

AMENDED AND RESTATED
CONDOMINIUM DECLARATION

FOR

HEATHERRIDGE SOUTH

DRAFT

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EXHIBIT A 42

DRAFT

AMENDED AND RESTATED
CONDOMINIUM DECLARATION
FOR
HEATHERRIDGE SOUTH

THIS AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by the HeatherRidge South Association, a Colorado nonprofit corporation (the “Association”).

RECITALS:

- A. Yale Properties, Inc., a corporation, recorded the Declaration of Condominium for HeatherRidge South on November 14, 1972, at Book 2075, Page 429, in the real property records of Arapahoe County, Colorado, as modified by that Amendment to Declaration of Condominium for HeatherRidge South subjecting the real estate described therein as HeatherRidge South Filings No. 1 and 2, Arapahoe County, Colorado, to the terms and conditions set forth therein (collectively, “Original Declaration”).
- B. The Owners and the Association desire to amend and restate all provisions of the Original Declaration, by virtue of this Amended and Restated Declaration for HeatherRidge South (“Declaration”), and intend, upon the recording and continued validity of this Declaration, that the Original Declaration shall be superseded and replaced by this Declaration
- C. Pursuant to Article XIII of the Original Declaration, Owners of at least seventy-five percent (75%) of votes in the Properties and seventy-five percent (75%) of the mortgagees covering or affecting any or all of the Units within the Community have approved in writing this Declaration.

NOW, THEREFORE, the Original Declaration is replaced and amended and restated as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Act

The Colorado Common Interest Ownership Act (as may be amended from time to time) as set forth in Colorado Revised Statutes §§ 38-33.3-101 *et seq.*, to the extent that it applies to communities created prior to July 1, 1992. Neither the approval nor the recording of this Declaration shall constitute an election under Colorado Revised Statutes §38-33.3-118 to be fully subject to the Act.

Section 1.2 Air Space Unit

A general reference to a Unit within the Unit boundaries as defined herein below.

Section 1.3 Allocated Interest

Collective reference to the Undivided Interest in the General Common Elements, Common Expenses, and Voting Interest, all of which are set forth in this Declaration in Section 2.2. The Allocated Interests are equal for all Units except as the pertains to Common Expenses.

Section 1.4 Amenities

Those Common Elements which are recreational or social or other types of facilities intended for the use and enjoyment in common by the Owners and their Related Users.

Section 1.5 Architectural Review Committee (“ARC”)

Sometimes referred to as the “architectural control committee” or “ACC.” A committee appointed by the Board whose purpose is to review and approve applications by Owners to make improvements on or within their Unit or Limited Common Elements. The ARC shall be composed of three (3) members or any other number as determined by the Board, some or all of whom may be Board members. The Board may also choose to act as the ARC in the absence of any appointment(s).

Section 1.6 Articles

The Articles of Incorporation of the Association, as the same may be amended from time to time.

Section 1.7 Association

The unit owners’ association formed under the name of the HEATHERRIDGE SOUTH ASSOCIATION, INC., a Colorado non-profit corporation, its successors and assigns.

Section 1.8 Building

A structure within which Units and Common Elements are located, depicted on the Condominium Map.

Section 1.9 Bylaws

The Bylaws of the Association, as the same may be amended from time to time.

Section 1.10 Common Driveway

The paved access area linking the public streets (S. Xanadu Way and S. Wheeling Way) to the Limited Driveways of the various Units.

Section 1.11 Common Elements

All portions of this Community *excluding* Units and *including* but not limited to: (i) the real property upon which the Community is situated and which is subject to this Declaration; (ii) all real property existing for the common use; (iii) access easements; (iv) the Amenities; (v) uncovered parking areas and all roadways and appurtenances including but not limited to the Common Driveways; (vi) landscaping areas; and (vii) all of the Buildings but *excluding* the Units. The term “Common Elements” includes both “General Common Elements” (those Common Elements for the use of all Owners and Related Users) and “Limited Common Elements” (as defined below).

Section 1.12 Common Expenses

As used in this Declaration, this term includes all charges levied by and for the benefit of the Association pursuant to the Governing Documents, including, but not limited to: (i) annual or more frequently-determined costs and expenses of the Association resulting from owning, leasing, using, maintaining, or otherwise controlling any real or personal property and the Common Elements; (ii) expenses incurred by the Association pursuant to Section 5.2; (iii) large expenditures of the Association, including but not limited to, capital expenditures funded wholly or partially by the levying of “Special Assessments” as defined in Section 5.5; and (iv) amounts necessary to fund reserves pursuant to Section 5.7.

Section 1.13 Common Expense Assessment; Assessment

In addition to the definition included in the Act, these terms shall include the following items levied against a particular Owner and Unit: (i) the Owner’s Allocated Interest in the Common Expenses, subject to reapportionment pursuant to Section 5.3; (ii) late charges, attorneys’ fees, fines, and interest charged by the Association at the rate as determined by the Board; (iii) charges against a particular Owner and the Unit for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation of the Governing Documents by the Owner or Related Users; (iv) charges levied against an Owner pursuant to Section 5.6 due to Owner’s negligence or misconduct (“Default Assessment”) and (v) any sums permitted by the Governing Documents or the Act to be assessed against a particular Owner or Unit, including but not limited to amounts levied pursuant to Section 5.4.

Section 1.14 Community; Common Interest Community

The Community is the real estate (which includes Units and Common Elements) described in Exhibit A to this Declaration, including all structures and Improvements erected or to be erected thereon, and such additions as may hereafter be amended into and brought within the jurisdiction of the Association, which Community is a Condominium Community as defined in the Act and which Community is also a Common Interest Community as defined in the Act. The name of the Community is “HeatherRidge South.”

Section 1.15 Condominium Map; Map

Those condominium maps for the HeatherRidge South, filed in the Arapahoe County real property records on June 7, 1972 at Book 42, Page 47 and any other amendments thereto.

Section 1.16 Declaration

This instrument together with the Condominium Map, as each may be amended from time to time.

Section 1.17 Eligible Insurer; Eligible Guarantor

An insurer or governmental guarantor who has, in writing provided to the Association, requested notice from the Association of those matters which such insurer or guarantor is entitled to notice by reason of this Declaration or the Bylaws of the Association.

Section 1.18 Eligible Security Interest

A holder of a First Security Interest on a Unit who has in a writing provided to the Association requested notice from the Association of those matters which such holder is entitled to notice by reason of this Declaration or the Bylaws of the Association.

Section 1.19 Board of Directors; Board

The body designated in the Governing Documents to act on behalf of the Association.

Section 1.20 Governing Documents

This Declaration, the Condominium Map, the Articles, the Bylaws, and the Rules, and all written policies, procedures, and resolutions of the Board, as each may be amended from time to time.

Section 1.21 Improvements

All structures and appurtenances thereto of every type and kind, including but not limited to Buildings, driveways, fences, retaining walls, porches, patios, landscaping, drainage, entry gates, hedges, plantings, planted trees, shrubs, poles, signs, exterior air conditioning, fixtures or equipment.

Section 1.22 Limited Common Elements

Those portions of the Common Elements which are either limited to and reserved for the exclusive use of an Owner of a Condominium Unit or are limited to and reserved for the common use of more than one but fewer than all of the Condominium Unit Owners. The Limited Common Elements shall include, by way of illustration and not limitation, the back patios, front porches, front courtyards, Limited Driveways as shown on the Map, awnings, air-conditioning equipment and related power and condensation lines outside the boundaries of a Unit but serving a single Unit, and other portions of Common Elements designed or designated for exclusive use by the Owner of a particular Unit or which is limited to and reserved for the common use of more than one but fewer than all Owners. Similarly, fireplace chimneys (also known as "flues") located outside the boundaries of a Unit, which shall serve only one Unit, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air-conditioning, hot and cold water, electrical, or other utility services to the Unit shall be a Limited Common Element appurtenant to such Unit. The Limited Common Elements may also be identified on the Map.

Section 1.23 Limited Driveway

The paved access area linking the public street to the garages of all the Units comprising one or more building groups, as shown on the Map.

Section 1.24 Managing Agent; Manager

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

Section 1.25 Nonprofit Act

The Colorado Revised Nonprofit Corporations Act (as may be amended from time to time) as set forth in Colorado Revised Statutes §§ 7-121-101, et seq.

Section 1.26 Owner

The record owner, whether one or more persons or entities, of fee simple title to any Unit which is included in the Community. If a Unit is held in a trust or entity, the trustee or a beneficiary of a trust and the manager or an officer or director of the entity shall be considered the Owner for purposes of eligibility to serve on the Board. If a Unit is sold under a contract for deed, the buyer shall be deemed the Owner of the Unit for purposes of this definition. All record Owners are members in the Association.

Section 1.27 Related User

Any Person who: (i) resides with an Owner within the Unit; (ii) is a guest, licensee, or invitee of an Owner, or (iii) is an occupant, tenant or contract purchaser of a Unit, and any family member, guest, or invitee or cohabitant of any such person.

Section 1.28 Rules

All policies, procedures, rules, regulations and architectural control or design guidelines promulgated by the Board regarding the use and enjoyment of all Units and Common Elements.

Section 1.29 Security Interest

An interest in real or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, security deed, contract for deed, land sales contract, lease intended as a security, assignment of leases or rents intended as a security, pledge of an ownership interest in an association and any other consensual lien or contract for retention of title intended as security for an obligation.

Section 1.30 Unit

The fee simple interest in a condominium unit, as shown by each such Unit's identifying number or letter on the Condominium Map, together with the Allocated Interests, and together with any Limited Common Elements that may be appurtenant to such Unit.

Section 1.31 Unit Boundaries; Boundaries

Each Unit's boundaries consist of the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors that mark the perimeter boundaries thereof as shown on the Condominium Map, the air space contained therein, and including all fixtures and improvements therein contained such as but not limited to, water heaters, heating and air conditioning equipment and associated ducts, pipes and equipment. Utilities running through a Unit that serve more than one Unit are General Common Elements. All spaces of the Unit interior, interior non-supporting walls, inner decorated or finished surfaces of the Unit's perimeter walls, floors, and ceilings as well as other fixtures and betterments within the boundaries of the Unit and serving only that Unit are part of the Unit. When interpreting deeds, plats, and plans, Unit boundaries shall be the then-existing physical boundaries of a Unit (whether in its original state or reconstructed in substantial accordance with the original plans thereof) and such boundaries expressed in the deed or plan, without regard to settling or lateral movement of the Building and without regard to minor variance between boundaries shown on the plan or deed, and those of the Building.

- 1.31.1 "Unfinished perimeter wall" shall mean the un-taped and un-mudded drywall surfaces which constitute the interior face of a perimeter wall of a Unit.
- 1.31.2 "Unfinished ceiling" shall mean the un-taped and un-mudded drywall surfaces which constitute the ceiling of a Unit.
- 1.31.3 "Unfinished floor" shall mean the subfloor decking or, as applicable, the unfinished surface of concrete, which constitute the lowest floor of the Unit. Any grout, mastic, adhesive, or other adhesive materials on top of the floor decking or unfinished surface of concrete is part of the Unit.

A Unit shall include any paint, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, and attached garages. A Unit shall also include any fireplace or stove hearth, facing brick, tile or firebox. A Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings, and floors of the Unit.

Section 1.32 Voting Interest

The number of votes allocated to each Unit. Each Unit shall have one vote, irrespective of the number of Owners on title for the Unit.

ARTICLE 2

ESTABLISHMENT OF CONDOMINIUMS

Section 2.1 Number of Units

The number of Units included in the Community is one hundred seventy-six (176). Each Unit within the Community is described on the Condominium Map.

Section 2.2 Formula for Determining Allocated Interests

The Common Expense Liability, Undivided Interest in the Common Elements, and Voting Interest in the Association allocated to each Unit are equal.

2.2.1 Undivided Interest in Common Elements: Undivided Interest in Common Elements: each Unit shall have a 1/176th interest in the Common Elements.

2.2.2 Common Expense Liability: Common Expenses shall be prorated and charged to all Unit Owners equally; except as otherwise provided herein, each Unit shall have a 1/176th interest in the Common Expense Liability.

2.2.3 Voting Interest: there shall be one (1) class of membership in the Association for each Unit. Each Unit shall have one (1) vote. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as the owners determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

Section 2.3 Description of a Unit

Any instrument affecting a Unit may legally describe it by the identifying Unit and Building number shown on the Condominium Map. A legal description of a Unit may be in the following form:

Unit _____, Building _____,
HeatherRidge South, according to the Map thereof filed for record
in accordance with and subject to the Condominium Declaration
for HeatherRidge South recorded on June 7, 1972, in Book 42, at
Page 47, as amended, in the Office of the Clerk and Recorder of
Arapahoe County, State of Colorado.

Any conveyance or other instrument affecting title to a Unit or any part thereof describing the Unit in substantially the foregoing form or otherwise effectively describing the Unit shall be deemed to include and describe the entire Unit including the appurtenant undivided interest in Common Elements and all of the rights, easements, obligations, limitations, encumbrances, covenants, conditions and restrictions benefitting or burdening the Unit under the terms of this Declaration.

Section 2.4 Inseparability of a Unit

The interest of an Owner in a Unit and that Unit's appurtenant interest in Common Elements and Limited Common Elements shall be inseparable.

Section 2.5 Partition of Common Elements not Permitted

The Common Elements shall be owned in common by all Owners, and no Owner may bring any action for partition thereof. Owners hereby waive any claims of adverse possession, easement by prescription, or other claims to the Common Elements.

Section 2.6 Encroachment Easement

In the event any portion of the Common Elements, including Limited Common Elements, encroaches upon any Unit or any Unit encroaches upon the Common Elements, including Limited Common Elements, or another Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement, or shifting, provided, however, that in no event shall an easement relieve an Owner of liability in case of negligence or willful misconduct of such Owner. In the event any portion of a structure on the Community is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Units or Common Elements shall be easements for the maintenance of said encroachments so long as they shall exist.

Section 2.7 Utilities

Utilities including, but not limited to, gas, electricity, telephone and cable television, if separately metered to each individual Unit, shall be payable by the Owner of each Unit as billed by the appropriate utility or organization. In the event that any utilities are master metered, then such utility service(s) shall be part of the Common Expense Assessments. Other costs associated with the use and occupancy of a given Unit may be individually billed to such Unit, and the respective Owner shall pay the same. To the extent that water, sewer, trash removal and other costs associated with the use and occupancy of a Unit are not separately metered and/or billed to the individual Units, the costs of the same shall be billed to the Association and shall be a common expense to be included in the monthly or other Assessments levied against the Unit and payable by the Owner.

Section 2.8 Recorded Easements

The Community shall be subject to all easements as shown on any survey plat or the Condominium Map, those of record, those provided in the Act, and otherwise as set forth in this Declaration.

Section 2.9 Easements

There is hereby created a blanket easement upon, across, over, in, under and through the Community for the benefit of the Common Elements and the Units and the Improvements

situated on the Community for ingress and egress, and for the installation, maintenance, repair, and replacement of utilities (herein "Utilities"), including, but not limited to water, sewer, gas, telephone, cable TV, electricity, heating, ventilating, air conditioning, computer, cable, and master television antenna or cable or satellite television systems, if any. Said blanket easement includes future utility services not presently available to Units. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment and appurtenances on the Common Elements necessary to operate, repair, and maintain the Utilities.

Section 2.10 Reservation of Easements, Exceptions and Exclusions

The Association is hereby granted the right to establish from time to time, utility and other easements, permits or licenses over the Common Elements for the best interest of the Owners and the Association. Each Owner is hereby granted a perpetual nonexclusive right of ingress to and egress from the Owner's Unit over and across the Common Elements and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association, such as for closure for repairs and maintenance as well as for seasonal closure of the Amenities, as applicable.

Section 2.11 Emergency Access Easement

A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons and to any security personnel now or hereafter servicing the Community (without implying any obligation on the part of the Association to provide for security), to enter upon all streets, roads, driveways and Common Elements located in the Community in the performance of their duties.

Section 2.12 Support Easement

Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of Improvements presently situated or to be built in the future.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 3.1 Membership

Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Each Owner is obligated to comply with the Governing Documents. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant, and then only to the purchasers of such Unit. Any attempt to make a prohibited transfer is void.

Section 3.2 Voting

Each Owner shall be entitled to vote on all matters that are subject to a vote by the Owners provided that no more than one (1) vote shall be cast for each Unit. The Voting Interest allocated to each Owner shall be cast in accordance with the Bylaws.

ARTICLE 4

THE ASSOCIATION

Section 4.1 General Purposes and Powers

The Association, acting in all instances through its Board unless otherwise required by the Act or this Declaration, shall perform such functions and manage and operate the Community as provided in this Declaration so as to further the interests of the Owners. The Association shall have all power necessary or desirable to effectuate such purposes and shall act pursuant to the Governing Documents. All Owners shall be deemed to have assented to, ratified and approved such designation of rights, duties, and authority.

Section 4.2 Powers: Duties

The Association, acting in all instances by and through the Board, shall have the following specific powers:

- 4.2.1 The Association shall have all of the powers, authority and duties permitted pursuant to the Act and the Colorado Revised Nonprofit Corporation Act, C.R.S. 7-121-101 et seq.
- 4.2.2 The Association shall have all of the powers, authority and duties necessary and proper to manage the business affairs of the Community.
- 4.2.3 The Association shall have all of the powers, authority and duties necessary and proper to own, operate, manage, lease, encumber, maintain, repair, reconstruct, replace, improve and otherwise deal with the Common Elements, including the right to acquire additional Common Elements and to construct and maintain Improvements thereon.
- 4.2.4 Subject to the provisions of this Declaration, the Association may acquire, own, and hold tangible and intangible personal property or real property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same percentage as their respective Undivided Interests in the Common Elements.
- 4.2.5 The Association may undertake any activity, function or service for the benefit or to further the interests of the Owners such as, but not limited to, pursuing grants and installing water saving bathroom fixtures.

- 4.2.6 The Association shall have the absolute right to engage a community association manager and to delegate such authority as the Board deems reasonable, by contract or resolution.
- 4.2.7 The Association may borrow money and assign its future income (collaterally or absolutely), including its right to receive Common Expense Assessments, upon the affirmative vote of at least fifty-one percent (51%) of the total votes in the Association at a meeting called for that purpose or pursuant to a vote taken by written ballot in lieu of a meeting which may be conducted electronically to the extent permitted by law.
- 4.2.8 The Association shall have complete authority and control to, by Rules, issue and amend restrictions on use and occupancy of the Units and Common Elements in addition to those contained in this Declaration in furtherance of its rule-making authority.
- 4.2.9 The Association shall establish and enforce Rules as it deems necessary to ensure the proper use, development, enhancement, maintenance, repair, and replacement of real and personal property within the Community, subject to the provisions of Article 7 below, to appoint persons to serve on the Architectural Review Committee.

Section 4.3 Enforcement

The Association shall have the power to enforce provisions in its Governing Documents and shall take such action as the Board deems desirable to cause such compliance by each Owner and each Related User, by any one or more of the following means:

- 4.3.1 By entry upon or into any Unit in accordance with Section 6.3 herein below, for the purpose of enforcement or causing compliance including by curing said violation, which cost of cure or compliance shall become a Common Expense Assessment of the Owner;
- 4.3.2 By commencing and maintaining actions and suits: (i) to recover damages; (ii) to restrain and enjoin any violation or threatened violation of, or compel compliance with, provisions of the Governing Documents by mandatory injunction or otherwise; and (iii) if the Unit is not the Owner's primary residence, to be entitled to the ex parte appointment of a receiver to take possession and control of the Unit, to rent the Unit and to apply the rental payments to obligations owed to the Association;
- 4.3.3 By suspension of the voting rights of an Owner for up to thirty (30) days following any violation of a provision of the Governing Documents, or so long as the violation continues, whichever is longer;
- 4.3.4 By levying and collecting, after notice and an opportunity to be heard, fines against any Owner for violation by such Owner or a Related User, as a Common Expense Assessment to be secured by a continuing lien, from the date it is levied, and by foreclosure of such lien; and
- 4.3.5 By suspending the right to use Common Elements, after notice and an opportunity for hearing, which shall include the right to use the Amenities.

Section 4.4 Mechanic's Liens

No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of the Owner thereof or his agent, contractor or subcontractor, shall create any right to file a statement of mechanic's lien against either the Unit of any other Owner not expressly consenting to or requesting such labor or materials or against any interest in the Common Elements, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished; provided, however, express consent shall be deemed given by the Owner of any Unit to the Association, or any managing agent, in the case of emergency repairs. Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against any Unit, or any part thereof, of any Owner for labor performed or for materials furnished in work on the first Owner's Unit. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, including attorney's fees. If not promptly paid, the association may collect the same in the manner provided herein for collection of Assessments.

Section 4.5 Indemnification

To the full extent permitted by law, each officer, committee member and member of the Board of the Association shall be and are hereby indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, committee member, or member of the Board of the Association, or any settlements thereof, whether or not they are an officer, committee member, or member of the Board of the Association at the time such expenses are incurred; except in such cases wherein such officer or Board member is adjudged guilty of willful acts or omissions, breaches of fiduciary duty, acts or omissions not made in good faith or for acts that involve intentional misconduct or a knowing violation of law; and provided that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interests of the Association.

Section 4.6 Limitation of Liability

- 4.6.1 Notwithstanding the duty of the Association to maintain, repair, and replace portions of the Community, and except to the extent covered by Association insurance described in Article 8, the Association shall not be liable to Owners for injury or damage, other than for the cost of maintenance, repair, and replacement, caused by any latent condition of those portions of the Community to be maintained and repaired by the Association, or caused by the elements or other Owners or persons.
- 4.6.2 The Association shall not be liable for injury or damage to person or property caused by or resulting from any water, rain, hail, snow, ice, object, lawn furniture, personal property, wind, tree or shrub, golf balls, or any other item which may leak, flow, or otherwise originate from any portion of the Common Elements or from any device,

pipe, drain, conduit, appliance, or equipment which the Association is responsible to maintain hereunder, except:

- 4.6.2.1 for injuries or damages arising after the Owner of a Unit has put the Association on written notice of a specific leak, flow, or issue from any portion of the Common Elements or device, pipe, drain, conduit, appliance, or equipment for which the Association has a maintenance responsibility; and,
- 4.6.2.2 only if the Association has failed to exercise due care to correct the leak, flow, other issue within a reasonable time thereafter.
- 4.6.3 The Association shall not be liable to the Owner of any Unit or such Owner's occupant, family, tenant, invitee, licensee, permittee, or guest for loss or damage, by theft or otherwise, of any property which may be parked or stored in or upon any of the Common Elements.
- 4.6.4 The Association shall not be liable to any Owner, or any Owner's occupant, family, tenant, invitee, licensee, permittee, or guest for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.
- 4.6.5 No reduction of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.
- 4.6.6 EACH OWNER, BY VIRTUE OF THEIR OWNERSHIP OF A UNIT, SHALL RELEASE THE ASSOCIATION, ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, MANAGING AGENT AND THEIR EMPLOYEES, AND AGENTS ("RELEASED PARTIES") FROM ANY AND ALL CLAIMS, COSTS, CAUSES OF ACTION, AND LIABILITIES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE BY THE RELEASED PARTIES, ARISING OUT OF OR RELATED TO ANY LOSS, ILLNESS, PERSONAL INJURY, OR DEATH RELATED TO COVID-19 OR ANY OTHER INFECTIOUS DISEASE, OR ANY VIRUS, FUNGI, MOLD, OR BACTERIA.
- 4.6.7 Each Owner of a Unit hereby acknowledges that neither the Association its officers, directors, and committee members shall not be liable for any action or failure to act unless the action or failure to act was not in good faith and was done or withheld wantonly or willfully.

ARTICLE 5

COVENANT FOR PAYMENT OF ASSESSMENTS TO ASSOCIATION

Section 5.1 **Creation of Lien and Personal Obligation for Assessments**

Each Unit, and each Unit 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 Assessments to the Association pursuant to the Governing Documents. Such Assessments shall be the personal obligation of the Owner of such Unit at the time when the assessment or other charges became due. The Assessments shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such Assessment is made. All Assessments shall be payable in the amounts and in the manner specified in the levy thereof, and no offsets or reduction shall be permitted by any reason, including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under this Declaration.

Section 5.2 **Purpose of Assessments**

In addition to such other purposes as set forth in the Act, Assessments shall be used for the purposes of promoting the health, safety, and welfare of Owners and Related Users, and in particular:

- 5.2.1 To enforce all provisions of the Governing Documents;
- 5.2.2 To exercise all rights and powers and to discharge all duties and obligations of the Association pursuant to the Act and the Governing Documents;
- 5.2.3 To discharge all expenses incurred by the Association in the alteration, enhancement, construction, reconstruction, maintenance, repair, or replacement of the Common Elements and portions of the Community the Association is required to maintain and all Improvements located thereon, including fixtures and personal property related thereto but not any Improvements, fixtures, or personal property owned or maintained by the Owners as provided in Section 6.1 below;
- 5.2.4 To discharge all expenses incurred by the Association in the alteration, maintenance, repair and replacement of any property the Association may elect to so alter, maintain, repair or replace pursuant to the Governing Documents
- 5.2.5 To pay the costs of providing utilities to and within the Community for which the Association is responsible or voluntarily assumes such responsibility;
- 5.2.6 To fund any operating deficit or the reserves pursuant to Section 5.7, and to fund any expense the Association deems necessary to meet its financial obligations; and
- 5.2.7 To pay for any debt service or financial commitments of the Association undertaken by the Association pursuant to Section 4.2.8

Section 5.3 Apportionment of Common Expenses

All Common Expense Assessments shall be assessed against all Units in accordance with the formula for Common Expense Liability as set forth in this Declaration, except as otherwise provided in this Declaration, and in the Board's sole discretion:

- 5.3.1 The Association shall have the right to add to any Owner's Assessment the following:
 - 5.3.1.1 Those amounts expended by the Association for the sole benefit of any individual Unit or any occupant thereof, including but not limited to: Unit insurance; extraordinary maintenance, repair, and replacement specific to a Unit; improvement, maintenance repair, and replacement caused by the negligent or willful acts of any Owner and/or his or her Related User;
 - 5.3.1.2 Any increased insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of an Owner (or the Owner's Related Users);
 - 5.3.1.3 All fines and costs assessed against an Owner pursuant to the Governing Documents; and
 - 5.3.1.4 Any insurance deductible or uninsured or underinsured portion of a loss as authorized in this Declaration or by Rule or Regulation.
- 5.3.2 Any Common Expense for the maintenance, repair, or replacement of a Limited Common Element appurtenant to more than one Unit but less than all may be assessed against the benefitted Units allocated amongst those benefitted Units as reasonably determined by the Board in its sole discretion.
- 5.3.3 Any Common Expense for insurance may be assessed in proportion to risk.
- 5.3.4 If a Common Expense is caused by the negligent act or omission of an Owner or Owner's Related User, the Association may assess that expense exclusively against that Owner and that Unit, in addition to sums charged to the Owner pursuant to Section 5.4 hereof.
- 5.3.5 Fees, charges, taxes, impositions, late charges, fines, attorneys' fees, collection costs and interest charged against an Owner are enforceable as Common Expense Assessments.

Section 5.4 Annual Assessment/Commencement of Common Expense Assessments

The Common Expense Assessment may be made on an annual basis or more frequent basis against all Units based upon the Association's advance budget of the estimated cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. The budget shall be adopted in accordance with the mechanism set forth in Section 303(4) of the Act. Common Expense Assessments shall be due and payable in periodic installments as determined by the Board. The omission or failure of the Board of Directors to levy the assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 5.5 Special Assessments

The Board shall have the further right, during any calendar year, to levy and assess against the Owners, according to their Common Expense Liability, a special assessment for such purpose or purposes as may be necessary or appropriate to maintain the community to such standard as the Board deems appropriate, including for the funding of reserves (“Special Assessment”), apportioning deductibles, addressing cost overruns, budget shortfalls, or any other purpose or purposes, in accordance with the formula for Common Expense Liability as set forth in this Declaration. Within thirty (30) days after the determination by the Board to levy any such Special Assessment, the Board shall set a date for a meeting of the Owners in accordance with the Bylaws. At such meeting, the proposed Special Assessment shall be approved in the absence of a veto by a majority of those votes cast by Owners voting in person or by proxy at the meeting called for this purpose (or of the total written ballots received if it is a written ballot in lieu of a meeting) if a quorum has been reached. If approved, the Special Assessment shall be collectible as a Common Expense Assessment. No Special Assessment shall be due or payable less than thirty (30) days after the holding of the ratification meeting described herein above. Notwithstanding anything herein to the contrary, the Association may levy one or more Special Assessments in any given fiscal year for insurance premiums payable by the Association without the necessity of having an Owner vote and without adopting a new budget in accordance with Section 5.4.

Section 5.6 Default Assessments

In the event that the need for maintenance, repair, or replacement of any portion of the community is caused by or in any way results from the negligent or willful act or failure to act, or the misconduct of an Owner or an Owner’s Related User, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner, and such obligation shall be considered a Default Assessment, which shall be collectible as a Common Expense Assessment.

Section 5.7 Reserves/Surplus

The Association shall establish a reserve fund for the maintenance, repair and replacement of those Common Elements and the portions of the Community the Association is required to maintain or for which it has the responsibility to insure, and that must be periodically maintained, repaired or replaced. Such reserve fund shall be funded through a portion of the payments described in Section 5.16 below and through a portion of the periodic installments of the Common Expense Assessments. Neither the Board nor the Association makes any assurances that the reserve fund is adequate to meet the needs of the Association at any given time. Any surplus funds derived from Assessments shall be transferred to the reserve fund or used for Association operations, in the Board’s sole discretion and by acceptance of a deed to his or her Unit, each Owner hereby directs the Board to make this determination each year.

Section 5.8 Notice to Lien Holders

A copy of a notice of delinquency shall be mailed to Eligible Security Interest holders upon their prior written request for such notices. Notice shall be mailed to the name and address as appears on the request for notice.

Section 5.9 Effect of Non-Payment of Assessments

Any Assessment provided for in this Declaration, or any installment thereof, which is not fully paid within fifteen (15) days after the due date thereof, shall bear interest at rate as may be set by the Board from time to time from the due date, and the Association may assess a monthly late charge thereon. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, 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, or any monthly or other installment thereof, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefore. The Association's costs of collection, management company charges, expenses and reasonable attorneys' fees incurred by virtue of the failure of the Owner to timely pay Assessments when due, including costs for preparing and recording any lien notice, and the Association's costs of suit, expenses and reasonable attorneys' fees incurred for any such action or foreclosure proceedings, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Unit. 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 Assessments, 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, and cast the votes appurtenant to such Unit, and to convey or otherwise deal with the same. The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the Unit which accrued prior to the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. Whether or not the Association forecloses its lien, it may apply for and be entitled to, the *ex parte* appointment of a receiver for a Unit, if the Unit is not the Owner's primary residence, and the Owner of such Unit shall be liable for all costs and expenses in securing and maintaining this appointment, including receiver's fees, attorneys' fees and costs. The Association shall also be entitled to suspend the Owner's voting rights and rights to use the Amenities and the General Common Elements, after notice and an opportunity for hearing, for as long as there is a past-due balance owed to the Association.

Section 5.10 Lien Priority

The lien for all Assessments levied by the Association pursuant to the Act and as described by this Article 5 is prior to all other liens and encumbrances on the Unit except:

- 5.10.1 Liens and encumbrances recorded before the recordation of the Original Declaration;
- 5.10.2 Liens for real estate taxes and other governmental assessments or charges against the Unit;
- 5.10.3 A First Security Interest on the Unit recorded before the date on which the Assessment sought to be enforced became delinquent, except to the extent the Association's lien is made superior by the Act.

This Subsection does not affect the priority of mechanics' or materialmen's liens. Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessment under this Section 5.10 is required, except a notice of delinquent Assessment must be recorded before commencement of foreclosure. Sale or transfer of any Unit shall not affect the Assessment lien; however, the sale or transfer of any Unit pursuant to judicial or non-judicial foreclosure of a First Security Interest shall extinguish that portion of the Association's lien that is subordinate to the First Security Interest. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Owner from continuing liability for any Assessments thereafter becoming due nor from Assessments which were levied prior to the sale and remain unpaid. No sale or transfer shall relieve such Unit from the Association's lien rights for any Assessments thereafter becoming due. Where the holder of a recorded First Security Interest or other purchaser of a Unit obtains title to the same as a result of foreclosure or conveyance in lieu, such acquirer of title, his successors and assigns, shall not, except as provided by Subsection 5.11.3 above, be liable for Assessments levied by the Association which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expenses or other Assessments shall be deemed to be Common Expenses collectible from all of the Units including such acquirer, his successors and assigns.

Section 5.11 Statement of Unpaid Assessments

The Association shall provide statements of unpaid assessments as provided by the Act.

Section 5.12 Failure to Fix Assessment

The omission or failure to establish any Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or release of the Owners from their obligations to pay the same.

Section 5.13 No Waiver or Abandonment

No Owner may be exempt from liability for payment of the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the Assessments are made.

Section 5.14 Encumbrancer's Rights

Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any unpaid Assessments payable with respect to such Unit, and upon such payment, the encumbrancer shall have a lien on such Unit for the amounts paid.

Section 5.15 Homestead Exemption

Each Owner hereby agrees that the Association's lien on a Unit for Assessments as hereinbefore described is not subject to the provisions of any federal or state homestead exemptions. Each Owner hereby agrees that the acceptance of a deed or other instrument of conveyance for any Unit within the Community shall signify such Owner's waiver of all homestead exemptions.

Section 5.16 Working Capital Assessments

Commencing ninety (90) days after the recording of this Declaration, each Owner, upon the conveyance of a Unit to another Owner, except for transfers between spouses or to a trust for estate planning purposes, shall pay to the Association at the time of the closing of such conveyance, an amount equal to three (3) times the then-current monthly installment of the annual assessment and shall be due and payable to the Association at the time of the closing of the conveyance of a Unit. A conveyance to a spouse, to a trust or entity for the Owner's estate planning purposes, or from the estate of a decedent Owner shall not be considered a conveyance for purposes of this Working Capital Assessment. The grant of a life estate in a Unit shall not be considered a conveyance for purposes of this Working Capital Assessment. This Working Capital Assessment is separate from and in addition to any and all other Assessments which are levied against the Units by the Association and shall be deposited into the operating or reserve accounts of the Association as the Board determines best benefits the Association's needs at the time of the conveyance. This Working Capital Assessment shall be an Association lien on the Unit as provided in this Declaration if not paid at the time of closing of the conveyance of the Unit. Working Capital Assessments are not refundable. Upon the approval and recording of this Declaration, the Owners agree that working capital collected prior to the recording of this Declaration, if any, is transferred to the Association's reserve fund and the Association shall have no duty to refund or pay such amounts in any manner whatsoever.

ARTICLE 6

RESPONSIBILITIES FOR MAINTENANCE

Section 6.1 Owner Maintenance Responsibilities

Except as limited by Section 6.2 below, each Owner shall be responsible for the maintenance, repair, replacement, alteration, and remodeling of said Owner's Unit. For purposes of maintenance, repair, replacement, alteration and remodeling, an Owner shall have the right and obligation to maintain, repair, replace, alter and remodel as follows and in accordance with Section 7.1:

- 6.1.1 Unit Interior: The interior non-supporting walls, and the materials (such as, but not limited to, plaster, drywall, paneling, wallpaper, paint, wall and floor tile, and flooring) making up the finished surfaces of the supporting walls, and the perimeter walls, ceilings and floors within the Unit.
- 6.1.2 Windows and Doors: The windows and window frames, perimeter or entry doors and perimeter/entry door frames to the Unit.
- 6.1.3 Utilities: The Owner shall also be responsible for the maintenance, repair (and damage as a result of any repair or failure to maintain), and replacement of the following:

- 6.1.3.1 Any air conditioning unit serving that Unit exclusively and all related lines, equipment, and ducts, wherever located;
- 6.1.3.2 For two-story Units, domestic water lines from and including the individual Unit shutoff valve and all lines and pipes, wherever located, beyond such valve, including but not limited to pipes within the perimeter walls and outdoor spigots . For single story (ranch) Units, all water lines serving only that Unit exclusively, from the point that they are inside of the unfinished surface of the floor slab, and including all lines in interior and perimeter walls and outdoor spigots;
- 6.1.3.3 Gas lines serving that Unit exclusively, wherever located, to the point of the meter or other equipment maintained by the gas provider;
- 6.1.3.4 Electrical lines, conduit, and other equipment serving that Unit exclusively, wherever located, to the point of and including the electrical panel outside the Unit;
- 6.1.3.5 Sanitary sewer lines and pipe serving that Unit exclusively, from the point that they are inside (above) of the unfinished surface of the floor slab, wherever located, above such unfinished surface of the floor slab;
- 6.1.3.6 Keeping the chimney flue in a clean condition;
- 6.1.3.7 Telephone, cable, and other telecommunications equipment serving that Unit exclusively, wherever located;
- 6.1.3.8 Replacement of building exterior light fixtures and light bulbs within such fixtures that are located directly outside of the Owner's Unit on the patio or front porch appurtenant to the Owner's Unit;
- 6.1.3.9 Dryer vents and ducts, bathroom fan vents and ducts, range hoods and ducts, wherever located, except that the Association will replace exterior vent covers on the roof and building exteriors.
- 6.1.4 Back Patio Covers: The Owner shall be responsible for any shade structure over a patio but the Association shall provide replacement of roof shingles on and painting of such structure. The Owner shall further be responsible for cleaning and sweeping the patio appurtenant to the Owner's Unit and the front walkway.
- 6.1.5 Back Patio: All maintenance, repair, and replacement of the back patio, including the back patio concrete slab and all fences around the back patio, shall be the responsibility of the Owner. Any damage to the back patio concrete slab shall be the responsibility of the Owner unless the Association's negligence caused the damage; damage caused by tree roots shall not be considered caused by Association negligence. The Owner shall also have responsibility for shoveling of snow and clearing of ice from the back patio.
- 6.1.6 Front Porches and Front Courtyard Area: The Association shall have maintenance, repair, and replacement responsibility for the concrete slab on the front porch, retaining walls between units, and fencing between units, if any, commensurate with the size of the original buildout. All other portions of the front porch, and improvements therein, including but not limited to any sidewalk, shall be maintained,

repaired, and replaced by the Owner. The Owner shall be responsible for shoveling of snow and clearing of ice from all portions of the front porch and courtyard area.

In the event that the Association approves applications for improvements to be made by an Owner, the Board may condition the application upon the Owner's written assumption of maintenance responsibilities, including the cost of such maintenance responsibilities, therefore, in which case the Owner's maintenance responsibilities hereunder shall automatically include such improvements. In the absence of such written assumption of responsibility, the Owner shall be responsible for all such improvements. No Owner may make improvements to their Unit that will obstruct access to utilities, including but not limited to water shut off valves and sewer clean outs; any damage to the Unit caused by the Association's accessing such utilities shall be the Owner's responsibility to repair.

Section 6.2 Association Maintenance Responsibilities

Except as otherwise provided in Section 6.1 above and elsewhere in this Declaration, the Association, acting through the Board, its officers and the Managing Agent shall have the sole and exclusive right and duty to manage, operate, control, maintain, repair, replace or restore all of the Common Elements (including Limited Common Elements) and any portion thereof, together with all Improvements, all as more fully set forth in the Governing Documents. Should said maintenance or repair result from the negligent act or omission of an Owner or his or her Related Users, the Owner shall reimburse the Association for the costs of such maintenance or repair immediately upon receipt of an invoice for said costs. Notwithstanding anything in this Declaration to the contrary, to the extent that an Owner installs anything on the Common Elements or alters them in any way, with or without the Association's permission, the additional cost to maintain, repair, replace such items shall be assessed to the Unit Owner and the Unit in accordance with Section 5.3. The Association shall provide periodic maintenance of the sewer lines outside the boundaries of the Units; in the event of a sewer backup not caused by the Association's negligence, the Association shall have no liability or responsibility for Unit damage, personal property damage, personal injury, or any other claim.

Section 6.3 Easement to Units for Repair, Maintenance and Emergencies

Some of the Common Elements are or may be located within a Unit or may be conveniently accessible only through a particular Unit. The Board, any Managing Agent, and each Owner shall have a non-exclusive right and easement, which may be exercised for any Owner by the Board, or the Managing Agent, as the Owner's agent, for access through each Unit and to all Common Elements, from time to time, during such reasonable hours as may be reasonably necessary, for the maintenance, repair, replacement, or inspection of any of the Common Elements located therein or accessible therefrom to ensure the Common Elements are functioning properly or for making repairs therein necessary to prevent damage to the Common Elements or to another Unit, or the purposes described in Section 4.3.1. When access to a Unit is required, at least seventy-two (72) hours prior notice shall be provided to the occupants of such Unit, except when said occupants have no objection to earlier entry and except in the case of an emergency, in which case no prior notice shall be required. However, the Association shall provide notice of any entry due to an emergency to the Owner of the Unit within a reasonable

amount of time after the emergency entry. The cost to repair damage to the interior or any part of a Unit resulting from the Association's maintenance, repair, or replacement of any of the Common Elements or as a result of repairs within another Unit made at the direction of the Association shall be the responsibility of the Owner of the Unit that is damaged, subject to the Owner's and the Association's right to pursue reimbursement for negligent acts or omissions and the Association's ability to assess any amount to a specific Unit(s) pursuant to Section 5.3. No diminution or abatement of Common Expense Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improving any portion of the Community or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration or repair of the damaged areas shall be to substantially the same condition as they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the negligent act or omission of any Owner or said Owner's Related Users, then the Owner shall be responsible for all costs and losses incurred as a result of such damage, including any expenses incurred to avoid or repair such damage and any losses suffered by other Owners as a result of such damage.

ARTICLE 7

ARCHITECTURAL CONTROL

Section 7.1 Approval Required

No Improvement, or alterations of the same, including, but not limited to, the removal of partitions between Units, the alteration, modification, or removal of any structural components, the alteration, modification, or removal of any utility lines within a Unit that may affect other Units, the addition or replacement of doors, screen or storm doors, garage doors, windows, window treatments, or screening on a Limited Common Element, as well as anything that can be seen, felt, experienced or heard from outside the Unit, shall be commenced, placed, erected, or altered, until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing by the Architectural Review Committee. The Board may also choose to act as the Architectural Review Committee.

Section 7.2 Failure to Act

If the Board or the Architectural Review Committee fails to approve or disapprove such location, plans and specifications or other requests within forty-five (45) days after the receipt thereof, then the proposal shall be deemed denied except where prohibited by law. In the event that an Owner's proposal is denied due to inaction on the part of the Architectural Review committee, then the Owner shall be entitled to hearing in front of the Board of Directors. At the conclusion of the hearing, the Board of Directors shall have thirty (30) days to review the plans and specifications or other requests. If the Board of Directors fails to approve or disapprove the plans and specifications or other requests within this thirty (30) day-period, then the proposal shall be deemed to be approved. Any approval given is valid for twelve (12) months. If all of the work

described in the approval has not been completed within twelve (12) months of the approval, then the work described in the approval is automatically revoked, any work shall be removed, and a new application needs to be submitted.

Section 7.3 Guidelines

The Board may, in its reasonable discretion, publish or issue guidelines concerning any matters as the Board determines is reasonable; provided, however, any such guidelines shall in no way be deemed approval or consent as required by this Article 7, unless they guidelines expressly so state.

Section 7.4 Liability

The Architectural Review Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or for any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. Neither the Board nor the Architectural Review Committee, nor any members thereof, shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements.

Section 7.5 Waivers

The approval or consent of the Architectural Review Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

ARTICLE 8

INSURANCE / CONDEMNATION

Section 8.1 Insurance Carried

The Association shall obtain and maintain in full force and effect, to the extent reasonably available and 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. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

- 8.1.1 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 canceled, nor may coverage be reduced, without thirty (30) days prior notice to the Association, or in the case of nonpayment of premium, ten (10) days prior notice.

- 8.1.2 All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Unit 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 Unit 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 Unit Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 8.2 Owners' Insurance

Each Owner is advised to maintain, at the Owner's expense, property insurance upon the finished surfaces ("finished" as used in this Section is defined as painted and textured) of all walls, floors, ceilings, windows, and doors of their Unit; betterments, improvements and upgrades beyond original developer configuration and grade; refrigerator, stove, microwave, washer and dryer; all other non-built-in appliances; all wall, window and floor coverings such as carpet, tile or hardwood; and all personal property and furnishings in the Owner's Unit or in any Limited Common Element allocated to the Owner's Unit, in such amounts, against such risks, and containing such provisions as the Owner may reasonably determine from time to time. Each Owner is also advised to maintain, at the Owner's expense, adequate liability insurance covering acts within the Unit and elsewhere as the Owner deems is appropriate, together with all other coverages the Owner deems is advisable.

Section 8.3 Property Insurance on the Units and Common Elements

- 8.3.1 The Association shall obtain and maintain property insurance in amounts, against risks, and containing provisions as the Board reasonably determines from time to time. At a minimum, the Association's insurance shall insure against all risks of direct physical loss for one hundred percent (100%) of the full replacement cost (at the time the insurance is purchased and at the renewal date, less deductibles) of (1) the Common Elements and all fixtures, improvements and alterations, situated on or constituting a part of the Common Elements; (2) any personal property of the Association, situated in the Common Elements or used in the operation or maintenance of the Common Elements; and (3) the Units in their original configuration and grade, commensurate with the original development across the entire community (as opposed to something unique or upgraded by the developer), but not the finished ("finished" as used in this Section is defined as painted and textured) interior surfaces of the walls, floors, and ceilings of the Units, or any improvements or betterments installed by the Unit Owners. This means that the Association's property policy will cover the unfinished ("unfinished" as used in this Section is defined as drywalled, taped, mudded and sanded) perimeter and interior walls in their original configuration, the original ductwork and utilities contained

therein; the original grade cabinetry, counters and countertops throughout the unit; original grade bathroom fixtures (tub and shower doors, sink, toilet); original grade bathroom fixtures (tub and shower, doors, sink, toilet); bathroom cabinets and countertops; original grade lighting fixtures; and original grade built-in kitchen appliances such as a built-in range, range hood, built-in microwave, kitchen sink and faucet and garbage disposal. The Association does not maintain insurance on any portion of finished basements as they were not finished during the original developer build-out. Owners are advised that the Association will most likely have no coverage and shall not be responsible to have coverage for damage resulting from sewer backups; Owners are advised to contact the Association from time to time with respect to specific coverages in place.

- 8.3.2 The Association's insurance may exclude land, excavations, foundations and other items normally excluded from property policies and may provide for a deductible, not to exceed a reasonable and prudent amount as determined by the Board. The Association's property insurance will be maintained in the name of the Association, for the use and benefit of all Owners. To the extent available, such property insurance also will (i) contain no provisions by which the insurer may impose a so-called "co-insurance" penalty; (ii) permit a waiver of claims by the Association, and provide for a waiver of subrogation rights by the insurer as to claims against each Owner and the members of the Owner's household; (iii) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner carries; (iv) provide that, notwithstanding any provision that gives the insurer an option to restore damage in lieu of making a cash settlement, the option may not be exercised if the proper party(ies) elect(s) not to restore the damage in accordance with the provisions of this Declaration or the Act; (v) provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (vi) provide that it may not be canceled, nor may coverage be reduced without thirty (30) days prior notice to the Association, or in the case of nonpayment of premium, ten (10) days prior notice; and (vii) include so-called "inflation guard," "building ordinance or law," and "steam boiler and machinery coverage" endorsements. If, as a result of any improvements or alterations made to or concerning a Unit by its Owner, the premium for the Association's property insurance policy is increased to an amount exceeding what the premium would have been if the Owner had not made the improvements or alterations, the Board may assess the amount of the increase in premium against the Owner and the Owner's Condominium in accordance with Section 5.3. Notwithstanding anything herein to the contrary, the Association shall not be obligated to file a claim with its property insurance carrier; to the extent that the Association elects not to file such a claim, it will "self-insure" the loss to the extent that it exceeds the amount of the deductible. Whether or not a claim is filed on the Association's policy, for claims not involving wind, hail, or other losses that have similarly high deductibles, any amounts under the deductible shall be paid for by the party responsible for the maintenance of the damaged item(s) or the party who benefits from the repair, independent of fault or negligence, subject to the Association's right to recover from an Owner the cost of restoring such damage due to their negligent act or omission or due to the negligent act or omission of their

Related Users. For deductibles on wind or hail losses or other losses to property that the Association is responsible to maintain, repair, or replace that are subject to a similarly high deductible, the deductible shall be apportioned to all Owners according to their Common Expense Liability as a Special Assessment without the necessity of an Owner vote.

Section 8.4 Liability Insurance

- 8.4.1 The Association shall obtain a policy of public liability and property damage liability insurance covering the Common Elements, in such limits as the Board may determine from time-to-time, but not in any amount less than One Million Dollars (\$1,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage.
- 8.4.2 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.
- 8.4.3 All liability insurance shall name the Association, its directors, officers, and manager or managing agent, if any, and employees, if any, as insureds.

Section 8.5 Fidelity Insurance

The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts 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 fidelity coverage or bonds shall be an amount equal to or greater than all funds held by the Association in reserve, operating and other accounts, plus two months' worth of then-current assessments, as estimated at the time of renewal.

Section 8.6 Worker's Compensation and Employer's Liability Insurance

The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law. If the Association does not have employees, then the Board may, in its discretion, maintain any such insurance as it deems advisable.

Section 8.7 Officers' and Directors' Professional Liability Insurance

The Association shall obtain officers' and directors' professional liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting on behalf of the Association.

Section 8.8 Other Insurance

The Association may obtain insurance against such other risks, as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 8.9 Insurance Premium

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

Section 8.10 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 that agent's intentional acts or omissions.

Section 8.11 Annual Insurance Review

The Board shall review the insurance carried by and on behalf of the Association for the purpose of determining the amount of insurance required.

Section 8.12 Adjustments 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, Unit Owners and holders of first lien security interests as their interests may appear. Proceeds must be distributed first for the repair or restoration of the damaged property. The Unit Owners and holders of first lien security interest are not entitled to receive payment of any portion of the proceeds. The Association, through the Board of Directors, may determine how a surplus of proceeds, if any, shall be utilized. To the extent that insurance proceeds are insufficient to repair an insured loss under the Association's property policy, subject to the Owner's responsibility for deductibles as described in Section 8.3.2 hereinabove, the Association shall have the authority to levy a Special Assessment, without the necessity of an Owner vote, to make up the insufficiency as necessary to restore the damage as required by this Declaration or otherwise determined in the reasonable discretion of the Board.

Section 8.13 Duty to Repair

Any portion of the Community for which insurance is required under this Article, and for which proceeds are available, that is damaged or destroyed must be repaired or replaced by the Association. In the absence of insurance proceeds, the Association shall repair or replace the Common Elements and the Unit Owner shall repair or replace the Unit in accordance with the maintenance provisions of this Declaration, subject to the Association's right to either approve any scope of work for the repair or replacement an Owner may arrange prior to the work commencing or to assume the obligation to repair or replace on a case-by-case basis.

Section 8.14 Condemnation and Hazard Insurance Allocations and Distributions

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.

Section 8.15 Responsibility for Payment of Deductible Amount

The Board may adopt and establish written nondiscriminatory policies and procedures related to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment.

Section 8.16 Communicable Disease Liability

Notwithstanding the duty of the Association to maintain and repair portions of the Community, and except to the extent covered by a policy of insurance maintained by the Association, neither the Association, nor its Board of Directors, officers, committee members, managers, management companies, or other agents shall be responsible for any bodily injury, damage, cost, expense, or claim arising out of or related to any virus, fungus, bacteria, or other similar agent.

ARTICLE 9

USE RESTRICTIONS

Section 9.1 Residential Purposes

Each Owner shall be entitled to the exclusive ownership and possession of his or her Unit, subject to: (i) all applicable governmental rules, regulations, laws, ordinances and restrictions, and (ii) all provisions of the Governing Documents as though such restrictions are set forth in this Declaration or any amendments thereto including but not limited to amendments adding to or modifying the use restrictions contained within Article 9 pursuant to Section 10.2 herein. Each Unit shall be improved, used and occupied for private, residential single-family dwelling purposes only, and no such Unit shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely. No Units or Common Elements shall be used for any business or commercial purposes, whatsoever, except as otherwise provided in the Governing Documents. Notwithstanding the foregoing, home-based businesses shall be permitted provided that the activity is conducted entirely within the Unit, there is no sign or advertising of the activity, there is no external effect, and the activity does not unreasonably increase traffic or parking within the Community beyond what is customary for a residence.

Section 9.2 Restrictions Regarding Vehicular Parking, Storage and Repairs

To the extent permitted by law, the following restrictions apply to all Owners and their Related Users.

- 9.2.1 Parking spaces are restricted to the parking of vehicles and may not be used for storage. The Board shall have the authority to adopt Rules regarding what constitutes a “vehicle” for purposes of this Section 9.2, parking and the storage of vehicles, and the parking areas generally from time-to-time.
- 9.2.2 The use of parking spaces as storage areas, workshop areas, or any other modification is prohibited.
- 9.2.3 No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked within the Community outside of an enclosed garage. An “abandoned or inoperable vehicle” shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which cannot be driven under its own propulsion, or which does not have an operable propulsion system installed therein or which appears to be inoperable missing or damaged parts, flat tires or the like. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be given to the owner thereof, if known, by being conspicuously placed upon the vehicle. If the abandoned or inoperable 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.
- 9.2.4 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 within the Community except to the extent specifically authorized by Rule.
- 9.2.5 The following vehicles may not be parked or stored within the Community unless authorized in writing by the Board of the Association: oversized vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, $\frac{3}{4}$ ton trucks and greater, trucks with camper tops or similar accessories, self-contained motorized recreation vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. Any such oversized vehicle may be parked as a temporary expedience for loading, delivery of goods or services, or emergency. This restriction shall not apply to emergency vehicles as defined by the Act or trucks less than $\frac{3}{4}$ ton in size, nor shall it apply to commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of the Common Elements, Units, or any Improvement while such construction or maintenance is being performed.

Section 9.3 Leasing and Occupancy

In order to preserve the character of the Community as predominantly Owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, the leasing of Units shall be permitted subject to the terms and conditions listed in this Section 9.3.

“Leasing,” for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person other than the Owner; provided, however, for the purposes of this Declaration, leasing shall not include the occupancy of the Unit by the child, spouse, sibling, parent, or roommate of an Owner who occupies the Unit as the Owner’s primary residence. Upon the death of all Owners of record of any Unit, there shall be a nine (9) month period of time for the estate to be probated and/or the Unit to be sold without the Unit being considered Leased. The granting of a life estate, provided that the Unit is the primary residence of the beneficiary, shall not be considered a Lease. In the event that a Unit is titled in a trust or an entity, then if the Unit is the primary residence of a trustee or beneficiary of the trust, or the primary residence of an officer, director, manager, or member of the entity, the unit shall not be considered Leased. No short-term rentals (defined as any lease period or tenancy which includes but is not limited to homestays, AirBNB’s, exchanges, and other arrangements, of less than six (6) months) shall be permitted.

9.3.1 General. Owners desiring to lease their Units may do so only if they have applied for and received from the Association either a “Leasing Permit” or a “Hardship Leasing Permit.” Such a permit, upon its issuance, will allow an Owner to lease his or her Unit provided that such leasing is in strict accordance with the terms of the permit and this Section. The Association shall have the authority to establish conditions as to the duration and use of such permits consistent with this Section. All Leasing Permits and Hardship Leasing Permits shall be valid only as to specific Owners and Units and shall not be transferable between either Units or Owners; provided, however if a valid Lease is in place at the date of transfer of the Unit, that Lease may continue until the expiration of the lease term or for a maximum of one year from the date of transfer of the Unit, whichever is earlier.

9.3.2 Applicability. Those Owners who are leasing their Units upon the effective date of this Declaration shall be entitled to a Leasing Permit, notwithstanding the limitation on the number of Units that can be leased set forth herein. However, upon conveyance or transfer of a Unit, any grantee of the Unit shall be subject to the provisions of this Section.

9.3.3 Leasing Permits. An Owner’s request for a Leasing Permit shall be approved if current, outstanding Leasing Permits have not been issued for more than the established maximum threshold of twenty-five percent (25%) of the total Units in the Community (the “Threshold”). A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (1) subject to the terms of subsection (a) above, the sale or transfer of the Unit to a person or entity other than the Owner (excluding sale or transfer to (a) an Owner’s spouse, (b) a person cohabitating with the Owner, (c) a corporation, partnership, company, or legal entity in which the Owner is a principal; and (d) transfer to a trust for the Owner’s estate planning purposes); (2) the failure of an Owner to lease his or her Unit within 180 days of the Leasing Permit having been issued; or (3) the failure of an Owner to have his or her Unit leased for any consecutive 180 day period thereafter. The Board may make an exception to the 180 day provision upon written application from the Owner at least 30 days prior to the expiration of the 180 day period that shows the Owner made reasonable efforts to rent the Unit, but has been unable to do so due to market conditions or if the Owner demonstrates an abnormal or hardship reason for the vacancy. If current Leasing Permits have been issued for Units equal to or greater

than the Threshold, no additional Leasing Permits shall be issued (except for Hardship Leasing Permits) until the number of total Units with valid Leasing Permits falls below the Threshold. Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued the same if they so desire when the total Units with valid Leasing Permits falls below the Threshold. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

- 9.3.4 Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Association for a Hardship Leasing Permit. The Association shall have the authority to issue or deny requests for Hardship Leasing Permits in its sole discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship, (2) the harm, if any, which will result to the Unit if the permit is approved, (3) the number of Hardship Leasing Permits which have been issued to other Owners, (4) the Owner's ability to cure the hardship, and (5) whether previous Hardship Leasing Permits have been issued to the Owner. A "hardship" as described herein shall only include the following situations: (1) an Owner must relocate his or her residence outside the greater Denver metropolitan area; (2) where the Owner dies and the Unit is being administered by his or her estate and such administration cannot be concluded within 9 months from the date of death; (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Unit within one (1) year; and (4) where an Owner or Owner's family member residing in the Unit has a substantiated medical condition necessitating moving from the Unit. Military deployments where the Owner cannot practically live in the Unit shall be considered a hardship for the duration of the deployment. Hardship Leasing Permits, except those for military deployment, shall be valid for a term not to exceed one year. At the request of the Board, Owners shall be required to provide written documentation in support of their hardship request. Such documentation may include proof that the property has been actively listed and marketed at its current fair market value, personal financial statements or records, letters from employers, death certificates, or whatever else the Board or its representative may reasonably deem necessary to make its decision. Owners may apply for additional Hardship Leasing Permits pursuant to the conditions stated below. Hardship Leasing Permits shall be automatically revoked if, during the term of the permit, the Owner is approved for and receives a Leasing Permit.
- 9.3.5 The Board's ability to approve hardship requests shall be limited to a total number of active Hardship Leasing Permits not to exceed five percent (5%) of the total number of Units.
- 9.3.6 The Board may not extend the length of any Hardship Leasing Permit if other requests are pending at the time but have not been approved because the Association has reached the maximum allowable limit. If applicable, the Owner must be able to demonstrate that a conscientious effort has been made to sell the Unit during the time the Unit was required to be on the market. Applications for extension must be submitted no less than thirty (30) days before the expiration of the current permit. In

granting approval for an extension request, the Board may assess an administrative fee in an amount to be established the Board from time to time.

9.3.7 In the case of a hardship permit granted under condition (1) or (2) defined above, the Unit must be placed on the market no later than 120 days prior to the expiration of the Hardship Leasing Permit. The Board may immediately revoke any Hardship Leasing Permit for failure to comply with this provision.

9.3.8 It shall not be considered a hardship that current market conditions would require an Owner to sell his or her Unit at a loss.

9.3.9 Leasing Provisions. Leasing which is authorized pursuant to a permit shall be further governed by the following provisions:

9.3.9.1 Notice. Within ten (10) days after entering into the initial lease of a Unit, the Owner shall provide the Board with a copy of the lease agreement. The Owner may redact the financial terms of the lease, as well as any Social Security numbers, bank account information, or other personal information.

9.3.9.2 General. Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All Leases shall be in writing. All Leases must be for an initial term of not less than six (6) months. It shall also be a violation of this Declaration to advertise or otherwise permit physical and/or online marketing of a Unit on a short-term basis which is defined as a Lease having an initial lease term of less than six (6) months. Under no circumstances shall a Unit be leased on a short-term basis, which includes homestays, AirBNB, VRBO and any other short-term arrangements. No Unit shall be used (i) for the operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, or (ii) for the operation of a reservation or time-use system among co-Owners of a Unit managed by a party other than the co-Owners themselves or a system whereby co-Owners are required as a condition of purchase of a fractional interest in the Unit to subject the fractional interest to a pre-determined reservation or time-use system among co-Owners, regardless of whether or not the co-Owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating. The Association may not require that a prospective tenant of a Unit be approved by the Association and/or its agent(s), including, but not limited to, meeting creditworthiness standards.

9.3.9.3 Compliance with the Governing Documents and Use of Common Elements. Each Owner covenants and agrees that any Lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the Lease by the existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease.

9.3.9.3.1 Compliance with Governing Documents. The lessee shall comply with all provisions of the Governing Documents adopted pursuant thereto and shall control the conduct of all other occupants and guests of the Leased Unit in order to ensure such compliance. The Owner shall cause all occupants of his or her Unit to comply with the Governing Documents adopted pursuant thereto, and shall be responsible for all violations by such occupants, notwithstanding the fact that such occupants of the Unit are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Governing Documents for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee. The fine may be assessed against the Owner after both parties are provided notice and an opportunity for hearing. Unpaid fines shall constitute a lien against the Unit. Any violation of the Governing Documents adopted pursuant thereto by the lessee, any occupant, or any guest of lessee, is deemed to be a default under the terms of the Lease and authorizes the Owner to terminate the Lease without liability and to evict the lessee in accordance with Colorado law. If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration and the Owner fails to commence such action within 30 days of the date of the Association's notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner for breaches resulting from the violation of the Governing Documents adopted pursuant thereto. If the Association evicts the lessee, any costs, including but not limited to reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Unit.

9.3.9.3.2 Use of Common Elements. The Owner transfers and assigns to the lessee, for the term of the Lease, any and all rights and privileges that the Owner has to use the Common Elements, including but not limited to, the use of any and all recreational facilities and other amenities.

9.3.10 Inapplicability of this Section to the Association. Notwithstanding the above, this Section shall not apply to any leasing transaction entered into by the Association, which shall be permitted to Lease a Unit without first obtaining a permit in accordance with this Section, and such Units shall not be considered as being leased

in determining the maximum number of Units that may be leased in accordance with this Section.

- 9.3.11 Only to the extent specifically required by institutional underwriting guidelines, this Section shall not apply to any leasing transaction entered into by the holder of any first mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage. If required by such institutional underwriting guidelines, such parties shall be permitted to Lease a Unit without first obtaining a Leasing Permit in accordance with this Section, and such Units shall not be considered as being leased in determining the maximum number of Units that may be Leased in accordance with this Section. Notwithstanding anything herein to the contrary, this Section shall not apply to any leasing transaction entered into by the Association.

Section 9.4 Timeshare Restrictions

Timeshares as defined by Colorado law are prohibited in the Community.

Section 9.5 Certain Work Prohibited

Owners are limited in the use of their Unit and the Community, as follows:

- 9.5.1 No Owner shall undertake any work, enhancements or alterations in his Unit which would jeopardize the soundness, health or safety of the Common Elements, impair the structural integrity, electrical systems, or mechanical systems; or lessen the support of any portion of the Community; or materially increase the transmission of sound from within the Unit, or impair any easements;
- 9.5.2 Structural alterations shall not be made by an Owner to his or her Unit, to the Common Elements, or to the Building, nor shall an Owner make any changes to the water or gas pipes, electric conduits, plumbing lines, or other utilities, without prior written approval of the Board (which approval shall not be unreasonably withheld). The removal and/or installation of light switches, light fixtures, plumbing fixtures, water heaters, furnaces, and other similar components existing within a Unit that do not require alterations of the Common Elements may be performed without prior written approval of the Board,
- 9.5.3 No Owner may add anything to or change the appearance of any of the Common Elements, including any Limited Common Elements appurtenant to such Owner's Unit, which are visible from the exterior of the Building or such Unit without prior written approval of the Board (which approval shall not be unreasonably withheld). In such event that permission is granted, unless there is a separate written agreement to the contrary between the Owner and the Association, the Owner shall maintain, repair, replace, (to the extent reasonably available) and insure such improvements.
- 9.5.4 No Owner may alter or change the exterior appearance or structure of any garage space without the prior approval of the Board, in its sole discretion. Additionally, garages may not be used for living purposes or made into a room for recreational purposes or otherwise.

- 9.5.5 No Owner shall hang, erect, affix or place anything upon any of the Common Elements (except for decorative items located within his Unit) without prior written approval of the Board, which shall not be unreasonably withheld, and no Owner shall place anything on or in windows or doors of Units which would or might create an unsightly appearance or create an unsafe condition.
- 9.5.6 Some Units have roughed in plumbing lines; to the extent that these lines are stuffed with materials including, but not limited to, concrete to prevent sewer gas or otherwise, the Owner shall be responsible for any materials that fall into the sewer lines and for all consequences thereof. The Association shall have no responsibility for the preventing of sewer gas or other gases, including but not limited to radon, from entering the Unit or for any liability therefor.

Section 9.6 Amenities

Except as otherwise provided in this Declaration, the Amenities shall be available for the sole use and enjoyment of the Owners and their Related Users. Use of the Amenities may be made subject to payment of such reasonable fee or charge, if any, as may be imposed by the Association (in addition to charges imposed by means of Assessments for Common Expenses). In the case of an Owner which is not a natural person, the Amenities may be used only by the partners, shareholders, officers, employees, trustees, beneficiaries, members and/or agents, as applicable, of such Owner, and by their respective Related Users, but only to the extent such individuals (other than Related Users) are actually occupying such Owner's Unit, and only during the period of such occupancy.

Section 9.7 Use of Limited Common Elements

Each Limited Common Element shall be: (a) appurtenant to the Unit with which the Limited Common Element is conveyed or assigned; and (b) used only for the purposes set forth in this Declaration. The right to use a Limited Common Element shall be exercisable only by the Owner whose Unit such Limited Common Element is appurtenant thereto and said Owner's Related Users; and (c) subject to Rules, to place furniture and plants upon said area; to plant flowers and shrubs which do not unreasonably interfere with (i) the enjoyment of and access by the Owners of adjacent Units and Limited Common Elements; (ii) drainage of water runoff away from any Building; or (iii) any established drainage plan or scheme.

Section 9.8 Use of Common Elements

Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association. 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.

Section 9.9 Owners Liable for Damage

Each Owner shall be liable to the Association for all damage to the Common Elements and any Improvements thereto, including Buildings, Amenities and landscaping, caused by such Owner or Related User. Each Owner shall be responsible for compliance with the provisions of the

Governing Documents by his Related Users, and shall, after written notice and an opportunity for a hearing, pay the fines and penalties assessed pursuant to the Governing Documents for any violation by the Owner or his Related Users.

Section 9.10 Pets

Except as provided in the Rules, no animals, livestock, birds or poultry shall be brought within the Community or kept in any Unit, or on any portion of the Common Elements. No pet shall be permitted to be kept within any portion of the Community if it makes excessive noise or otherwise constitutes an unreasonable annoyance to other Owners as determined by the Board in its sole discretion. An Owner is responsible for any damage caused by his pets and shall be obligated to clean up after his pets in the Community. No pets shall be allowed to remain tied or chained to any patios or other parts of the Community, and any such pets so tied or chained may be removed by the Board or its agents. No pet waste shall be allowed to accumulate in any front courtyard/porch area or any back patio, whether enclosed or not.

Section 9.11 No Noxious, Offensive, Hazardous or Annoying Activities

No noxious or unreasonably offensive activity shall be carried on upon any part of the Community, nor shall anything be done or placed on or in any part of the Community which is or may become a nuisance or be a disturbance or annoyance to others. No sound shall be emitted from any part of the Community which is unreasonably loud or annoying. No odor shall be emitted from any part of the Community which is noxious or offensive to others; odors associated with cooking of food for household purposes shall not be considered noxious or offensive but could be considered a nuisance depending on the degree of odor. No light shall be emitted from any part of the Community which is unreasonably bright or causes unreasonable glare. No unsightliness or waste shall be permitted on or in any part of the Community. Without limiting the generality of the foregoing, no Owner shall keep or store anything (except in designated storage areas) on or in any of the Common Elements. Notwithstanding the foregoing, the Board shall have the authority but not the duty to enforce noxious, offensive, or nuisance-like violations that the Board deems not to affect the community-at-large.

Section 9.12 Outside Antennae

Exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type subject to federal statutes or regulations governing condominium communities, may be erected entirely within the air space of Limited Common Element front courtyard's front porch areas, or back patios. Any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type erected, installed or maintained by an Owner is subject to reasonable and valid safety restrictions, and reasonable restrictions as to screening of the device from view by neighboring Units. Subject to federal statutes or regulations governing condominium communities, no exterior television or other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on the general Common Elements of the Community. All costs associated with the installation or maintenance of any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar

device of any type by an Owner, including costs of repair of the structure to which such exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type is affixed, erected and/or installed upon, shall be the sole responsibility of that Owner. Abandoned satellite dishes abandon satellite dishes may be removed by the Association, with all costs and expenses being assessed to the Unit.

Section 9.13 Use Causing Loss of Insurance

Owners and/or their Related Users shall not do or permit anything on a Unit or the Common Elements which shall cause such Improvements to be uninsurable against loss by fire or the perils of an extended coverage endorsement to the Colorado standard fire policy form or cause any such policies representing such insurance to be more expensive, canceled or suspended, or that may cause the company issuing the same to refuse renewal thereof.

Section 9.14 Smoking

Smoking shall be prohibited in the clubhouse, at the pool or on any Common Elements as set forth in the Rules and Regulations.

Section 9.15 Vermin

In the event that there are or suspected to be vermin within the Community, the Association shall have the authority but not the duty to access the Units as set forth herein above, to test and treat the Units and the Common Elements, and to apportion the cost applicable to such Units in accordance with Section 5.3. Notwithstanding the foregoing, Owners are responsible for controlling rodents, insects, and other vermin within their Units and their Limited Common Elements.

ARTICLE 10

AMENDMENT AND TERMINATION

Section 10.1 Technical, Clerical, Typographical or Clarification Amendment; Amendment for Underwriting Guidelines

If the Board shall determine that any amendments to this Declaration or to the Condominium Map or 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 provision, then the Board shall have the right and power to make and execute any such amendments without obtaining the approval of any Owners or Eligible Security Interests. Additionally, the Board shall have the ability to amend the provisions of this Declaration without the approval of the Owners or Eligible Security Interests to the extent needed to meet the requirements of institutional lenders and/or governmental agencies that lend, insure or guarantee loans.

Section 10.2 Amendment of Declaration by Owners

Except as otherwise provided in this Declaration and subject to provisions elsewhere contained in this Declaration requiring the consent of others (except the provisions of Article 9, which shall only be amended by a vote of sixty-seven percent) any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration may be changed or repealed, and any such provision added to this Declaration at any time and from time to time upon approval of the Board and at least fifty-one percent (51%) of the Voting Interests in the Association.

Section 10.3 Recording of Amendments

The amendment or repeal shall be effective upon recording a certificate in the real property records of Arapahoe County, Colorado, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 10.4 Termination

The Community may be terminated upon an affirmative vote of the Owners holding seventy-five percent (75%) of the Allocated Interests, and in accordance with Section 38-33.3-218 of the Act.

ARTICLE 11

GENERAL PROVISIONS

Section 11.1 Compliance and Enforcement

- 11.1.1 Every Owner and occupant of a Unit shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.
- 11.1.2 The Association may enforce all applicable provisions of this Declaration and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:
 - 11.1.2.1 imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Unit;
 - 11.1.2.2 suspending the right to vote and the right to use Common Elements;
 - 11.1.2.3 exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Unit and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;
 - 11.1.2.4 requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing

Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration;

- 11.1.2.5 without liability to any person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;
 - 11.1.2.6 levying specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents; and
 - 11.1.2.7 bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.
- 11.1.3 In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance, repair or replacement responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Unit.
- 11.1.4 All remedies set forth in the Governing Documents shall be in addition to any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.
- 11.1.5 The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association not to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

Section 11.2 Severability

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

Section 11.3 Registration by Owner of Mailing Address

Each Owner shall register a mailing address with the Association. All notices or demands intended to be served upon an Owner (including, without limitation, notice of matters affecting the Community) shall be sent via first class mail, postage prepaid, addressed in the name of the Owner at such registered mailing address to the extent required by law. To the extent not prohibited by law, the Association shall use electronic means of communication. In the event an

Owner fails to register a mailing address with the Association as set forth herein, such Owner's registered mailing address shall be the mailing address of the Unit owned by such Owner. All notices, demands, or other notices intended to be served upon the Board of the Association or the Association shall be sent certified mail, postage prepaid, to the office of the Association at its principal address listed with the Colorado Secretary of State.

Section 11.4 Owner Caused Damages

If any loss or damage shall be caused to any Person or property, including the Community or any Unit therein, due to the negligent act or omission of any Owner or such Owner's Related User, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner and proceeds are payable for such damage or loss. The amount of any uninsured loss or damage may be collected by the Association from such Owner as an assessment against such Owner, by legal proceedings or otherwise, and such amount (including reasonable attorneys' fees) shall be secured by a lien on the Unit of such Owner as provided herein for Assessments.

Section 11.5 Final Determination

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of any provision of this Declaration shall be made by the Board and shall be final.

Section 11.6 Conflict of Provisions

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

Section 11.7 Challenge to this Amendment

All challenges to the validity of this Declaration must be made within one (1) year after the date of recording of this Declaration.

IN WITNESS WHEREOF, the undersigned, being the President and the Secretary of the HeatherRidge South Association, hereby certify that the Association has obtained signatures of approval of this Amended and Restated Declaration from Owners of at least seventy-five percent (75%) of the Common Elements in the Association (measured by one vote for each Unit) and seventy-five percent (75%) of the Mortgagees covering or affecting any or all of the Units within the Community.

Dated: _____

HEATHERRIDGE SOUTH ASSOCIATION

a Colorado nonprofit corporation

By: _____

, President

By: _____

, Secretary

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing Declaration was acknowledged before me on this _____ day of _____, by _____ as President and _____ as Secretary of the HeatherRidge South Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires:

Notary Public

EXHIBIT A

THE PROPERTY

**HeatherRidge South Filing No. 1 and
HeatherRidge South Filing No. 2,
County of Arapahoe,
State of Colorado.**

DRAFT