.20 "**Real Estate**" means the property described in **Exhibit A**, and such additional property as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto, and the buildings and improvements erected or to be erected thereon.

2.1.21 "**Townhome**" means the portion of a Building contained within each Unit.

2.1.22 “**Unit**” means a physical portion of the Community designated for separate ownership or occupancy, the boundaries of which are defined on the Plat and in this Declaration.

Each capitalized term not otherwise defined in this Declaration or in the Plat shall have the same meaning as specified or used in the Act.

### **ARTICLE III – NAME/DESCRIPTION OF REAL ESTATE AND EASEMENTS**

3.1 **Real Estate.** The initial Real Estate of the Community is described on **Exhibit A.**

3.2 **Utility and Plat Easements.** All easements, licenses, rights and restrictions to which the Community is known to be subject are recited on **Exhibit C.** Additional easements are established in the Act and by this Declaration. The Real Estate is also subject to the easements for utilities and other purposes shown upon the recorded Plat and as may be established pursuant to the provisions in this Declaration, or granted by authority reserved in any recorded document.

3.3 **Easements for the Executive Board and Owners.** Each Unit shall be subject to an easement in favor of the Executive Board (including its agents, employees, and contractors) and to each Owner to allow for their performance of obligations in this Declaration. On exercising this easement right, the party exercising the right shall be responsible for restoration and repairs, and a lien therefore is authorized and established against that party’s Unit, pursuant to this Declaration.

3.4 **Emergency Easements.** A nonexclusive easement for emergency ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar public agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in emergencies, when necessary to render services within the Community.

3.5 **Utility Easements.** The Executive Board is empowered to execute utility easements, upon terms and conditions satisfactory to the Board, across, over, in and under the Real Estate for the benefit of the Common Elements and the Units and the Improvements, for ingress and egress, installing, replacing, repairing, and maintaining all utilities, including without limitation, water, sewer, gas, telephone, cable TV and electricity. By virtue of this easement, the Executive Board shall have the authority to permit public agencies and utility companies to erect and maintain the necessary equipment on any of the Common Elements and affix and maintain electrical, gas, water, telephone or other utility wires, circuits, conduits and pipes through any Unit to serve any other Unit, provided that such utility infrastructure is located below the main floor living area of the Unit burdened by the easement, and provided that such installation and equipment comply with the rules and regulations of the Association.

### **ARTICLE IV - ASSOCIATION**

4.1 **Membership.** Each Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Unit ownership. There can be more members than there are Units.

4.2 **General Purposes and Powers of the Association.** The Association shall perform functions and manage the Community as provided in this Declaration to protect the value and desirability of the Community and the Units and to further the interests of the members of the Association. The Association shall have all of the powers, authority and duties which are necessary and proper to manage the business and affairs of the Community.

4.3 **Authority of the Association.** The affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, its Articles of Incorporation and Bylaws, and any rules and regulations adopted by the Executive Board. The Executive Board may, by written resolution, delegate authority to a manager or managing agent but delegation shall not relieve the Board of final responsibility.

4.4 **Specific Powers.** The Association shall have all of the powers, authority and duties permitted or set forth in the Act and the Colorado Revised Nonprofit Corporation Act. The Association shall have the power to institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more other Owners on matters affecting the Community, provided, however, that the Association may not institute any such proceeding against any party alleging a defect in the design, workmanship, construction, drainage or other alleged defect relating to the Common Elements or the Limited Common Elements, except in accordance with the provisions of Article 12 if applicable.

4.5 **Power of the Executive Board of the Association.** Except as otherwise provided in the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association, including without limitation to:

4.5.1 Adopt and amend the Bylaws and any policies, procedures, rules and regulations of the Association;

4.5.2 Adopt and amend budgets and collect Assessments;

4.5.3 Hire and terminate managers and other employees, agents and independent contractors;

4.5.4 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Community, subject to the limitations in the Declaration.

4.5.5 Make contracts and incur liabilities.

4.5.6 Regulate the use, maintenance, repair, replacement and modification of the Common Elements.

4.5.7 Cause additional improvements to be made as a part of the Common Elements.

4.5.8 Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if: (a) Owners entitled to cast at least two-thirds (2/3) of all votes in the Association agree to that action; (b) the action receives the written approval of 67% of all Eligible Holders;

and (c) if the action provides for the conveyance or encumbrance of any Limited Common Element, the action is approved by all Owners allocated interests in those Limited Common Elements.

4.5.9 Grant easements, leases, licenses and concessions through or over the Common Elements.

4.5.10 Impose and receive payments, fees or charges for the use, rental or operation of the General Common Elements.

4.5.11 Impose charges for late payment of Assessments; recover reasonable attorney fees and other legal costs for incurred in the collection of Assessments or incurred in other actions taken to enforce the power of the Association, regardless of whether or not suit was initiated; and after notice and opportunity to be heard, levy and collect reasonable fines for violations of the Governing Documents.

4.5.12 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments, except that charges for the preparation of statements of unpaid Assessments shall not exceed \$15.00 per statement.

4.5.13 Provide for indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance.

4.5.14 Exercise any other powers conferred by the Act or Governing Documents.

4.6 **Allocated Interests and Liability for Common Expenses.** The Allocated Interest of each Unit at any time shall be equal to a fraction, the numerator of which is one, and the denominator of which is the total number of Units. The Allocated Interest of each Unit is subject to decrease with the annexation of additional property pursuant to expansion rights reserved in this Declaration. Each Unit shall be liable for the percentage of Common Expenses equal to such Unit's Allocated Interest.

4.7 **Association Agreements.** Any agreement for professional management of the Community or any contract providing for services of the Declarant may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty, upon thirty (30) days' written notice. Contracts (including management contracts) entered into during the Declarant control period shall not bind the Association after the end of the Declarant control period unless ratified by the Executive Board after the end of the Declarant control period.

4.8 **Right to Notice and Comment.** Pursuant to C.R.S. § 38-33.3-205(l)(o), whenever the Governing Documents require that an action be taken after notice to the Owners, and at any other time the Executive Board determines the Owners shall receive notice of a matter proposed action and the right to comment orally or in writing, notice shall be given to each Owner in writing, delivered personally or by mail to all Owners at such address as it appears in the records of the Association or notice shall be published in a newsletter or similar publication which is routinely circulated to all Owners. The notice shall be given not less than three (3) days before the proposed action is to be taken. The



notice shall invite oral or written comment to the Executive Board before the scheduled vote on the proposed action.

4.9 **Indemnification.** To the full extent permitted by law, each officer and director of the Association shall be and is hereby released by the Owners and indemnified by the Association against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon them in any proceeding (or the settlement thereof) to which they may be a party or become involved by reason of being or having been an officer or director of the Association, whether or not they are an officer or director of the Association at the time such expenses are incurred; except that when such person is adjudged guilty of willful misfeasance of malfeasance in the performance of his or her duties, indemnification shall apply only when the Executive Board approves reimbursement as being in the best interests of the Association.

4.10 **Declarant Control.** The Declarant shall have the reserved power, pursuant to Section 303(5) of the Act, to appoint and remove officers and members of the Executive Board during the period of Declarant control. Such period of Declarant control shall terminate no later than the earlier of sixty (60) days after conveyance of seventy-five percent (75%) of the maximum number of units that may be created under this Declaration to Owners other than Declarant, two years after the last conveyance of a unit by the Declarant in the ordinary course of business, two years after any right to add new units was last exercised; or ten (10) years after recordation of the Declaration.

## **ARTICLE V – UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

5.1 **Number of Units.** The maximum number of units which may be subject to this Declaration is three hundred (300) including those Units which may be included if all of the property is subject to expansion rights is annexed to this Declaration. Declarant reserves the right to create and add additional units up to the maximum number of Units for the property subject to this Declaration as allowed by any governmental entity having jurisdiction. However, the aforesaid number of Units is not a representation or a guarantee as to the actual number of Units that will ultimately be included in or constructed as a part of the Community.

5.2 **Identification of Units/Unit Descriptions.** The identification of each Unit is shown on the Plat. Every contract for sale, deed, lease, Security Interest, or other legal instrument shall legally describe a Unit by its lot and block number, followed by the name of the Community, with reference to the Plat and Declaration. An illustrative description is as follows:

Lot \_\_\_\_, Block \_\_\_\_, Brookstone Subdivision Filing No. 2, Weld County, Colorado, according to the Plat recorded on \_\_\_\_\_, at Reception No. \_\_\_\_\_, in the records of the office of the Clerk and Recorder of the County of Weld, State of Colorado.

Reference to the Declaration or Plat in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration or Plat, without specific references hereto.

5.3 **Common Elements.** The real estate and improvements owned or leased by the Association shall be considered Common Elements. Portions of any Common Elements may be designated as part of a Unit or as a Limited Common Element to a Unit.

5.4 **Limited Common Elements.** In the event a Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, those Common Expenses may be assessed equally against the Units to which the Limited Common Element is assigned.

The Declarant reserves, for itself, for ten (10) years after the recording of this Declaration, the right to allocate areas as Common Elements, and further, to allocate areas which constitute a part of any Common Elements as Limited Common Elements for the exclusive use of the owners of Units to which those specified areas shall become appurtenant. Without limitation to the foregoing, the Declarant reserves the right to allocate specified areas which constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the owners of Units to which the specified areas shall become appurtenant. Declarant may assign such Common Elements as Limited Common Elements pursuant to the provisions of C.R.S. § 38-33.3-208 of the Act by making such an allocation: (i) in a recorded instrument, or (ii) in the deed to the Unit to which such Limited Common Element shall be appurtenant, or (iii) by recording an appropriate amendment or supplement to this Declaration. Such allocations by Declarant may be to Units owned by Declarant. This reserved right of the Declarant shall be deemed transferred to the Association upon the sale of all Units, upon the expiration of ten (10) years after recordation of this Declaration, or upon assignment by the Declarant to the Association, whichever occurs first.

5.5 **Owners' Easements of Enjoyment.** Every Owner shall have a right and easement access to his or her Unit and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

a. The right of the Association to promulgate and publish rules and regulations with which each Owner and such Owner's Agents shall strictly comply.

b. The right of the Association to suspend the voting rights and rights to use Common Elements by any Owner for any period during which any Assessment against his/her Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its adopted rules and regulations.

c. The right, power of authority of the Association to grant easements, rights-of-way, licenses, leases, dedications, transfers or conveyances or grants of any similar interest affecting the Common Elements.

d. The right of the Association to close or limit the use of the Common Elements while maintaining, repairing or making replacements in the Common Elements.

e. The Special Declarant Rights of the Declarant reserved in this Declaration.

5.6 **Delegation of Use.** Any Owner may delegate its right of enjoyment to the Common Elements to the members of their family, their tenants, guests, or contract purchasers who reside at their Unit.

## **ARTICLE VI - MAINTENANCE**

6.1 **Unit Maintenance.** Each Owner is responsible for the maintenance, repair and replacement of the Improvements and properties located within his/her Unit boundaries, including Limited Common Elements allocated to the Unit, which are not specifically the obligation of the Association to maintain, replace and keep in good repair pursuant to this Declaration. An Owner shall not take or permit any action that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall be responsible for the maintenance, repair and replacement all interior non-bearing walls of such Owner's Unit, and the surface materials thereon such as plaster, drywall, paneling, wallpaper, paint, tile, carpeting of the walls, ceilings and floors within the Unit, including all doors, windows and screens, subject to the Party Wall restrictions set forth in this Declaration.

6.2 **Owner's Failure to Maintain or Repair.** In the event that a Unit (including Limited Common Elements) is not properly maintained and repaired by the Owner pursuant to Section 6.1 or as set forth in this Declaration, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction to substantially the same condition in which it existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board (after a determination by the Executive Board that the condition of such Unit negatively impacts other Owners or the value of other Units within the Community) shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to good condition and repair. The Owner of the Unit, upon demand, shall reimburse all costs incurred by the Association in connection with the restoration. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for unpaid Assessments.

6.3 **Association Maintenance.** The Executive Board of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance responsibilities. The Association shall be responsible for the improvement, maintenance, repair, upkeep and reconstruction, replacement and operation of the Common Elements; Building roofs, exterior and trim; the main water and sewer lines which serve more than one Unit; landscaping; and for the payment of expenses which may be incurred by virtue of maintenance, repair or replacement as set forth on the recorded plat and final development plan, agreement with or requirement of any local governmental authority, the Town of Milliken and/or the County of Weld or other government authorities. The Association shall have the sole authority to select and approve building exterior colors and Building roof materials and colors.

6.4 **Landscaping, Sidewalks and Driveways.** No landscaping on a Unit may be installed by an Owner without Association approval. With the exception of Association approved flowers and landscaping placed by an Owner upon such Owner's Unit, which

landscaping shall be the responsibility of the Owner, the Association shall install and maintain landscaping on the Units, including, but not limited to, lawns, trees and shrubs. The Association shall also maintain sidewalks and driveways (and such maintenance shall include snowplowing services). The maintenance provided under this Section shall be performed at such time and in such a manner as the Association shall determine.

6.5 **Additional Maintenance.** Notwithstanding any other provisions hereof, the Executive Board may, from time to time, determine that the Association should provide other maintenance or repairs to any other improvements on the Units. Any such determination by the Executive Board must apply uniformly to all Units requiring such maintenance or repair. Any additional maintenance or repair services provided in accordance herewith may be revoked at any time as determined by the Executive Board.

6.6 **Association Maintenance a Common Expense.** The cost of maintenance, repair and replacement by the Association shall be a Common Expense of all of the Owners, to be shared by each Owner according to the Allocated Interests. The cost of repair of any damage to any part of a Unit resulting from the maintenance, repair, or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall be a Common Expense of all of the Owners. However, if such damage is caused by negligent or wrongful acts or omissions of an Owner or Owner's Agent, then such Owner shall be responsible and liable for the cost to repair such damage, to the extent that Owner's or Owner's Agent's negligence or wrongful acts or omissions caused such damage.

6.7 **Easement for Maintenance, Repair and Replacement of Common Elements.** Each Owner and the Association shall have the irrevocable right, to be exercised by the Association, its employees, agents and contractors, of access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements, or at any hour for making emergency repairs, maintenance or inspection necessary to prevent damage to the Common Elements of any Unit. In the event insurance proceeds are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

6.8 **Limited Common Element Damage.** In the event of damage or destruction of a Limited Common Element from any cause other than the negligent act or omission of an Owner or Owner's Agent, the Owners of the Units to which the Limited Common Element is attributable shall bear equally the expense to repair or replace the Limited Common Element to its previous condition. An Owner shall bear the cost of such damage to the extent of such Owner's or Owner's Agent's negligent act or omission.

## **ARTICLE VII - COVENANT FOR COMMON EXPENSE ASSESSMENTS**

7.1 **Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments.** The Association has a lien on each Unit for any amount levied against that Unit or the Owner thereof, including Assessments, fines, fees, late charges, interest and attorney fees incurred by the Association. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of

lien for assessments is required. Declarant, for each Unit, shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments described below, insurance assessments, utility assessments, and such other assessments as imposed by the Association. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall also be the personal obligation of the Owner of such Unit at the time the assessment or other charges became due. The Association Annual Common Expense Assessments and such other assessments as imposed by the Association shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such assessment or charge is made. If any assessments are payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which Common Expense Assessments are made. All assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Executive Boards are not properly exercising its duties and powers under this Declaration.

7.2 **Apportionment of Common Expenses.** Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Units in accordance with the formula for liability for the Common Expenses as set forth in this Declaration.

7.3 **Annual Assessment and Commencement of Common Expense Assessments.** The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Common Expense Assessment year. The budget shall be submitted to the Owners for ratification pursuant to Section 38-33.3-303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by votes of Owners representing sixty seven percent (67%) of the votes in the Association. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner as determined by the Executive Board. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Unit to an Owner other than the Declarant occurs. The omission or failure of the Executive Board to levy the assessment for any period shall not be deemed a waiver, modification or a release of any Owners of their obligation to pay.

7.4 **Special Assessments.** In addition to the Annual Assessments, the Association may levy at any time Special Assessments, payable as the Association may determine, for the purpose of defraying in whole or in part, any operating deficit and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair or replacement improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be

construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests, subject to the right of the Association to assess only against the Owners of affected Units. Any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner or Owner's Agents shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment shall be given promptly to the Owners provided no payment shall be due less than thirty (30) days after such notice shall have been given.

7.5 **Default Assessments.** All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to any Governing Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

7.6 **Effect of Non-Payment of Assessments.** Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Executive Board, shall bear interest from the due date at the rate of eighteen percent (18%) per annum, or such lesser rate as may be established by the Executive Board, and the Association may assess a late charge thereon in an amount not to exceed \$5.00 per day, or as otherwise determined by the Executive Board. Further, pursuant to the terms of the Association's Policy and Procedures for Collection of Unpaid Assessments adopted pursuant to the requirements of the Act, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges, fees or other monthly installments may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefore. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof convey or otherwise deal with the same. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

7.7 **Lien Priority.** The liens authorized by this Declaration are prior to all other liens and encumbrances on a Unit except:

7.7.1 Liens and encumbrances recorded before the recordation of the Declaration;

7.7.2 A First Lien Security Interest on the Unit for a loan insured or guaranteed by the Department of Veteran's Affairs ("VA") or the Federal Housing Administration ("FHA") which was recorded and perfected before the date on which the amounts due under the lien became delinquent (except as allowed by the Act with regard to the limited lien priority allowed to the Association), and to any executory land sales contract wherein the VA or FHA is seller regardless of whether the contract is recorded. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including any deed in lieu of foreclosure, nor cancellation or forfeiture of any such executory land sales contract, shall relieve any Unit from liability for Assessments or other charges subject to liens authorized by this Declaration which thereafter accrue, nor from the liens thereof, except as set forth above.

7.7.3 Liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens.

The liens authorized by this Declaration are not subject to any homestead exemption as allowed under state or federal law. Sale or transfer of a Unit shall not affect the liens, and any sale or transfer of a Unit pursuant to foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any executor land sales contract, shall not relieve any Unit from continuing liability for any charges thereafter becoming due, nor from the lien thereof; except that sale or transfer of a Unit pursuant to foreclosure of any VA or FHA mortgage or deed of trust or a proceeding in lieu thereof, or any deed in lieu of foreclosure relating thereto, shall extinguish the liens which became due prior to the time such Eligible Holder acquired title to the Unit.

7.8 **Working Fund.** Following the initial sale of a Unit by Declarant, the Association or Declarant may require each subsequent Owner acquiring the Unit to make a non-refundable assessment to the Association in an amount, per Unit, equal to one-sixth (1/6) of the annual Common Expense Assessment against that Unit, which payment shall be for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of assessments as they become due.

7.9 **Owner's Negligence or Misconduct.** In the event that the need for maintenance or repair of the Common Elements or any portion thereof, is caused through or by the willful act, omission or misconduct of an Owner, or the Owner's Agents, including but not limited to, pet damage, damage from water overflowing from a tub, hot water heater leaks, or water damage from a washing machine or hose, then the expenses, costs, and fees incurred by the Association for such maintenance, repair or replacement shall be the personal obligation of such Owner, and if not repaid to the Association within ten (10) days after the Association gave notice to the Owner of such expenses, costs and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Section, and such expenses, costs and fees shall

automatically become a default assessment determined and levied against such Unit, and the Association may proceed in accordance with the applicable provisions of the Declaration concerning collections of Assessments.

7.10 **Non-exemption.** No Owner may waive or otherwise escape liability for any Assessments by the nonuse of the Common Elements, or the abandonment of their Unit.

## **ARTICLE VIII – USE RESTRICTIONS, ALIENATION AND OCCUPANCY**

All Real Estate within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Executive Board or by an appropriate committee (subject to review by the Executive Board) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules. The following use restrictions are also subject to the Development Rights and Special Declarant Rights reserved by the Declarant.

8.1 **Use/Occupancy.** No Unit within the Community shall be used for any purpose other than as allowed by the local zoning codes. Units shall not be used for any purpose other than a single-family residential dwelling, and commercial and business uses with any adverse external effect on the nature, perception, operation or ambiance of the Community as a first-class residential community, as reasonably determined by the Executive Board of the Association, are prohibited, unless approved by the Declarant or the Association, and allowed pursuant to restrictions of record and by local zoning ordinances and regulations.

8.2 **Leasing and Occupancy.** Any Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Owner may deem advisable, subject to restrictions of record and the terms of this Declaration. Any lease or rental agreement of over thirty (30) days shall be in writing, a copy of which shall be delivered to the Executive Board or the Association's managing agent prior to the effective date of the lease, and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation and the rules and regulations of the Association. All leases and rental agreements of Units shall state that the failure of the tenant, renter or guest to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the rules and regulations of the Association shall constitute default of the lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the Owner, or by both of them. All occupants of a Unit shall be subject to the rights of the Association to remove and/or evict the occupant for failure of the occupant to comply with the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation or to the rules and regulations of the Association.

8.3 **Restrictions on Animals and Pets.** No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or upon any portion of the Community, except that Owners may keep no more than two (2) domestic, bona fide household pets. Such pets may not be bred or kept for any commercial purpose, and may not be kept in such a manner as to create a nuisance or inconvenience to any



resident of the community. Any Owner who keeps a pet shall obtain and maintain liability insurance specifically providing personal liability coverage for his/her pet's vicious acts, and shall provide the Association with a certificate of insurance or similar evidence that such coverage is in place. Any Owner who permits a pet to enter the Property, regardless of whether the pet is owned by the Owner, shall be deemed to indemnify the Association from and against any and all claims and liability relating to the actions of such pet.

The Executive Board shall have the right and authority to determine, in its sole discretion, that dogs, cats and other household pets are being kept for commercial purposes or are being kept in such a manner as to be unreasonable, a nuisance, or a violation of the Governing Documents. The Executive Board may take such action as it deems reasonably appropriate to correct the violation, which may include requiring the permanent removal of the pet or pets from the Community; requiring reimbursement of cleanup, maintenance or restoration expenses or other damages caused by such pet; and requiring reimbursement of costs incurred by the Association, which may include attorney fees, in the enforcement of the Rules and Regulations and the removal of a pet or pets from the Community. Reimbursement amounts determined by the Executive Board may be levied against the responsible Owner as an Assessment in accordance with this Declaration.

Pets shall not be allowed to run at large within the Community, but shall at all times be under the Owner's control and on a leash at all times, and the Owner shall immediately pick up and dispose of pet excrement upon the Common Elements and any Unit.

8.4 **Antennas and Receiving Equipment.** Subject to federal statutes or regulations governing common interest communities, only Permitted Antennas shall be allowed within the Community. "Permitted Antennas" are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

8.5 **Nuisances.** No nuisance shall be permitted within the Community, nor any use, excessive noise, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Unit or Common Element, or any portion of the Community by Unit Owners. Further, no offense or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed. As used herein, the term nuisance shall not include any activities of Declarant or its assignees, or their respective contractors or agents, which are reasonably necessary for the development and

construction of Improvements within this Community; or to activities of the Association in the performance of its duties under this Declaration.

**8.6 Vehicular Parking, Storage and Repairs.**

8.6.1 Vehicular parking upon the Common Elements shall be regulated by the Executive Board of the Association.

8.6.2 Each parking area may be subject to designation of individual spaces as a Limited Common Element appurtenant to certain designated Units. Parking designated as visitor or guest parking shall not be used by Owners or the occupants of any Units. While any Buildings under construction or completed are owned by Declarant, use of the parking spaces adjacent to that Building may be restricted to Declarant's use for construction and sales purposes.

8.6.3 The following vehicles may not be parked or stored within the Community, unless such parking or storage is within a garage of a Unit, or unless authorized in writing by the Executive Board: oversized vehicles or equipment, trailers, camping trailers, board trailers, hauling trailers, boats or accessories thereto, motorized recreational vehicles, or vehicles or equipment prohibited by law, rule or regulation. This prohibition shall not apply to vehicles which are temporarily parked for purposes of loading, delivery of goods or services, or emergency, provided that such use does not exceed four hours in any 72-hour period, and provided that the vehicle is not left unattended and is promptly moved upon request when needed to accommodate the ingress and egress of other vehicles. Overnight parking of these vehicles is prohibited. This restriction shall also not apply to commercial vehicles temporarily located within the Community upon the request of the Declarant or the Association when necessary for construction or for the maintenance of the Common Elements, Units or any Improvement located thereon.

8.6.4 No unlicensed or abandoned or inoperable vehicles of any kind shall be stored or parked on a Unit or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes or as defined by rule or regulation adopted by the Executive Board. In the event that the Association determines that a vehicle is unlicensed, abandoned or inoperable, then written notice describing said vehicle shall be delivered to the Unit to which the vehicle is associated, or to the vehicle owner, or shall be conspicuously placed upon the vehicle. If the vehicle is not removed within seventy-two (72) hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges.

8.6.5 No activity such as, but not limited to, maintenance, repair, rebuilding dismantling, repainting or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of the garages.

8.6.6 Garages and designated parking spaces (designated as either a part of a Unit, a Limited Common Element or as part of the Common Elements) are restricted to use for access or as a parking space for vehicles.

8.6.7 The conversion or alteration of garages into living areas, storage areas, workshop areas or any other modification or alteration of the garages, which would hinder, preclude or prevent the parking of the number of vehicles for which the garage was originally designed, is prohibited.

8.6.8 Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) is prohibited.

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

8.8 **No Annoying Lights, Sounds or Odors.** No light shall be emitted from any Unit which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound emitting devices shall be located or used on any portion of the Community except with the prior written approval of the Executive Board.

8.9 **Restrictions on Clotheslines and Storage.** No clotheslines, drying racks, service yards, shops, equipment or storage sheds shall be installed, allowed, kept, maintained or permitted in the Community unless the same, in each instance, is expressly permitted in writing by the Executive Board of the Association or is permitted by C.R.S. § 38-33.3-106.7 as an energy efficiency measure. Where such written permission is granted, such permission is revocable, to the extent provided by law, if the item or condition becomes obnoxious to other Owners, in which even the Unit Owner or person having the item or condition complained of shall be given a written notice to correct the problem or, if not corrected, the Unit Owner upon written notice will be required to remove the item/condition from their Unit and from the Community. The written notice provided for herein shall be issued by one (1) or more of the members of the Executive Board of the Association. Owners shall deem to hold the Association harmless from any claim resulting from any clothesline, drying racks, service yards, shops, equipment, storage sheds or storage areas maintained on their Unit.

8.10 **No Hazardous Activities.** No activity shall be conducted on any portion of the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no fireworks or firearms shall be discharged upon any portion of the Community and no open fires shall be lighted or permitted on any portion of the Community except in a contained barbeque unit while attended and in use for cooking purposes or within a safe and well-designed exterior fireplace.

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

8.12 **No Unsightliness.** All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed with an approved structure. All Units shall be kept in a clean, safe, and attractive condition, with no rubbish, refuse, or garbage allowed to accumulate.

8.13 **Restrictions on Signs and Advertising Devices.** No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community, other than a sign advertising the sale of the Unit, or other signs as may be approved in writing by the Executive Board or allowed by the Act.

8.14 **Restrictions on Structural Alterations and Exterior Improvements.** No structural alterations to any Unit or any Common or Limited Common Elements shall be done by any Owner, other than Declarant, without the prior written approval of the Association. No improvement to the exterior of a Building which includes a Unit, or to the Common Elements or to any landscaping shall be constructed, erected, placed or installed within the Community unless complete plans and specifications thereto shall have been first submitted to and approved by the Executive Board, which approval may be withheld at the Executive Board's discretion.

8.15 **Rules and Regulations.** In furtherance of the provisions of this Declaration, and the general plan, rules and regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Executive Board, or its successors and assigns. The Executive Board may establish and enforce penalties for the infraction thereof.

8.16 **Declarant's Use.** Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its assigns, employees and agents, to perform such reasonable activities, and to maintain upon portions of the Community such facilities as deemed reasonably necessary or incidental for the construction and sale of Units or the development of the Community, specifically including, without limiting the generality of the foregoing, the use of Units for sales or business offices, temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, parking areas and lighting facilities.

8.17 **Party Wall Provisions.**

8.17.1 Each Unit is adjacent to either one or two other Unit(s) in a single Building. Along and over the common boundaries between the Units lie party walls ("Party Walls") that, in conjunction with the footings underlying and the portion of the roof there over, form a structural part of, and physically join, the improvements on the adjoining Unit(s).

8.17.2 The Owners of adjacent Units shall each be deemed to own the necessary easements for the perpetual lateral and subjacent support, maintenance, repair, and inspection of the respective Party Wall with equal rights of joint use. The Association shall have the same necessary easements with respect to all Party Walls.

8.17.3 No Owner shall have the right to destroy, remove, or make any structural changes in a Party Wall that would jeopardize the structural integrity of either of the Units sharing such Party Wall without the prior written consent of the

Association, the adjacent Owner and the Security Interest holder for the adjacent Property, nor shall any Owner subject a Party Wall to the insertion or placement of timbers, beams, or other materials in such a way as to adversely affect the Party Wall's structural integrity. No Owner shall subject a Party Wall to any use that in any manner whatsoever may interfere with the equal use and enjoyment of the Party Wall by the adjoining Owner.

8.17.4 Should a Party Wall be structurally damaged or destroyed by the intentional act or negligence of either adjacent Unit Owner (the "Responsible Unit Owner") or agents of the Responsible Unit Owner's, the Association shall promptly rebuild and/or repair the Party Wall, the cost of which shall be a Common Expense apportioned to the Responsible Unit Owner under Article 7.

8.17.5 Should a Party Wall be structurally damaged or destroyed by causes other than the intentional act or negligence of adjacent Owner or such Owner's Agents, the damaged or destroyed Party Wall shall be repaired or rebuilt by the Association, the costs of which shall be a Common Expense apportioned among all the Unit Owners under Section 7.2.

8.17.6 To the extent not inconsistent with the terms and conditions of this Declaration, the general rules of law of the State of Colorado concerning party walls shall be applicable hereto.

## **ARTICLE IX – DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS**

9.1 **Development Rights and Special Declarant Rights.** The Declarant reserves through the maximum period of time allowed by law, but in all events, not more than ten (10) years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

9.1.1 The right to redesignate uses, to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements, subdivide Units or complete or make improvements, as the same may be indicated on plats filed of record or filed with the Declaration.

9.1.2 The right to construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements or to convert Common Elements into Units.

9.1.3 The right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions, as permitted under the Act.

9.1.4 The right to withdraw all or any part of the Real Estate from the Community and the right to withdraw all or any part of the expansion property by amendment to **Exhibit B**.

9.1.5 The right to make amendments to the Declaration or other Governing Documents to meet or comply with any requirements of FHA or VA.

9.1.6 The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary.

9.1.7 The right to merge or consolidate the Community with another community of the same form of ownership.

9.1.8 The right to make the Community subject to a master association.

9.1.9 The right to appoint or remove any officer of the Association or any Director during the Declarant Control period.

9.1.10 The right to exercise any additional reserved right created by any other provision of this Declaration.

9.1.11 The right to amend the Declaration in connection with the exercise of any development right.

9.1.12 The right to amend the Plat in connection with the exercise of any development right.

9.2 **Reserved Development Rights of Expansion.** Declarant reserves the right for itself and any Successor Declarant at any time and from time to time during the period of reservation of Development Rights to subject additional phases of the Expansion Property to the provisions of this Declaration and to expand the Project (Units and Common Elements) to include the maximum number of Units and entire Expansion Property. Development rights may be exercised with respect to different parcels of real estate at different times and no assurances are made fixing the boundaries or regulating the order in which such parcels may be subject to the exercise of each development right.

9.3 **Additional Reserved Rights.** In addition to the Special Declarant rights set forth above, Declarant also reserves the following additional rights for itself and for any Principal Builder:

9.3.1 **Sales.** The right to maintain mobile and other sales offices, parking areas, management offices and models in Units or on the Common Elements.

9.3.2 **Signs.** The right to maintain signs and advertising on the Community to advertise the Community or other communities developed or managed by, or affiliated with the Declarant.

9.3.3 **Dedications.** The right to establish, from time to time, by dedication and otherwise, public streets, utility and other easements for purposes, including, but not limited to, public access, access paths, walkways, drainage, greenbelts and open space areas, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions.

9.3.4 **Use Agreements.** The right to enter into, establish, execute, amend and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of parking and/or recreational facilities and/or Common Elements, which may or may not be a part of the Community.

9.3.5 **Construction Easement.** The right to perform, directly or through assigns, warranty, repairs and construction work, and to store material in secure areas in Units and in Common Elements, and the future right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a Security Interest. Declarant and its assignees have such easements through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easements include the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Real Estate.

9.3.6 **Access Easement.** Declarant, and its successors and assigns, shall have an access easement in, on, under, through and across the Real Estate to and from any real property accessible through the Community.

9.3.7 **Other Rights.** The right to exercise any additional reserved right created by any other provision of this Declaration.

9.4 **Construction Rights.** Nothing in this Declaration shall limit the right of the Declarant or a Principal Builder to obtain approvals from the Association to (a) excavate, cut, fill, or grade any property owned by Declarant, or by a Principal Builder with approval of Declarant, (b) construct, alter, demolish or replace any Improvements on any property owned by Declarant, or by a Principal Builder with approval of Declarant, or (c) store materials, supplies, equipment, tools, waste or other items on any property owned by Declarant, or by a Principal Builder with approval of Declarant.

9.5 **Rights Transferable/Rights Transferred.** Any rights created or reserved under this Article or the Act for the benefit of the Declarant may be transferred, in whole or in part, temporarily or permanently, to any person by an instrument describing the rights transferred recorded in the real property records of the County of Weld, State of Colorado. Such instruments shall be executed by the transferor Declarant and the transferee. The terms "Declarant's assigns" and "assignee", when used in this Declaration, shall be deemed to include such transferees. The rights transferred may then be exercised in compliance with the requirements of C.R.S. §38-33.3-210 and C.R.S. §38-33.3-209(6) without the consent of the Association, any Unit Owners or any holders of a Security Interest in a Unit. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of the County of Weld. Such instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. §38-33.3-210 and C.R.S. §38-33.3-209(6) with the consent of the appropriate Unit Owner(s) or any holders of a Security Interest(s) on the Unit(s).

9.6 **No Further Authorizations Needed.** The consent of Unit Owners or holders of Security Interest shall not be required for exercise of any reserved rights, and Declarant or its assignees, may proceed without limitation at its sole option. Declarant and its assignees may exercise any reserved rights on all or any portion of the Property in whatever order determined. Declarant or its assignees shall not be obligated to exercise

any reserved rights or to expand the Community beyond the number of Units initially submitted.

9.7 **Amendment of the Declaration or Plat.** If Declarant or its assignees elect to exercise any reserved rights, that party shall comply with the requirements of the Act including those concerning amendments of the Declaration or Plat.

9.8 **Interpretation.** Recording of amendments to the Declaration and the Plat pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of the amendment. Further, such amendment shall automatically (a) vest in each existing Owner the reallocated Allocated Interests appurtenant to their Unit, and (b) vest in each existing Security Interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements whether or not reference is made to any Amendment of the Declaration or Plat. Reference to the Declaration or Plat in any instrument shall be deemed to include all Amendments to the Declaration or Plat without specific reference thereto.

9.9 **Construction.** Subsequent to the initial Real Estate and Improvements made subject to this Declaration, any additional buildings, structures and types of improvements to be placed on the Real Estate may be of such quality and type as the persons developing the same may determine, and those improvements need not be of the same quality or types as the Improvements previously constructed on the Real Estate, nor of the same size, style or configuration. Improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Real Estate as may be added or as shown on the Map.

9.10 **Termination of Reserved Rights.** The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by the Declarant, recorded in the records of the Clerk and Recorder of the County of Weld, Colorado.

## **ARTICLE X – INSURANCE/CONDEMNATION**

10.1 **Insurance Carried.** The Association shall obtain and maintain in full force and effect, to the extent reasonably available at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, or the first occupancy of a Unit. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:



10.1.1 All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Unit Owner and shall provide that such policies may not be cancelled or modified without at least thirty (30) days prior written notice to all of the Unit Owners, Eligible Holders to whom a certificate of memorandum of insurance has been issued, and the Association.

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

10.1.3 All liability insurance shall be carried in blanket form, naming the Association, the Board, the manager or managing agent, if any, the officers of the Association, the Declarant, Eligible Holders, their successors and assigns and Unit Owners as insureds.

10.1.4 Prior to obtaining or renewing any policy of casualty insurance, the Board may obtain appraisals from one or more duly qualified real estate or insurance appraisers, which shall reasonably estimate the full replacement value of the Units and the Common Elements, without deduction for depreciation, review any increase to the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full replacement cost.

10.1.5 Owners may carry and are advised to carry other insurance on the Improvements and personal property in their Unit for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such insurance carried by Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if an Owner has other insurance that covers the same loss or losses as covered by policies of the Association. In this regard, Declarant discloses that the Association's insurance coverage, as specified hereunder and under the Act, does not obviate the need for Unit Owners to obtain insurance for their own benefit.

10.1.6 All policies of insurance shall provide that the insurance shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of such act or omission, shall not be invalidated and shall remain in full force and effect.

10.2 **Hazard Insurance on the Units and Common Elements.** The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the Improvements, the Common Elements and the other property of the Association. Insurance obtained on the Units is not required to include

Improvements installed by Owners. If coverage purchased by the Association includes Improvements installed by Owners, the cost thereof shall be assessed to each Unit in proportion to risk. All blanket hazard insurance policies shall contain a standard non-contributory mortgage clause in favor of each Eligible Holder, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such Eligible Holders, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of Weld County, Colorado. If obtainable, the Association may also obtain the following and any additional endorsements deemed advisable by the Executive Board: (a) an inflation guard endorsement, (b) a construction code endorsement, (c) a demolition and cost endorsement, (d) a contingent liability from operation of building laws endorsement, (e) an increased cost of construction endorsement, and/or (f) any special PUD endorsements.

**10.3 Liability Insurance.** The Association shall obtain adequate comprehensive policy of public liability and property damage liability insurance including non-owned and hired automobile liability coverage and personal injury liability coverage, covering all of the Units and the Common Elements, including structural coverage of the Units, in such limits as the Board may determine from time to time, but not in any amount less than Two Million Dollars (\$2,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. All liability insurance shall insure the Executive Board, the Association, the management agent, and their respective employees, agents. Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements.

**10.4 Fidelity Insurance.** The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustees and employees" shall not include any officer, director, agent or employee of Declarant appointed during the period of Declarant control, or any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

**10.5 Directors and Officers Liability Insurance.** The Association may obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association. Neither the term "officers" nor the term "directors" shall include any officer, director, agent or employee of Declarant appointed during the period of Declarant control, nor any officer, director, employee or agent of any

professional manager or managing agent heretofore or hereafter employed by the Association.

10.6 **Other Insurance.** The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

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

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

10.9 **Waiver of Claims Against Association.** As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

10.10 **Adjustment by the Association.** Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien Security Interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and Eligible Holders as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners and Eligible Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

10.11 **Duty to Repair.** Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Unit Owner to the extent insurance proceeds are available, at the Association's option on whether the repair is done by the Association or the Unit Owner, except as provided in the Act.

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

## **ARTICLE XI – SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS**

11.1 **General Provisions.** The provisions of this Article are for the benefit of Eligible Holders within the Community. To the extent applicable, necessary or proper, the

provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Association.

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

11.3 **Special Approvals.** Unless at least sixty-seven percent (67%) of the Eligible Holders (based on one (1) vote for each mortgage owned) of Units in the Association and requisite Unit Owners have given their written approval, neither the Association nor any Member shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such Real Estate by the Declarant or by the Association shall not be deemed within the meaning of this provision); (b) change the method of determining the obligations, Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of Improvement of Units, including the architectural design of the exterior appearance of Units, or the upkeep of the Common Elements; (d) fail to maintain the casualty, fire and extended coverage insurance as provided in this Declaration; (e) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed; (f) take action to terminate the legal status of the Community after substantial destruction or condemnation occurs; or (g) amend any material provision of this Declaration. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Holder receives written

request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within thirty (30) days, it shall be deemed to have approved such request.

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

## **ARTICLE XII – ASSOCIATION’S ENFORCEMENT RIGHTS**

### **12.1 Procedure to Authorize Construction Defect Action.**

12.1.1 Before the Executive Board institutes a Construction Defect Action against Declarant or any Construction Professional (defined below), or before any other claim for any other alleged matter whatsoever is brought by the Association against the Declarant or against members of the Executive Board appointed by the Declarant, including claims for breach of the Declaration, Articles or Bylaws, the Executive Board shall comply with the requirements of this Article 12, and all additional requirements of the Act.

#### **12.1.2 For the purpose of this Article only:**

(I) “*Construction Defect Action*” (a) Means any civil action or arbitration proceeding for damages, indemnity, subrogation, or contribution brought against a Construction Professional to assert a claim, counterclaim, crossclaim, or third-party claim for damages or loss to, or the loss of use of, real or personal property or personal injury caused by a defect in the design or construction of an improvement to real property, regardless of the theory of liability; and (b) includes any related, ancillary, or derivative claim, and any claim for breach of fiduciary duty or an act or omission of a member of the Association’s Executive Board, that arises from an alleged construction defect or that seeks the same or similar damages.

(II) “*Construction Professional*” has the meaning set forth in C.R.S. §13-20- 802.5(4).

### **12.1.3 Meeting to Consider Commencement of Action–Disclosures–Required Terms.**

12.1.3.1 The Executive Board shall mail or deliver written notice of the anticipated commencement of the action to each Unit Owner at the Owner’s last-known address shown in the Association’s records, to the Declarant, and to the last-known address of each Construction Professional against whom a Construction Defect Action is proposed; except that this notice requirement does not apply to: (a) Construction Professionals identified after the notice is mailed; or (b) joined parties in a Construction

Defect Action previously approved by Owners pursuant to Subsection 12.1.4 of this Article.

12.1.3.2 The notice given pursuant to this Subsection 12.1.3 must call a meeting of the Unit Owners, which must be held no less than ten days and no more than fifteen days after the mailing date of the notice, to consider whether to bring an action. A failure to hold the meeting within this time period voids the subsequent vote. A quorum is not required at the meeting. In no event shall the time period for providing the notice required pursuant to subsection 12.1.3.1 of this Article, holding the meeting required pursuant to this Subsection 12.1.3.2, and voting as required by Subsection 12.1.4 of this Article exceed ninety days. The notice must state that:

(A) The conclusion of the meeting initiates the voting period, during which the Association will accept votes for and against proceeding with the action. The disclosure and voting period shall end ninety days after the mailing date of the meeting notice or when the Association determines that the action is either approved or disapproved, whichever occurs first.

(B) Any Construction Professional against whom the Construction Defect Action is proposed will be invited to attend and will have an opportunity to speak (directly or through representatives) to the Unit Owners concerning each alleged construction defect and to present documents and display exhibits responsive to each alleged construction defect; and

(C) The presentation at the meeting by the Construction Professional or the Construction Professional's designee or designees may, but is not required to, include an offer to remedy any defect in accordance with C.R.S. §13-20-803.5(3) of the "Construction Defect Action Reform Act."

12.1.3.3 The notice given pursuant to this Subsection 12.1.3 must also contain a description of the nature of the action, which description identifies alleged defects with reasonable specificity, the relief sought, a good-faith estimate of the benefits and risks involved, and any other pertinent information. The notice shall also include the following disclosures:

1. For Construction Defect Actions, that the alleged construction defects might result in increased costs to the Association in maintenance or repair or cause an increase in assessments or special assessments to cover the cost of repairs.

2. If the Association does not file a claim before the applicable legal deadlines, the claim will expire.

3. Until the alleged defects are repaired, sellers of Units within the Community might owe Unit buyers a duty to disclose known defects.

4. The Executive Board (intends to enter)(has entered) into a fee arrangement with the attorneys representing the association, under which (the attorneys will be paid a contingency fee equal to \_\_\_\_\_ percent of the [net][gross] recovery of the amount the association recovers from the defendant(s)) (the Association's attorney will be paid [an hourly fee of \$\_\_\_\_\_] [a fixed fee of \$\_\_\_\_\_]).

5. In addition to attorney fees, the Association may incur up to \$\_\_\_\_\_ for legal costs, including expert witnesses, depositions, and filing fees. The amount will not be exceeded without the Executive Board's further written authority. If the Association does not prevail on its claim, the Association may be responsible for paying these legal expenses.

6. If the Association does not prevail on its claim, the Association may be responsible for paying its attorney fees.

7. If the Association does not prevail on its claim, a court or arbitrator sometimes awards costs and attorney fees to the opposing party. Should that happen in this case, the Association may be responsible for paying the opposing party's costs and fees as a result of such award.

8. There is no guarantee that the Association will recover enough funds to repair claimed construction defect(s). If the claimed defects are not repaired, additional damage to property and a reduction in the useful life of the Common Elements might occur.

9. Until the claimed construction defects are repaired, or until the construction defect claim is concluded, the market value of the Units in the Association might be adversely affected.

10. Until the claimed construction defect(s) are repaired, or until the construction defect(s) action is concluded, owners in the Association might have difficulty refinancing and prospective buyers might have difficulty obtaining financing. In addition, certain federal underwriting standards or regulations prevent refinancing or obtaining a new loan in projects where a construction defect is claimed, and certain lenders as a matter of policy will not refinance or provide a new loan in projects where a construction defect is claimed.

#### 12.1.4 **Approval by Unit Owners – Procedures.**

12.1.4.1 Notwithstanding any provision of law or any requirement in the Governing Documents, the Executive Board may initiate the action only if authorized within the voting period by Unit Owners to which seventy-five percent of the votes in the Association are allocated, or the highest percentage allowed by law, whichever is less. Such approval is not required for the Association to proceed with a Construction Defect Action if the alleged construction defect pertains to a facility that is intended and used for nonresidential purposes and if the cost to repair the alleged defect does not exceed fifty thousand dollars (\$50,000.00). Such approval is not required for the Association to proceed with a Construction Defect Action

when the Association is the contracting party for the performance of labor or purchase of services or materials.

12.1.4.2 Notwithstanding any other provision of law, an Owner's vote shall be submitted only once and may be obtained in any written format confirming the Owner's vote to approve or reject the proposed Construction Defect Action. The Association shall maintain a record of all votes until the conclusion of the Construction Defect Action, including all appeals, if any.

12.1.4.3 Notwithstanding any other provision of law or of the Governing Documents, Owners shall personally cast their votes. Votes cast by proxy shall not be counted.

12.1.5 **Notice to Construction Professional.** At least five business days before the mailing of the notice required by Subsection 12.1.3 of this Article, the Association shall notify the Declarant and each Construction Professional against whom a Construction Defect Action is proposed by mail, at its last-known address, of the date and time of the meeting called to consider the action pursuant to Subsection 12.1.3 of this Article.

12.2 **Attorney Client Privilege Preserved.** Nothing in this Article shall be construed to:

(a) Require the disclosure in the notice or the disclosure to a Unit Owner of attorney-client communications or other privileged communications.

(b) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or

(c) Limit or impair the authority of the Executive Board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

12.3 **Liability of Directors or Officers for Failure to Maintain an Action Against the Declarant or Contractors.** No officer or Director of the Association shall be liable to any person for failure to institute, maintain or conclude such cause of action if the following criteria are satisfied:

(a) the officer or Director was acting within the scope of their duties;

(b) the officer or Director was acting in good faith;

(c) the act or omission was not willful, wanton or grossly negligent.

12.4 **Alternative Dispute Resolution.** Any claim of a defect or general claim shall, upon the demand of the Association, or the Declarant or its contractor, be submitted to mediation or binding arbitration, subject to the following requirements:

(a) if the parties cannot agree upon utilizing binding arbitration or mediation, but one of the parties wants to utilize an alternative dispute resolution method, binding arbitration shall be utilized;



(b) the arbitrator or mediator must be a person qualified, either with applicable industry experience or legal experience with respect to the claim of defect or general claim, to consider and determine the applicable claim;

(c) if the parties cannot agree upon an arbitrator or mediator, the parties shall follow the arbitration procedures of the American Arbitration Association;

(d) the fees and costs of the arbitrator or mediator and its consultants shall be borne equally by the Association and the Declarant or its contractor;

(e) the arbitrator or mediator shall have authority to establish reasonable terms regarding inspection, destructive testing, and retention of independent consultants;

(f) the arbitrator or mediator shall hold at least one hearing in which the parties, their attorneys, and expert consultants may participate;

(g) the arbitrator or mediator shall issue a written report determining all claims, including any defenses raised by the Declarant or its contractor, and which shall include a recommendation for settlement (in the case of mediation) or binding arbitration award;

(h) all then applicable statutes of limitation on any claim subject to the mediation shall be tolled during the period of mediation or arbitration, but no longer than a period of one hundred twenty (120) days;

(i) the Declarant or its contractor shall have the right to allow subcontractors to participate in the arbitration or mediation proceedings to determine indemnification rights and obligations, provided that the Association is not made to bear the cost of resolution of such indemnity issues; and

(j) any arbitration shall be determined in accordance with the American Arbitration Association, Commercial Arbitration Rules with Expedited Procedures in effect on the date hereof, as modified by this Article. Any issue about whether a claim is covered by this Article shall be determined by the arbitrator. There shall be no substantive motions or discovery, except the arbitrator shall authorize such discovery as may be necessary to insure a fair private hearing, which shall be held within one hundred twenty (120) days of the demand, and shall be concluded within three (3) days. These time limits are not jurisdictional. The arbitrator shall apply substantive law and may award injunctive relief, but shall not have the power to award punitive damages.

**12.5 Use of Funds from Cause of Action.** In the event the Association receives funds as a result of any settlement, arbitration or judgment based upon a cause of action, after the payment of any fees and costs incurred in connection with the prosecution of such action, the Association shall:

(a) deposit the proceeds in a special, interest-bearing account; and

(b) utilize the proceeds only for the purpose of performing remedial or repair work to correct the conditions which were the subject of the defect or general claim.

**12.6 Amendment.** The arbitration and voting provisions of this Article 12 are for the benefit of the Declarant, are enforceable by Declarant, and may not be removed or

amended from this Declaration without the consent of Declarant regardless of whether Declarant owns any portion of the Real Estate at the time of such amendment.

### **ARTICLE XIII - GENERAL PROVISIONS**

13.1 **Enforcement.** The Association or a Unit Owner (with Owners being subject to arbitration provisions in this Declaration) may enforce the restrictions, conditions, covenants, and reservations imposed by the provisions of this Declaration by proceedings at law or in equity against any person(s), to recover damages for such violation, or to restrain such violation or attempted violation. Failure of the Association or of any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board of Directors may adopt such rules, procedures and resolutions for carrying out its duties, and to enforce such rules, procedures and resolutions.

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

13.3 **Term of Declaration.** The covenants and restrictions of this Declaration shall run with and bind the Real Estate in perpetuity, subject to the amendment and termination provisions set forth in this Declaration or in the Act.

13.4 **Amendment of Declaration or Plat by Declarant.** If Declarant shall determine that any amendments to this Declaration or the Plat shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement, for any changes to property not yet a part of the Community, or in order to exercise Development Rights and other Reserved Rights, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of ten (10) years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Unit Owner and holder of a Security Interest. Each deed, Security Interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and consent to the reservation of, the power of Declarant to make, execute and record an amendment under this section.

13.5 **Amendment of Declaration by Unit Owners.** Except as otherwise provided in the Act and this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the Consent of the Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in, this Declaration may be amended or repealed at any time and from time to time upon approval of at least sixty-seven percent (67%) of the voting power of the Association present in person or by proxy at a duly constituted meeting of the Members. Except to the extent expressly

permitted in this Declaration or the Act, no amendment may create or increase any special Declarant's rights, increase the number of Units in the Community, or change the boundaries of any Unit or the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Owners. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Weld County, Colorado, of a certificate setting forth the amendment or repeal in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

13.6 **Amendment Required by Mortgage Agencies**. Prior to ten (10) years after the recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which an Eligible Holder, or FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans, requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Weld County, Colorado of a certificate setting forth the amendment or repeal in full.

13.7 **Required Consent of Declarant to Amendment**. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving development rights or for the benefit of the Declarant, or the assignees, shall not be effective unless Declarant, or its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal.

13.8 **Required Consent of VA/FHA to Certain Amendments**. While the Declarant is in control of the Association (i.e., Unit Owners other than Declarant have not yet elected a majority of the Executive Board), amendments to the Declaration, Articles of Incorporation or Bylaws of the Association must first be approved by the VA or FHA if either VA or FHA has approved the Community for VA guaranteed or FHA insured loans. Further, the Association may not be merged or consolidated with another association without the prior written consent of the VA or FHA if either VA or FHA has approved the Community for VA guaranteed or FHA insured loans.

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

13.10 **Interpretations**. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado. In case of conflict between any Governing Documents (other than this Declaration) and the Articles of Incorporation, the Articles of Incorporation shall control. In case of conflict between any Association Documents (other than this Declaration and the Articles of Incorporation) and the Bylaws, the Bylaws shall control.



**EXHIBIT A  
TO  
MASTER DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BROOKSTONE TOWNHOMES, A COMMON INTEREST COMMUNITY**

**Property Description**

That portion of the plat of Brookstone Subdivision Filing No.2, Weld County, Colorado, included within Phase 1 of Brookstone Subdivision Filing No. 2 Site Plan Review, recorded in the Weld County, Colorado real estate records on August 9, 2017 at Reception No. 4325666, consisting of

Lots 1 – 8, Block 1; Tract C; and a portion of Tract B;  
Brookstone Subdivision, Filing No. 2

According to the plat recorded in the Weld County, Colorado real estate records on August 9, 2017 at Reception No. 4325665.

**EXHIBIT B**  
**TO**  
**MASTER DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**BROOKSTONE TOWNHOMES, A COMMON INTEREST COMMUNITY**

**Expansion Property Description**

All of Brookstone Subdivision Filing No. 2, Weld County, Colorado, including

Lots 9 – 32, Block 1; Lots 1 – 6, Block 2;  
Tract E; Tract F; Tract G; Tract H; Tract I; Tract J; and Tract K;  
Brookstone Subdivision, Filing No. 2

According to the plat recorded in the Weld County, Colorado real estate records on August 9, 2017 at Reception No. 4325665; together with

That portion of Tract B, Brookstone Subdivision Filing No.2, not included within Phase 1 of Brookstone Subdivision Filing No. 2 Site Plan Review, recorded in the Weld County, Colorado real estate records on August 9, 2017 at Reception No. 4325666; together with

Lot 2, Block 1  
Brookstone Subdivision

According to the plat recorded in the Weld County, Colorado real estate records on December 8, 2015 at Reception No. 41637711.

**EXHIBIT C**  
**TO**  
**MASTER DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**BROOKSTONE TOWNHOMES, A COMMON INTEREST COMMUNITY**  
**Easements and Encumbrances of Record**

1. The right of proprietor of a vein or lode to extract or remove his ore should the same be found to penetrate or intersect the premises thereby granted as reserved in United States patent recorded on May 4, 1910 in Book 132 at Page 290, and any and all assignments thereof or interest therein.
2. Terms, conditions, provisions, agreements and obligations specified under the Agreement by and between Edward H. Sappington, Matilda Sappington, Everett Sappington and Samuel D. Griffith recorded on July 16, 1942 in Book 1096 at Page 414.
3. An easement for waterline and incidental purposes granted to Little Thompson Valley Water District by the instrument recorded on February 5, 1964 in Book 506 at Reception Number 1428316.
4. An easement for waterline and incidental purposes as evidenced in the instrument recorded July 15, 1983 in Book 1002 at Reception Number 1933660.
5. An Oil and Gas Lease, from Ehrlich Feedlot, Inc. as Lessor(s) to T. S. Pace as Lessee(s) dated April 23, 1970, recorded on June 25, 1970 in Book 628 at Reception Number 1549950 and any and all assignments thereof or interests therein.
6. Terms, conditions, provisions, agreements and obligations contained in the Agreement by Milliken Sanitation District recorded on December 12, 1997 in Book 1637 at Reception Number 2584062.
7. Notices of Oil and Gas Interests and Surface Use by HS Resources recorded December 6, 2000 at Reception No. 2811307 and at Reception No. 2811308.
8. Terms, conditions, provisions, agreements and obligations contained in the Development Agreement recorded on March 5, 2001 at Reception No. 2830068 and the Addendum E-1 to Town of Milliken Development Agreement recorded August 9, 2017 at Reception No. 4325564.
9. All matters shown on the plat of Settlers Village recorded March 20, 2001 at Reception No. 2833840.
10. Terms, conditions, provisions, agreements and obligations contained in the Final PUD Site Plan recorded on March 20, 2001 at Reception No. 2833841.
11. Ratification and Correction to Settlers Village Final Plat and PUD Site Plat recorded April 26, 2001 at Reception No. 2843814, correcting Lot 2, Block 2 as located at the intersection of Traders Lane and State Highway 60 to read Lot 1, Block 2.

12. Ratification and Correction to Settlers Village Final Plat recorded August 1, 2001 at Reception No. 2870641, correcting 50 foot wide State Highway buffer along the North boundary of the plat to read 50 foot wide buffer, drainage and utility easement.
13. Terms, conditions, provisions, agreements and obligations contained in the Notice of Agreement recorded on August 7, 2006 at Reception No. 3409770.
14. Order and Decree Organizing Centennial Crossing Metropolitan District No. 2 recorded January 5, 2007 at Reception No. 3445728.
15. Any assessment or lien of Centennial Crossing Metropolitan District Nos. 1-8, as disclosed by the instrument recorded on March 2, 2007 at Reception No. 3459416.
16. Terms, conditions, provisions, agreements and obligations contained in the Corporate Easement of Qwest Facilities recorded on October 14, 2003 at Reception No. 3116711.
17. Terms, conditions, restrictions, provisions, notes and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on the Plat of Settlers Village Fifth Filing recorded on June 8, 2009 at Reception No. 3628109, and May 14, 2012 at Reception No. 3845685.
18. Terms, conditions, restrictions, provisions, notes and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on the Plat of Brookstone Subdivision recorded on December 8, 2015 at Reception No. 4163771.
19. All matters shown on the map for Brookstone Phase 1 – Site Plan recorded April 29, 2016 at Reception No. 4199494.
20. Terms, conditions, provisions, agreements and obligations contained in the Public Service Company of Colorado Easement as recorded January 27, 2017 at Reception No. 4273542.
21. Terms, conditions, provisions, agreements and obligations contained in the Addendum A-1 to Town of Milliken Development Agreement for Settlers Village Subdivision: Brookstone Site Plan Phase I as recorded April 29, 2016 at Reception No. 4199495.
22. Terms, conditions, restrictions, provisions, notes and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on the Plat of Brookstone Subdivision, Filing No. 2 recorded on August 9, 2017 at Reception No. 4325665.