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DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
SUNDANCE CROSSING

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- Exhibit A - Units and Condominium Phases
- Exhibit B - Common Area
- Exhibit C - Certain Title Exceptions

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
SUNDANCE CROSSING**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SUNDANCE CROSSING is made and entered into by SUNDANCE VILLAGE, LLC, a Colorado limited liability company ("Declarant," as hereinafter more fully defined).

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property situated in the County of Mesa, State of Colorado, which is described on Exhibit A and Exhibit B, each of which is attached hereto and incorporated herein by this reference (the "Community," as hereinafter more fully defined); and

WHEREAS, the property described on the attached Exhibit A and Exhibit B is subject to that certain Declaration of Covenants, Conditions, Restrictions and Easements for Hacienda Subdivision recorded in the office of the Clerk and Recorder of Mesa County, Colorado, as amended and supplemented (hereinafter, the "Master Declaration," as hereinafter more fully defined); and

WHEREAS, in addition to the Master Declaration, the Declarant desires to subject and place upon the Community certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth herein; and

WHEREAS, the Declarant anticipates constructing condominium buildings, condominium units, and other condominium improvements in the Community in phases on Lot 1, Block 3, Sundance Village, Mesa County, Colorado and on each of Lots 120 through 125, inclusive, all in Block 2, Sundance Village, Mesa County, Colorado (collectively the "Condominium Phases," as hereinafter more fully defined); and

WHEREAS, the Declarant shall retain ownership of each Condominium Phase until the recording of a condominium map with respect to such Condominium Phase; and

WHEREAS, a condominium unit shall become a "Unit" under this Declaration only at such time as a condominium map is recorded in Mesa County, Colorado, with respect to the Condominium Phase in which such condominium unit is located; and

WHEREAS, the condominium building(s) and other improvements, other than the individual air spaces, shall become "Common Elements" under this Declaration only at such time as a condominium map is recorded in Mesa County, Colorado, with respect to the Condominium Phase in which such condominium building(s) and other improvements are located; and

WHEREAS, a common interest community may be created pursuant to CCIOA (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of

each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded.

NOW, THEREFORE, in addition to the provisions of the Master Declaration, the Declarant hereby declares that all of the Community shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein.

**ARTICLE 1. DEFINITIONS**

**Section 1.1. Agencies.**

"Agencies" collectively means the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Department of Housing and Urban Development, including the Federal Housing Administration ("HUD"), the Veterans Administration ("VA") or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to any of those currently performed by any of such entities.

**Section 1.2. Allocated Interests.**

"Allocated Interests" means the Assessment liability and votes in the Association allocated to each Unit. The Allocated Interest of each Unit shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units within the Community from time to time.

**Section 1.3. Assessment.**

"Assessment" means annual Assessments and special Assessments, which are provided for in this Declaration. For purposes of Sections 4.1, 4.4.2, 4.8 through 4.16, inclusive and 16.6 of this Declaration, "Assessment" means annual Assessments, special Assessments, and late charges, fines, fees, interest, costs, expenses, reasonable attorneys' fees, and any other amounts, which are provided for in this Declaration.

**Section 1.4. Association.**

"Association" means the Sundance Crossing Owners Association, Inc., its successors and assigns, a community association as provided in CCIOA.

**Section 1.5. Board of Directors or Board.**

"Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration, the Articles of Incorporation and the Bylaws of the Association to act on behalf of the Association.

**Section 1.6. CCOA.**

"CCOA" means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as amended.

**Section 1.7. Common Area.**

"Common Area" means any property which is owned or leased by the Association or any property which the Association has a contractual obligation to maintain. The Common Area does not include the Condominium Units, Lots, Condominium Phases, Common Elements or publicly-dedicated property. The Common Area at the time of recordation of this Declaration is described on the attached Exhibit B.

**Section 1.8. Common Elements.**

"Common Elements" means the totality of the following, excluding the Lots, Individual Air Spaces, Common Area, any publicly-dedicated property, and the Condominium Phases (except for those areas on which one or more Condominium Maps have been recorded):

1.8.1. The real property which is part of the Condominium Phases on which one or more Condominium Maps have been recorded; and

1.8.2. The Condominium Buildings (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, flucs, hallways, roofs, stairs, stairways, and the mechanical installations of the Condominium Buildings consisting of the equipment and materials making up any services such as power, light, gas, hot and cold water, heating, air conditioning, and exterior security lighting, which exist for common uses (including the pipes, vents, ducts, flucs, chutes, conduits, wires, and other similar utility installations used in connection therewith)), except for the Individual Air Spaces; and

1.8.3. Any amenities and amenity areas, if any, sidewalks, walkways, paths, fences, grass, shrubbery, trees, driveways, roads, streets, alleys, access ways, parking areas (other than garages which are part of the Units), landscaping, irrigation systems, and gardens, if any, now or hereafter located in the Condominium Phases on which one or more Condominium Maps have been recorded; and

1.8.4. All apparatus, installations and equipment of the Condominium Buildings existing for common use of one, some or all of the Owners of Condominium Units; and

1.8.5. In general, all Common Elements depicted on the Condominium Map and any items designated by the Declarant as Common Elements under other provisions of this Declaration, including General Common Elements and Limited Common Elements, and all other parts of the Community shown on the Condominium Map that are necessary or convenient to the existence or maintenance of Condominium Units, or normally in common use by the residents of Condominium Units.

**Section 1.9. Common Property.**

"Common Property" means the Common Area and the Common Elements.

**Section 1.10. Community.**

"Community" means the real property and Improvements described on the attached Exhibit A and Exhibit B, as supplemented and amended from time to time. The Community is a planned community under CCIOA. The name of the Community is "Sundance Crossing".

**Section 1.11. Condominium Building.**

"Condominium Building" means any building (including all fixtures and Improvements therein contained) located in the Community and within which one or more Individual Air Spaces are located.

**Section 1.12. Condominium Map.**

"Condominium Map" means the condominium map(s) of the Condominium Phase(s) and Improvements thereon and which is designated as the Condominium Map of Sundance Crossing, to be recorded in the office of the Clerk and Recorder of Mesa County, Colorado. More than one Condominium Map or supplement thereto may be recorded and, if so, then the term "Condominium Map" collectively means all of such condominium maps and supplements thereto. The Condominium Map shall depict all or a portion of the Condominium Units and/or Common Elements in three dimensions, and shall be executed by a Person who is authorized by CCIOA to execute a declaration relating to this Community. Further, the Condominium Map shall include a certificate executed by a licensed or registered engineer, land surveyor, or architect stating that all Improvements shown on the Condominium Map have been substantially completed, all structural components of all buildings that contain or comprise any Condominium Units in the Community are substantially completed, and stating that the Condominium Map contains all the information required by Section 38-33.3-209 of CCIOA.

**Section 1.13. Condominium Phases.**

"Condominium Phases" means the phases pursuant to which the Declarant intends to construct Condominium Buildings, Condominium Units, and/or other condominium Improvements in the Community, as further provided in this Declaration, including without limitation, Section 17.7 hereof (Declarant's Use). The Condominium Phases shall be as follows:

- Condominium Phase 1 - Lot 1, Block 3, Sundance Village, Mesa County, Colorado
- Condominium Phase 2 - Lot 125, Block 2, Sundance Village, Mesa County, Colorado
- Condominium Phase 3 - Lot 124, Block 2, Sundance Village, Mesa County, Colorado
- Condominium Phase 4 - Lot 123, Block 2, Sundance Village, Mesa County, Colorado
- Condominium Phase 5 - Lot 122, Block 2, Sundance Village, Mesa County, Colorado
- Condominium Phase 6 - Lot 121, Block 2, Sundance Village, Mesa County, Colorado
- Condominium Phase 7 - Lot 120, Block 2, Sundance Village, Mesa County, Colorado

Each Condominium Phase shall be solely owned by the Declarant, its successors and assigns, and shall have no voting rights or Assessment obligations under any of the Governing

Documents unless and until a Condominium Map is recorded with respect to such Condominium Phase as provided in Section 17.7 of this Declaration (Declarant's Use). Declarant may construct or complete the Condominium Phases at any time and from time to time, and no assurances are made as to the order or timing of construction or completion of such Condominium Phases. The rights provided for in this Section shall terminate automatically upon termination of the Special Declarant Rights, as provided in Section 1.35 hereof (Special Declarant Rights).

**Section 1.14. Condominium Unit.**

"Condominium Unit" means the Individual Air Space contained within the enclosed rooms occupying part of a floor or floors in a Condominium Building, and bounded by the unfinished interior surfaces of the perimeter walls (or the adjoining walls, if two or more Condominium Units adjoin each other), unfinished interior surfaces of floors (or the lowestmost floors, if it is a Condominium Unit containing more than one level), unfinished interior surfaces of ceilings (or the uppermost ceilings, if it is a Condominium Unit containing more than one level), and the unfinished interior surfaces of windows and window frames, doors and door frames of a Condominium Building, and which is separately identified on the Condominium Map. A "Condominium Unit" does not exist until such time as a Condominium Map that includes such Condominium Unit has been recorded in the office of the Clerk and Recorder of Mesa County, Colorado. A "Condominium Unit" under this Declaration shall also include the undivided interest in the Common Elements appurtenant to such Condominium Unit. The undivided interest in the Common Elements appurtenant to each Condominium Unit shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Condominium Units within the Community from time to time.

**Section 1.15. Declarant.**

"Declarant" means Sundance Village, LLC, a Colorado limited liability company or any other Person(s) to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds).

**Section 1.16. Declaration.**

"Declaration" means this Declaration of Covenants, Conditions and Restrictions of Sundance Crossing, and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including, but not limited to, maps and plats.

**Section 1.17. Design Review Committee or Committee.**

"Design Review Committee" or "Committee" means the committee which is appointed as provided in Section 5.1 of this Declaration.

**Section 1.18. Development Rights.**

"Development Rights" means the following rights or combination of rights hereby reserved by the Declarant, as provided in this Declaration, to:

- 1.18.1. add real estate to this Community;
- 1.18.2. create Units and/or Common Property;
- 1.18.3. subdivide or replat Lots; and
- 1.18.4. withdraw real estate from this Community.

The Declarant's rights to exercise Development Rights shall terminate automatically as provided in Section 1.35 of this Declaration (Special Declarant Rights).

**Section 1.19. *First Security Interest.***

"First Security Interest" means a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and governmental or quasi-governmental special assessments).

**Section 1.20. *General Common Elements.***

"General Common Elements" means all of the Common Elements except the Limited Common Elements.

**Section 1.21. *Governing Documents.***

"Governing Documents" means this Declaration, the Articles of Incorporation, Bylaws, and any rules and regulations, policies and procedures, design guidelines, and similar documents, of the Association.

**Section 1.22. *Improvements.***

"Improvements" means all structures now or hereafter located in the Community, exterior improvements to any such structures, and any other exterior improvements made to a Unit or Common Property, and any appurtenances thereto or components thereof, of every type or kind, including all landscaping features. The foregoing shall include, without limitation, buildings, outbuildings (including storage sheds), painting or other finish materials on any visible structures, additions and/or expansions, parking facilities, driveways, stairs, walkways, patios/porches/balconies/decks and patio/porch/balcony/deck covers, awnings, hot tubs, jacuzzis and/or saunas, antennas, satellite dishes, exterior light fixtures, poles, athletic equipment (including basketball backboards and hoops), whether fixed or movable, play yards (including swing sets and jungle gyms), exterior tanks, solar collectors, fences (including dog runs), screening walls, retaining walls, sprinkler systems, fountains, ponds, hedges, windbreaks, gardens, trees, shrubs, flowers, vegetables, sod, other plantings, rock, gravel, bark, mulch and other landscaping components, signs, exterior decorations, mailboxes, and exterior air conditioning, cooling, heating and water softening equipment, if any.

**Section 1.23. *Individual Air Space.***

"Individual Air Space" means the air space contained within the enclosed rooms occupying part of a floor or floors in a Condominium Building, and bounded by the unfinished interior surfaces

of the perimeter walls (or the adjoining walls, if two or more Individual Air Spaces adjoin each other), unfinished interior surfaces of floors (or the lowermost floors, if it is an Individual Air Space containing more than one level), unfinished interior surfaces of ceilings (or the uppermost ceilings, if it is an Individual Air Space containing more than one level), and the unfinished interior surfaces of windows and window frames, doors and door frames of a Condominium Building, and which is separately identified on the Condominium Map; provided that, if the adjoining wall, ceiling or floor between any two or more Individual Air Spaces is completely or partially removed so as to provide free access between such Individual Air Spaces, the area of each Individual Air Space shall be determined as if such wall, ceiling or floor were in existence, and each such Individual Air Space shall continue to be a separate Condominium Unit for purposes of this Declaration.

**Section 1.24. *Initially Unoccupied Units.***

"Initially Unoccupied Units" means only those Units which have not been conveyed by the Declarant to the first Owner thereof other than the Declarant.

**Section 1.25. *Limited Common Elements.***

"Limited Common Elements" means those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner(s) of a particular Condominium Unit or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Condominium Units; provided that such use is expressly subject to the terms and provisions of this Declaration. Without limiting the foregoing, the Limited Common Elements shall include the following, if the same now or hereafter exist: the utility, heating, air conditioning and domestic hot water fixtures and equipment, audio, visual or telecommunication lines, cables and appurtenances, if any, associated with or providing service to any Condominium Unit; window wells, if any, attached to a Condominium Unit; porches, balconies, patios and decks, if any, as well as any fence(s) surrounding the same, if any, attached or appurtenant to any Condominium Unit, as designated on the Condominium Map; and other areas or improvements, if any, designated as Limited Common Elements on the Condominium Map. The Limited Common Elements shall be used in connection with the applicable Individual Air Space(s) to the exclusion of the use thereof by the other Owners, except by invitation and except as otherwise provided in this Declaration. No reference to any Limited Common Elements need be made in any instrument of conveyance, encumbrance or other instrument. The Limited Common Elements allocated to Condominium Units as provided in this Section may not be reallocated without the consent of the Owners whose Condominium Units are affected and any Security Interest Holders of such Condominium Units.

**Section 1.26. *Lot.***

"Lot" means each platted lot that is now or hereafter described on the attached Exhibit A, as the same may be subdivided or replatted from time to time (and "Lot" shall include all lots created as a result of such subdivision or replatting) as well as any other platted lots as may hereafter be included in any real property annexed to this Declaration, with the exception of the Common Property, Condominium Units, and any publicly dedicated property. Each Lot shall constitute a "unit" under CCIOA, and it shall not be necessary to use the term "unit" as a part of a legally sufficient description of a Lot.

**Section 1.27. *Master Association.***

"Master Association" means the Hacienda Subdivision Association, Inc., a Colorado non-profit corporation, its successors and assigns.

**Section 1.28. *Master Declaration.***

"Master Declaration" means the Declaration of Covenants, Conditions, Restrictions and Easements for Hacienda Subdivision recorded in the office of the Clerk and Recorder of Mesa County, Colorado, as amended and supplemented.

**Section 1.29. *Member.***

"Member" means all Owners of a Unit collectively or, following termination of the Community, all former Owners entitled to distributions of proceeds under CCIOA, or their heirs, personal representatives, successors or assigns. The Association shall have one (1) class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. Each Unit shall have one (1) membership in the Association and there is only one (1) Member per Unit, even if the Unit is owned by multiple Owners.

**Section 1.30. *Owner.***

"Owner" means each fee simple title holder of a Unit, including without limitation, the Declarant or other Person who owns a Unit, but does not include a Person having an interest in a Unit solely as security for an obligation. There may be more than one (1) Owner of a Unit.

**Section 1.31. *Person.***

"Person" means a natural person, a corporation, a limited liability company, a partnership, a joint venture, an association, a trust, or any other entity recognized under the laws of the State of Colorado, or any combination thereof.

**Section 1.32. *Security Interest.***

"Security Interest" means an interest in real estate or personal property in the Community, or any portion thereof, created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.11 of this Declaration (Certificate of Status of Assessments) and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.3 of this Declaration (General Provisions of Insurance Policies), "Security Interest" shall also mean and refer to any executory land sales contract wherein the administrator of Veterans Affairs, an officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said administrator or has been assigned by the administrator and is owned by the administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of Mesa County, Colorado, show the administrator as having the record title to the Unit.

**Section 1.33. Security Interest Holder.**

"Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Section 4.11 of this Declaration (Certificate of Status of Assessments) and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.3 of this Declaration (General Provisions of Insurance Policies), the administrator of Veteran's Affairs, an officer of the United States of America, and his assigns under any executory land sales contract wherein the said administrator is identified as the seller, whether such contract is recorded or not, whether such contract is owned by the said administrator or has been assigned by the administrator and is owned by the administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of Mesa County, Colorado, show the said administrator as having the record title to the Unit), or any successor to the interest of any such Person under such Security Interest.

**Section 1.34. 75% Control Period.**

"75% Control Period" means a length of time that terminates upon the first to occur of the following events: sixty (60) days after conveyance of seventy-five percent (75%) of the Units that May Be Created to Owners other than a Declarant; two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business; or two (2) years after any right to add new Units to the Declaration was last exercised.

**Section 1.35. Special Declarant Rights.**

"Special Declarant Rights" means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Rights; to maintain sales offices, construction offices, management offices, model homes and signs advertising the Community and sale of Units; to use easements through the Common Property for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to make the Community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the Association or any director during any 75% Control Period. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. The Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any such Special Declarant Rights. Such rights shall terminate automatically either twelve (12) years after the date of recording of this Declaration or at such time as the Declarant and its assigns no longer owns any portion of the property described on the attached Exhibits A and B, whichever occurs later.

**Section 1.36. Unit.**

"Unit" means each Condominium Unit and each Lot.

**Section 1.37.      *Units that May Be Created.***

"Units that May Be Created" means three hundred fifty-one (351) Units, which shall be the maximum number of Units that may be subject to this Declaration. However, the aforesaid number of Units that May Be Created is not a representation or a guarantee as to the actual number of Units that will ultimately be included in or constructed as part of the Community.

**ARTICLE 2.      MEMBERSHIP AND VOTING RIGHTS**

**Section 2.1.      *Membership.***

The Association shall have one (1) class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. Each Unit shall have one (1) membership and there is only one (1) Member per Unit, even if the Unit is owned by multiple Owners.

**Section 2.2.      *Voting Rights.***

Each Member shall be entitled to one (1) vote for each Unit owned, except that no votes allocated to a Unit owned by the Association may be cast. The maximum number of votes which may be cast in connection with any matter shall be equal to the total number of Units then existing within the Association.

**ARTICLE 3.      ASSOCIATION**

**Section 3.1.      *Association.***

The Association has been or will be formed as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights created by law, as well as those set forth in this Declaration, its Articles of Incorporation and Bylaws.

**Section 3.2.      *Board of Directors.***

The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or other committees, to officers of the Association and/or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

**Section 3.3.      *Authority of the Board of Directors.***

Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee without a vote of the Members, except as otherwise specifically provided in this Declaration, the Articles of Incorporation or Bylaws of the Association.

**Section 3.4. Election of Part of the Board During the 75% Control Period.**

No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that May Be Created to Owners other than the Declarant, at least one (1) director and not less than twenty-five percent (25%) of the directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that May Be Created to Owners other than the Declarant, not less than thirty-three and one-third percent (33 1/3%) of the directors must be elected by the Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board.

**Section 3.5. Authority of Declarant During 75% Control Period.**

Except as otherwise provided in this Article, during the 75% Control Period, the Declarant or Persons appointed by the Declarant may appoint all officers and directors of the Association, and may remove all officers and directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and directors of the Association before termination of the 75% Control Period; but, in that event, the Declarant may require, for the duration of the 75% Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

**Section 3.6. Termination of 75% Control Period.**

After termination of the 75% Control Period, the Members shall elect a Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers.

**Section 3.7. Budget and Review or Audit.**

3.7.1. Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board of Directors shall give notice to the Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Board of Directors does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by eighty percent (80%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last approved by the Board of Directors and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

3.7.2. At the discretion of the Board of Directors or as required pursuant to subsections 3.7.2.1 or 3.7.2.2 below, the Association's books and records shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified Person selected by the Board of Directors. Such Person need not be a certified public accountant

except in the case of an audit. A Person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

3.7.2.1. An audit shall be required only when both of the following conditions are met:

(i) The Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000); and

(ii) An audit is requested by the Owners of at least one-third (1/3) of the Units represented by the Association.

3.7.2.2. A review shall be required only when requested by the Owners of at least one-third (1/3) of the Units represented by the Association.

3.7.2.3. Copies of an audit or review under this subsection 3.7.2 shall be made available upon request to any Owner beginning no later than thirty (30) days after its completion.

In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under Section 3.7 of this Declaration, Section 3.7 shall be deemed amended to require that which is required pursuant to CCIOA, as amended.

**Section 3.8. Association Books and Records.**

3.8.1. The Association's books and records shall be subject to an audit or a review as further provided in this Declaration. Except as otherwise provided in subsections 3.8.2 and 3.8.3 below, the Association shall make reasonably available for inspection and copying by Owners, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of all of the Governing Documents and financial documents as listed in the most recent available version of the contract to buy and sell real estate promulgated by the Colorado Real Estate Commission. The Person(s) accessing and/or copying such documents shall pay all costs associated therewith. "Reasonably available" shall mean available during normal business hours, upon prior notice of at least five (5) business days, or at the next regularly scheduled meeting if such meeting occurs within thirty (30) days after the request.

3.8.2. Notwithstanding subsection 3.8.1 above, a membership list or any part thereof may not be obtained or used by any Person for any purpose unrelated to an Owner's interest as an Owner without the consent of the Board of Directors. Without limiting the generality of the foregoing, without the consent of the Board of Directors, a membership list or any part thereof may not be:

3.8.2.1. Used to solicit money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association;

3.8.2.2. Used for any commercial purpose; or

3.8.2.3. Sold to or purchased by any Person.

3.8.3. Notwithstanding subsection 3.8.1 above, the Board of Directors may, at any time(s), prior or subsequent to a request for inspection and/or copying, determine that items are confidential and should not be made available.

3.8.4. In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under Section 3.8 of this Declaration, Section 3.8 shall be deemed amended to require that which is required pursuant to CCIOA, as amended.

**Section 3.9. Information Regarding Security Interests on Units.**

Each Member shall, within twenty (20) days of encumbering such Member's Unit with a Security Interest, and at other times upon request of the Board of Directors, provide the Association with the name and address of such Security Interest Holder, a copy of the instrument(s) creating the Security Interest(s), and the loan number(s) (or other identifying number of such Security Interest(s)). Within twenty (20) days after any change in the name or address of the Security Interest Holder on a Member's Unit, and at other times upon request of the Board of Directors, such Member shall provide the aforesaid information to the Association with respect to each Security Interest held by such Security Interest Holder.

**Section 3.10. Rules and Regulations and Policies and Procedures.**

Rules and regulations and policies and procedures concerning and governing the Units, Common Property, and/or this Community, or any portion(s) thereof, may be adopted, enacted, modified, amended, repealed and/or re-enacted from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations or policies and procedures. The rules and regulations and policies and procedures may state procedural requirements, interpretations and applications of this Declaration and law, including without limitation, blanket requirements, blanket interpretations, and blanket applications. The Board has the authority to adopt or vary one or more rules and regulations or policies and procedures that are different for different types of Units. Any rules and regulations or policies and procedures that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration.

**Section 3.11. Cooperation with, and/or Delegation to, the Master Association, Other Community Association(s), Any Metropolitan or Other District(s), and/or Any Other Governmental Entities.**

The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with, and/or delegate to, the Master Association, any other community association(s), any metropolitan or other district(s), and/or any other governmental entities, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its sole discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the

Association, any other community association(s), any metropolitan or other district(s), and/or any other governmental entities, as the Board of Directors may determine in its sole discretion from time to time.

**Section 3.12. *Management Agreements and Other Contracts.***

Any agreement for professional management of the Association's business or other contracts providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereof, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice; provided however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the 75% Control Period shall be subject to review and approval by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one or more First Security Interests (and if HUD or VA requires such approval).

**Section 3.13. *Authenticated Electronic Representation.***

Notwithstanding anything to the contrary contained in the Governing Documents, to the extent permitted by applicable law, the Association may use technology or electronic representation, including without limitation electronic mail and electronic posting, in completing its duties and responsibilities. In this regard, any reference in any of the Governing Documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent permitted by applicable law, the provisions of this Declaration shall be deemed to include provisions which permit such authenticated electronic activity.

**Section 3.14. *Merger.***

The Declarant hereby reserves the right to merge the Association with one or more other common interest communities without the approval of any Owner or any other Person. This right shall terminate automatically as provided in Section 1.35 of this Declaration (Special Declarant Rights).

**Section 3.15. *Compliance with Maintenance Manuals.***

Notwithstanding anything to the contrary, the Board of Directors, acting on behalf of the Association, shall comply with all maintenance manuals, if any, given by the Declarant to the Board of Directors or the Association, regarding maintenance, repair and/or replacement of any portion of the Community or any Improvements therein. Further, the Board of Directors shall cooperate, at no cost or expense to the Board of Directors, with all inspections that may be undertaken by or at the request of the Declarant, on or with respect to the Community and Improvements therein.

**Section 3.16. *Notice of Meetings and Other Matters of the Association.***

Notices of any meetings, news letters and other correspondence or documents concerning the Association shall be sent to the Declarant at the same time that such notices, news letters, and

other correspondence or documents are sent to the Members. However, the foregoing shall expire twelve (12) years after initial recording of this Declaration in Mesa County, Colorado.

**Section 3.17. *Delivery of Property by Declarant.***

After the Members other than the Declarant elect a majority of the Board of Directors, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, if and to the extent required by CCIOA.

**ARTICLE 4. ASSESSMENTS**

**Section 4.1. *Personal Obligation for Assessments.***

Each Owner of a Unit, including the Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association annual Assessments or charges, special Assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration, with such Assessments and other amounts to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all Assessments, fees, charges and other amounts attributable to their Unit. Each amount, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person(s) who was the Owner of such Unit at the time when the amount became due. The personal obligation for delinquent amounts (including Assessments) shall not pass to such Owner's successors in title unless expressly assumed by them.

**Section 4.2. *Purpose of Assessments.***

The Assessments levied by the Association shall be used for maintenance, repair and replacement of the Common Property, as provided in this Declaration, to pay Association expenditures, to promote the recreation, health, safety and welfare of the residents of the Units, and for all of those purposes and activities which may be required of the Association or the Board of Directors, or which the Association or the Board of Directors may be empowered to pursue, as provided in any of the Governing Documents, or law.

**Section 4.3. *Initial Annual Assessment.***

The amount of the annual Assessment against each Unit shall be in accordance with an Association budget that is proposed by the Board of Directors and not vetoed by the Owners, as provided herein, exclusive of any amounts due to the Master Association, any other community association(s), any metropolitan or other district(s) and/or any other Person or entity. However, the rate of the Assessments against the Initially Unoccupied Units shall be less than that against the other Units, as provided in the next Section.

**Section 4.4. Rate of Assessment.**

4.4.1. Annual and special Assessments shall be sufficient to meet the expected needs of the Association and shall be apportioned among the Units in accordance with their Allocated Interests. Notwithstanding the foregoing, however, the amount of the annual and special Assessments against the Initially Unoccupied Units shall be set at a lower rate than that the rate of annual Assessments and special Assessments other Units, because the Initially Unoccupied Units receive and benefit from fewer services funded by such Assessments than the other Units. Colorado Revised Statutes §38-33.3-315(3)(b) states that "Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited." Based on this provision, the Initially Unoccupied Units shall pay annual and special Assessments at the rate of twenty-five percent (25%) of any annual Assessment or special Assessment charged to Units other than the Initially Unoccupied Units. The annual Assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced by the Association on a periodic basis.

4.4.2. The Declarant may in its sole discretion, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall constitute loans from the Declarant to the Association which may be repaid, in whole or in part, by the Association to the Declarant, without interest, at such time(s) as may be determined by the Declarant in its sole discretion at any time(s); provided, however, that at all times all amounts advanced to the Association by the Declarant, if any, which have not been repaid to the Declarant shall constitute advances against amounts due from the Declarant (including without limitation Assessments). If the Declarant elects in its sole discretion to loan any amounts as provided in this Section, Declarant shall not, under any circumstances, be obligated to continue loans, payment or funding of any amount(s) in the future.

**Section 4.5. Date of Commencement of Annual Assessments.**

The annual Assessments shall commence at such time as the Board of Directors may determine in its sole discretion. After any annual Assessment has been made by the Association, annual Assessments shall not be greater than the amount set forth in Section 4.3 of this Declaration (Initial Annual Assessment) until a budget is proposed by the Board of Directors and not vetoed by the Owners as provided in this Declaration. The annual Assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors may determine in its sole discretion from time to time; provided that the first annual Assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Unit between installment due dates shall pay a pro rata share of the last payment due.

**Section 4.6. Special Assessments.**

In addition to the annual Assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of sixty-seven percent (67%) of the Association votes cast by Members voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present (pursuant to Section 4.7 of this Declaration), a special Assessment, for the

purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any portion of real property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or replacement of any damaged or destroyed Improvements located on said real property, or for the funding of any expense or deficit incurred or anticipated to be incurred by the Association. Any such special Assessment shall be set against each Unit in accordance with the Allocated Interests set forth in this Declaration, except that the special Assessments against the Initially Unoccupied Units shall be set in accordance with Section 4.4.1 of this Declaration. A meeting of the Members called for the purpose of considering the establishment of a special Assessment shall be held in conformance with Section 4.7 of this Declaration (Notice and Quorum for Any Special Assessments).

**Section 4.7. *Notice and Quorum for Any Special Assessments.***

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.6 of this Declaration (Special Assessments) shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 4.8. *Assessments for Services that Benefit Less than All of the Units.***

The Association may, at any time from time to time, in the sole discretion of the Board of Directors, provide services to less than all of the Units. If such services are not funded by the Association's annual or special Assessments, then all costs, fees and expenses of such services, as well as overhead costs of the Association, shall be paid by the Owners of the Units for which such services are to be or were provided and the same shall be apportioned by the Board of Directors in its sole discretion. Services which may be provided by the Association pursuant to this Section include, without limitation: (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of Improvements or property owned or maintained by such Owner(s); (b) the provision of any services or functions to or for such Unit(s); (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (e) the procurement of insurance for Owners.

**Section 4.9. *Lien for Assessments.***

4.9.1. The Association has a statutory lien on a Unit for any Assessments levied against that Unit and/or the Owner(s) thereof. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as Assessments under this Article. The amount of the lien shall include all those items set forth in this Section and in the definition of Assessments, from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes

due, including the due date set by any valid Association acceleration of installment obligations.

4.9.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required. However, the Board of Directors or managing agent of the Association or other Person designated by the Board of Directors may prepare, and record in the county in which the applicable Unit is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit, and a description of the Unit. If a lien is filed, the costs and expenses thereof shall be added to the Assessments for the Unit against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

**Section 4.10. *Priority of Association Lien.***

4.10.1. A lien under this Article 4 is prior to all other liens and encumbrances on a Unit except:

4.10.1.1. liens and encumbrances recorded before the recordation of the Declaration;

4.10.1.2. a First Security Interest on the Unit which was recorded before the date on which the amount(s) due to the Association became delinquent; and

4.10.1.3. liens for real estate taxes and other governmental assessments or charges against the Unit.

4.10.2. A lien under this Section is also prior to the First Security Interests described in the preceding subsection 4.10.1.2. to the extent, if any, provided in CCIOA.

4.10.3. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other Assessments made by the Association.

4.10.4. The Association's lien on a Unit for Assessments and other amounts shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Association lien.

**Section 4.11. *Certificate of Status of Assessments.***

The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid Assessments, if any, currently levied against such Owner's Unit. The statement shall be furnished after written request within such times as required by law, and is binding on the Association, the Board of Directors, and every Owner. The Association or its agents shall have the right to charge a reasonable fee for the issuance of such certificates.

**Section 4.12. Application of Payments; Effect of Non-Payment of Assessments; Remedies of the Association.**

4.12.1. Application of payments received by the Association from Owners for payment of amounts due to the Association by such Owners, shall be applied first to the payment of attorneys fees, fines, late charges and any other amounts (other than annual Assessments or special Assessments) due to the Association (in the order listed), if any; second to the payment of accrued interest at the rate specified in subsection 4.12.2 below, if any; and third to the payment of Assessments and other amounts due to the Association.

4.12.2. Any Assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors, and the Board of Directors may assess thereon a periodic late charge in such amount(s) and for such period(s) as the Board may determine from time to time. The Association may bring an action at law against the Owner(s) personally obligated to pay the same, or foreclose the lien against such Owner's Unit. If a judgment or decree is obtained, including without limitation, in a foreclosure action, such judgment or decree shall include interest (as provided above) and reasonable attorney's fees, together with the costs of the action, and may include late charges. No Owner may be exempt from liability for payment of any Assessment 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, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

**Section 4.13. Surplus Funds.**

Any surplus funds of the Association remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves, may, at the election of the Board of Directors in its sole discretion, be retained by the Association and need not be paid to the Owners or credited to them.

**Section 4.14. Working Capital Fund.**

The Association shall require the first Owner (other than Declarant) of any Unit who purchases that Unit from Declarant to make a non-refundable contribution to the Association in an amount equal to two (2) times the then current monthly installment of the annual Assessment (regardless of whether or not annual Assessments have commenced as provided in Section 4.5 of this Declaration (Date of Commencement of Annual Assessments)). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit and shall be maintained or used, as determined from time to time by the Board of Directors in its sole discretion, for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the sale of his Unit, an Owner shall be entitled to reimbursement at closing (in the form of a credit on the closing settlement statement) from the purchaser of such Unit (but not

from the Association) for the portion of the aforesaid contribution to working capital fund which has not been used by the Association at the time of conveyance of the Unit by such Owner.

**Section 4.15. Other Charges.**

The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such amounts as the Board of Directors may determine in its sole discretion at any time from time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; returned checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Unit; notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the Assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments.

**Section 4.16. Charges for Misconduct.**

If any Association expense is caused by the misconduct of any Owner, his family members, tenants, guests or invitees, as determined by the Board of Directors in its sole discretion, the Association may assess that Association expense exclusively against such Owner and such Owner's Unit.

**ARTICLE 5. DESIGN REVIEW COMMITTEE**

**Section 5.1. Composition of Committee; Authority of Representative.**

5.1.1. The Design Review Committee shall consist of three (3) or more persons. Until automatic termination of the Special Declarant Rights as provided in Section 1.35 of this Declaration (Special Declarant Rights), the Declarant has the right to appoint the Design Review Committee; subsequent to such date, the Design Review Committee shall be appointed by the Board of Directors. The power to "appoint" the Design Review Committee, as provided herein, shall include without limitation the power to: constitute the initial membership of the Design Review Committee; appoint member(s) to the Design Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Design Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the sole discretion of the appointor. The appointments of all then-current members of the Committee who were appointed by the Declarant shall automatically terminate at such time as the Declarant's power to appoint members of the Committee expires. The members of the Design Review Committee shall not be "officers" of the Association as a result of their membership on the Committee and thus, as a result of such membership on the Committee, shall not have any of the rights or duties attributable to officers of the Association.

5.1.2. The Committee may at any time, from time to time, appoint a representative to act on its behalf. If the Committee does so, then the actions of such representative shall be the actions of the Committee, subject to the right of appeal as provided below. However, if such a representative is appointed by the Committee, then the

Committee shall have full power over such representative, including without limitation the power to at any time withdraw from such representative any of such representative's authority to act on behalf of the Committee and the power to at any time remove or replace such representative.

**Section 5.2. Prohibitions Against Changes in Common Area, General Common Elements and Structural Changes.**

Other than as to the Declarant, the Association (following the termination of the 75% Control Period), or any Owner (but only as provided in Section 11.5 of this Declaration (Antenna and Satellite Dishes)): no Improvements shall be constructed, erected, placed, altered, planted, applied or installed on any Common Area or General Common Elements; nor shall any structural alteration be made to any Unit or Common Property. "Structural alteration," as used in the preceding sentence, means change(s) to any foundation and/or weight bearing wall that may compromise the integrity of any Improvement.

**Section 5.3. Review and Approval by Committee; Reimbursement for Expenses.**

5.3.1. Except as provided in Section 5.11 (Variance) and Section 5.15 of this Declaration (Declarant's Exemption), no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot or Limited Common Elements unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Design Review Committee), shall have been first submitted to and approved in writing by the Design Review Committee.

5.3.2. The Design Review Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures.

5.3.3. In its review of such plans, specifications and other materials and information, the Design Review Committee may require that the applicant(s) reimburse the Committee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, shall be levied in addition to the Assessments against the Unit for which the request for Design Review Committee approval was made, but shall be subject to the Association's lien for Assessments and subject to all other rights of the Association for the collection of Assessments, as more fully provided in this Declaration.

**Section 5.4. Delegation (and Acceptance) of Design Review and Approval.**

5.4.1. The Declarant, during the time when the Declarant has the right to appoint the Design Review Committee, and the Board thereafter, may delegate any or all design review and/or approval functions pursuant to this Declaration to any other entity(s), and may accept from any entity(s) delegation of any or all review and/or approval functions of such entity(s). The Committee shall also have the right and authority to otherwise cooperate with any entity(s) in order to increase consistency or coordination, reduce costs, or

as may otherwise be deemed appropriate or beneficial by the Declarant or by the Board of Directors, as applicable, in their sole discretion from time to time.

5.4.2. The party with the right to appoint the Design Review Committee may, at any time, determine to reclaim any delegated rights. In order to reclaim any delegated rights, written notice must be given to the governing body of the entity to whom delegation was made, that such right is being reclaimed, and the reclamation shall be effective upon receipt of the notice by the governing body of the entity to whom delegation was made. No delegation of design review and/or approval shall constitute a waiver of the Association's right of design review and approval as provided in this Declaration.

5.4.3. The rights and duties under this Article may be delegated with conditions and restrictions that the entity accepting the delegation must follow.

**Section 5.5. *Additional Approvals of Improvements Required.***

In addition to the required approvals by the Board of Directors, as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities, and may require approval by the Master Association or other Person. Without limiting the generality of the preceding sentence, issuance of building permits by the City of Grand Junction, Colorado, if required, shall be a precondition to commencement of any construction of, alteration of, addition to or change in any Improvement.

**Section 5.6. *Procedures.***

The Design Review Committee shall decide each request for approval within forty-five (45) days after the complete submission of all plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the Design Review Committee fails to decide any request within forty-five (45) days after the complete submission of all plans, specifications, materials and other information with respect thereto, then such request shall be deemed to have been denied by the Committee.

**Section 5.7. *Vote and Appeal.***

A majority vote of the Design Review Committee is required to approve a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Design Review Committee decides a request for approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Committee, upon a written request therefor submitted to the Committee within ten (10) days after such decision by the Committee's representative. The decision of the Committee shall be final. No additional or further appeals are permitted, nor will any be recognized.

**Section 5.8.      *Prosecution of Work After Approval***

After approval of any proposed Improvement by the Design Review Committee, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the terms and conditions of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application, or such other time as may agreed to in writing by the Committee at any time(s), from time to time, in its sole discretion, or to complete the Improvement in complete conformance with the terms and conditions of the approval, shall constitute noncompliance with the requirements for approval issued by the Design Review Committee and a violation of this Article.

**Section 5.9.      *Inspection of Work***

The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement prior to, during or after completion of the same, in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with this Article and any approval therefor granted by the Committee. However, unless the Committee expressly states, in a written document, that an Improvement is being completed or has been completed in conformance with the approval therefor, no such conformance shall be implied from inspection of the Improvement either during the work or after completion thereof.

**Section 5.10.     *Standards/Guidelines***

The Design Review Committee, with the advice of the Board of Directors, has the authority, at any time from time to time, to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce architectural or design standards, guidelines, rules and regulations to interpret and implement the provisions of this Declaration. Without limiting the generality of the foregoing, such provisions may provide for blanket approvals, interpretations, restrictions on Improvements, or other matters. All Improvements proposed to be constructed, and any guidelines that are adopted, shall be done and used in accordance with this Declaration.

**Section 5.11.     *Variance***

The Design Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 11 of this Declaration (Restrictions), in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments may be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

**Section 5.12.     *Waivers; No Precedent***

The approval or consent of the Design Review Committee, or any representative thereof, to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Design Review Committee, or any representative thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a

precedent as to any other matter. The granting or denial of a variance or adjustment by the Design Review Committee, or any representative thereof, shall not be deemed to constitute a waiver of any right to grant or deny any other or future variance or adjustment by the Design Review Committee or any representative thereof, as to any other request for variance or adjustment or other matters whatsoever.

**Section 5.13. Records.**

The Design Review Committee shall, for such period(s) as the Board may determine in its sole discretion from time to time, maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall, subject to the provisions of Section 3.8 of this Declaration (Association Books and Records), be available to Members for inspection at reasonable hours of the business day.

**Section 5.14. Liability.**

Neither the Design Review Committee nor any members or representatives thereof, shall be liable in equity or damages to any Person submitting one or more requests for approval, or to any Owner or other Person, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within their jurisdiction hereunder. In reviewing any matter, neither the Design Review Committee, nor any members or representatives thereof, shall be responsible for the safety, whether structural or otherwise, of the improvement(s) submitted for approval, nor the conformance with applicable building codes or other governmental laws or regulations, nor any other matters, and any approval of an Improvement by the Design Review Committee or any representative thereof shall not be deemed an approval of any of the same. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval or disapproval granted by the Design Review Committee or any representative thereof.

**Section 5.15. Declarant's Exemption.**

Notwithstanding anything to the contrary contained in this Declaration, until automatic termination of the Special Declarant Rights as provided in Section 1.35 of this Declaration (Special Declarant Rights), the Declarant shall be exempt from the provisions of this Article except for the requirement to obtain approval from all governmental entities with jurisdiction thereover (as provided in subsection 5.5 hereof).

**ARTICLE 6. INSURANCE**

**Section 6.1. Insurance.**

The Association shall maintain insurance in connection with the Common Property. The Association shall maintain insurance as required by applicable law or applicable regulation, including without limitation CCIOA, which insurance shall include, without limitation, property insurance and commercial general liability insurance. In addition, the Association may maintain insurance on such other property and/or against such other risks as the Board of Directors may elect in its sole discretion from time to time, including, but not limited to, fidelity coverage, workers compensation insurance, and personal liability insurance to protect directors and officers of the

Association from personal liability in relation to their duties and responsibilities in acting as directors or officers on behalf of the Association as well as insurance on such other property and/or against such other risks as the Board of Directors may elect in its sole discretion from time to time.

**Section 6.2. Insurance on the Structures on Lots.**

In addition to insurance on the Common Property, as provided in the preceding Section, the Board in its sole discretion or its agent may obtain and maintain a policy of property insurance covering the structure(s) located on each Lot, except for land, excavations, foundations and other matters normally excluded from property policies, in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the insurance policy. Said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, an "Inflation Guard Endorsement," an "Agreed Amount Endorsement," and may include other endorsement(s) as determined by the Board in its sole discretion from time to time. Such insurance shall afford protection against at least the following:

6.2.1. loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

6.2.2. such other risks as shall customarily be covered with respect to designs similar in construction, location and use, including all perils normally covered by the standard "All Risk" endorsement, where such is available.

**Section 6.3. General Provisions of Insurance Policies.**

All policies of insurance carried by the Association shall comply with this Section. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty (30) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest on the Unit insured by such insurance policy. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any Owner or member of such Owner's household. Further, all policies of insurance carried by the Association shall also contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

**Section 6.4. Deductibles.**

The Association may adopt and establish written non-discriminatory rules and regulations or policies and procedures relating to the responsibility for deductibles. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association may,

at the election of the Board of Directors in its sole discretion: be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed; be apportioned among the Persons sharing in a joint duty of repair and maintenance; and/or be partly or wholly borne by the Association and/or any such Person(s). Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act, omission or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question in such amount(s) as the Board of Directors determines in its sole discretion, and the Association may collect such amount(s) from said Owner(s) in the same manner as any Assessment.

**Section 6.5. *Payment of Insurance Proceeds.***

Any loss covered by an insurance policy described in Sections 6.1 or 6.2 of this Declaration must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee, or the Association, shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders, as their interests may appear. Subject to Section 7.1 of this Declaration (Damage or Destruction), the proceeds must be disbursed first for the repair, restoration or replacement of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired, restored or replaced and any budget or reserve deficit has been funded, or unless the Community is terminated.

**Section 6.6. *Acceptable Insurance Companies.***

Each insurance policy purchased by the Association must be written by an insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where, (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

**Section 6.7. *Insurance to be Maintained by Owners.***

Any insurance policy issued to the Association does not eliminate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Owner's Unit, as well as the structure(s) located on Lots (unless the Association in its sole discretion elects to provide such coverage as provided in Section 6.2 of this Declaration), shall be the responsibility of the Owner of such Lot. As to Units, furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each Unit (unless and to the extent the same are insured by the Association in its sole discretion), shall be the responsibility of the Owner of such Unit. In the event the applicable Owners' insurance policies are underwritten by different insurers, the applicable Owner(s) shall be responsible for ensuring that such Owner's insurer agrees, in the event damage

occurs to the covered property, to facilitate payment of the insurance proceeds when two or more insurers are involved so that the insurer will pay (a) all undisputed proceeds and (b) all disputed proceeds (subject to the right of such insurer to recover from the other insurer(s) any such sums for which the other insurer(s) are found to be liable).

## **ARTICLE 7. DAMAGE OR DESTRUCTION**

### **Section 7.1. *Damage or Destruction.***

7.1.1. Any portion of the Community which is covered by a policy of insurance which is required to be carried by the Association under this Declaration, and which is damaged or destroyed, must be repaired or replaced promptly by the Association, except as otherwise provided by law.

7.1.2. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds must be used to restore the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other Persons will be distributees, the insurance proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests of all the Units. If the Members vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

### **Section 7.2. *Use or Distribution of Insurance Proceeds.***

In the event of damage or destruction to all or a portion of the Common Property, due to fire or other adversity or disaster, the insurance proceeds, if sufficient to repair or replace the damaged areas, shall be applied by the Association to such repair and/or replacement. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and/or replace the damaged or destroyed area(s), the Association shall levy a special Assessment in the aggregate amount of such insufficiency pursuant to 4.6 of this Declaration (Special Assessments), but without approval of the Members, and shall proceed to make such repairs or replacements. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and any Security Interest Holders of their respective Units. The Assessment provided for herein shall be a debt of each Owner and a lien on such Owner's Unit and the Improvements thereon, and may be enforced and collected in the same manner as any Assessment provided for in this Declaration.

### **Section 7.3. *Damage or Destruction of Condominium Units.***

If due to casualty, or for any other reason, an Individual Air Space shall be destroyed or damaged, then the Owner thereof shall, within a reasonable time thereafter (not to exceed one hundred twenty (120) days after repair or replacement of the Common Elements, including without limitation the walls and roof of the Condominium Unit), commence and diligently pursue repair and replacement of the Individual Air Space, using any available personal insurance proceeds and

personal funds of such Owner, unless the Common Elements are not repaired and/or replaced as hereinabove provided.

## ARTICLE 8. MAINTENANCE

### Section 8.1. *General.*

8.1.1. Maintenance, repair and replacement of all Common Property, Improvements located thereon (including without limitation private streets) and of any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association unless such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair and replacement or unless such maintenance, repair and replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. The Association may contract for regular trash removal service, which shall be paid by the Owners as part of the Assessments to the Association that are provided for in Article 4 of this Declaration (Assessments). Any Owner desiring non-regular or extraordinary trash removal shall make his or her own arrangements for the same and pay for the same in addition to the Assessments that are due to the Association. Further, the Association may provide such other maintenance, repair and replacement as the Board of Directors deems appropriate from time to time including, without limitation, publicly-dedicated property and Improvements located thereon. The costs, expenses, fees, and other amounts to be expended for the maintenance, repair and replacement that is provided for in this subsection shall, subject to Section 8.5 of this Declaration (Acts or Omissions), be collected by the Association as Assessments as provided in Article 4 of this Declaration (Assessments).

8.1.2. The Association shall also provide maintenance, repair and replacement of the outside landscaping of each Unit that is not enclosed by a fence or other structure; such maintenance, repair and replacement shall include, without limitation, mowing and watering, pulling of weeds from mulch or rock areas, and pruning of shrubs and trees. Such maintenance, repair and replacement of certain outside landscaping shall include, without limitation, watering of such landscaping, and Owners shall not have any right to change the time, extent, amount, or any other matters having to do with such watering. Further, the Association shall provide snow removal from: the driveway on each Unit; from the sidewalks on the Common Elements; and from those sidewalks on each Lot that are now or hereafter located between the front property line of such Lot and a fenced area or front porch on such Lot. However, the Association shall not provide snow removal from any porch, patio, balcony, or deck.

8.1.3. The Association shall also maintain, repair and replace the exteriors of the Condominium Buildings and the dwelling units located on each Lot, as follows (to the extent that such are applicable): Paint or stain, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces; railings around any decks, and any fences (and gates) around patios or balconies; provided, however, that such exterior maintenance, repair and replacement shall not include exterior doors or garage doors, except painting or staining, and shall also not include windows or window screens, other glass surfaces, water spigots,

air conditioning compressors, or foundations. The costs, expenses, fees and other amounts for the items that are provided for in this subsection shall, subject to Section 8.5 of this Declaration (Acts or Omissions), be collected by the Association as Assessments as provided in Article 4 of this Declaration (Assessments).

8.1.4. The extent, degree and timing of Association-provided snow removal, and of Association-provided watering, maintenance, repair and/or replacement shall be determined at any time(s), from time to time, by the Board of Directors in its sole discretion. In no event shall the Association be responsible for removal of, or damage caused to any Person or property by, ice or the build-up of ice in the Community or any portion(s) thereof.

8.1.5. Notwithstanding anything to the contrary contained in this Declaration, none of the responsibilities of the Association for management, control, maintenance, repair, or replacement shall give rise to any interest of the Association in any Unit or the quality of any improvements therein or thereon, nor any right by the Association to pursue any claims against the Declarant, any officer or employee thereof, or any other Person, for negligence, breach of express or implied warranties, or any other matters, with respect to any such improvements or the construction thereof.

8.1.6. Except as provided in subsections 8.1.1 through 8.1.5 above, the maintenance, repair and replacement of each Unit, and the Improvements thereon, shall be performed by the Owner(s) thereof at such Owner's sole cost and expense. However, the foregoing is subject to the provisions of Section 8.5 of this Declaration (Acts or Omissions).

**Section 8.2. *Changed or Added Improvements.***

Any Improvement which has been changed, altered or modified by or for an Owner or occupant of a Unit shall be maintained, repaired and replaced by such Owner to the extent of the change, alteration or modification. If the Improvement is newly constructed, erected, placed, planted, applied or installed by an Owner or occupant of a Unit, then the entirety of such Improvement shall be maintained, repaired and replaced by the Owner of such Unit. However, the Board of Directors may at any time, in its sole discretion, elect to have the Association provide such maintenance, repair or replacement; provided that any such decision shall be subject to being repealed, revoked, modified, changed or altered, at any time, from time to time, by the Board in its sole discretion.

**Section 8.3. *Association's Right to Maintain, Repair and Replace.***

In the event any Owner shall fail to perform his maintenance, repair and/or replacement obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owner by the Board of Directors, enter upon said Unit subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or replacement. Notwithstanding the foregoing, no notice shall be required in emergency situations. The cost of such maintenance, repair and/or replacement shall be the personal obligation of the Owner of the Unit on which such work is performed, and shall be subject to all of the terms and provisions applicable to Assessments as provided in Article 4 of this Declaration (Assessments), including, without limitation, interest, late charges and lien rights.

**Section 8.4. *Non-Interference with Grade and Drainage.***

Each Owner and the Association agree, for themselves and their heirs, personal representatives, successors and assigns, that they will not in any way interfere with or obstruct the established drainage pattern over any real property. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading by the Declarant is completed.

**Section 8.5. *Acts or Omissions***

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement of the Common Property, a Unit, or any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of any member of such Owner's family or by a tenant, guest or invitee of such Owner, the cost of such maintenance, repair, replacement or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado, and any amounts incurred by the Association for such maintenance, repair or replacement shall be added to the Assessments to which such Owner's Unit is subject and shall be subject to all of the terms and provisions of Article 4 of this Declaration (Assessments). A determination of the act or omission of any Owner, or any member of an Owner's family or a tenant, guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Board of Directors at a hearing after notice to the Owner.

**ARTICLE 9. PARTY WALLS ON LOTS**

**Section 9.1. *Definition.***

"Party Wall" means: any wall which is part of the original construction of the structures located on Lots as such wall(s) may be repaired or reconstructed from time to time, is placed on or immediately adjacent to a lot line, and separates, as a common wall, two (2) or more structures, or any portion thereof, on two (2) or more Lots; and any monolithic slab located on two (2) or more Lots. Without limiting the generality of the foregoing, "Party Wall" includes any two walls which meet the foregoing criteria and which are separated by a small amount of air space.

**Section 9.2. *General Rules of Law to Apply.***

To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 9.3. *Rights of Owners.***

The Owners of each Lot on which a Party Wall is located shall have the following rights:

9.3.1. A perpetual and reciprocal easement in and to that part of the adjacent Lot on which such Party Wall is located, for Party Wall purposes only, including mutual support, maintenance, repair and inspection. For the purposes of repairing or maintaining a Party Wall, the Owners of each Lot on which a Party Wall is located, are granted the right to

enter onto the adjacent Lot which shares the same Party Wall and to go inside any residence or other Improvements thereon to do work necessary in the exercise of rights provided herein at all reasonable times after reasonable notice to the occupants of such adjacent Lot or immediately in the event of an emergency.

9.3.2. After reasonable notice to the occupants of the adjacent Lot on which a Party Wall is located, the Owner of a Lot which has such Party Wall shall have the right to break through an appurtenant Party Wall for the purposes of repairing or restoring sewer, water, or other utilities located within such Party Wall. Notwithstanding the foregoing, the Owner of the Lot who effectuates such breakage shall have the obligation to promptly restore such Party Wall to its previous structural condition at his/her/its sole cost and expense.

**Section 9.4. *Sharing of Repair and Maintenance.***

Except as otherwise provided in this Declaration, the cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Lots on either side of the Party Wall. Notwithstanding the foregoing, the cost of repair and replacement of the finished surface of a Party Wall that is located within a residence shall be at the sole cost and expense of the Owner of the Lot on which such residence is located.

**Section 9.5. *Destruction by Fire or Other Casualty.***

If a Party Wall is destroyed or damaged by fire or other casualty, the Owner of either of the two (2) or more adjacent Lot(s) on which such Party Wall is located may restore it. Except as otherwise provided in this Declaration, the Owners of the Lots on either side of such Party Wall shall share equally the costs and expenses of such restoration. Without limiting the generality of the foregoing, any Owner of a Lot may call for a larger contribution from one or more others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 9.6. *Repairs to Monolithic Slabs and Monolithic Foundations.***

If any monolithic slab requires repair, the entire monolithic foundation shall be involved in the repair process. The Owners and occupants of each of the two (2) or more adjacent Lots on which such monolithic foundation is located shall cooperate regarding repairs to such foundation and, except as otherwise provided in this Declaration, each such Lot shall share equally in the costs thereof.

**Section 9.7. *Weatherproofing.***

Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 9.8.      *Right to Contribution Runs with Land.***

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to and run with the land and shall pass to such Owner's successors in title to the Lot to which such Owner's membership pertains.

**Section 9.9.      *Arbitration.***

In the event of any dispute arising concerning a Party Wall under the provisions of this Article, such dispute shall be resolved as follows unless such dispute is subject to Article 16 of this Declaration (Dispute Resolution): each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party fail or refuse to appoint an arbitrator within ten (10) days after written request therefor by the party with whom such party shares a Party Wall, the Board shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorneys' fees.

**ARTICLE 10.    EASEMENTS**

**Section 10.1.    *Other Easements.***

In addition to any other easements that may be granted or reserved elsewhere in this Declaration or by law, the following Sections in this Article describe easements to which the Community is or may be subject.

**Section 10.2.    *Access Easement.***

Each Owner hereby grants: to the Association and the other Owners, and to their agents, employees and contractors, a right and easement on, over, across and through such Owner's Unit for maintenance, repair and replacement as provided in this Declaration, including without limitation as provided in Article 8 of this Declaration (Maintenance); to utility companies, their contractors, agents and employees, for access to, inspection, maintenance, repair and replacement of utility meters and their appurtenances; and to the Association for and incidental to enforcement of any term or provision of any of the Governing Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Property, any other property, or any Unit, the Person responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. The rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Unit; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance, repair and/or replacement; and except that in emergency situations entry upon a Unit may be made at any time provided that the Owner(s) or occupant(s) of each affected Unit shall be notified of emergency entry as early as is reasonably possible. The interior of any dwelling unit shall not be subject to the easement that is granted in this Section.

**Section 10.3.    *Utilities Easement.***

The Declarant hereby reserves a blanket easement upon, across, over and under the Common Property for utilities and the installation, replacement, repair and maintenance of utilities,

including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Property and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Property without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall terminate at such time as the Special Declarant Rights automatically terminate as provided in Section 1.35 of this Declaration (Special Declarant Rights), at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Property.

**Section 10.4. Easement for Encroachments.**

To the extent that any improvement on a Unit or on Common Property encroaches on any other Unit or Common Property, a valid easement for the encroachment exists.

**Section 10.5. Drainage Easement.**

An easement is hereby reserved by the Declarant and granted to the Association, their respective directors, officers, agents, employees, successors and assigns, to enter upon, across, over, in and under the Common Property for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Community so as to maintain or improve the drainage of water in or from the Community.

**Section 10.6. Emergency Easement.**

A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies and persons to enter upon the Units, the Common Property, or any other portion of the Community in the proper performance of their duties.

**ARTICLE 11. RESTRICTIONS**

**Section 11.1. General Plan; Restrictions Imposed.**

It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Community. The Community is subject to the recorded easements, licenses and other matters listed on Exhibit C attached hereto and incorporated herein by this reference. In addition, the Declarant declares that all of the Community shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. Further, all laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed; however, the Association shall have no duty or obligation to enforce such laws, ordinances and regulations.

**Section 11.2. Residential Use; Professional or Home Occupation.**

Subject to Section 17.7 of this Declaration (Declarant's Use), Units shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, the Owners or occupants of a Unit may conduct business activities within their homes provided that all of the following conditions are satisfied:

11.2.1. The business conducted is clearly secondary to the residential use of the Unit and is conducted entirely within the Unit;

11.2.2. The existence or operation of the business is not detectable from outside of the Unit by sight, sound, smell or otherwise, or by the existence of one or more signs indicating that a business is being conducted;

11.2.3. The business does not result in an undue volume of pedestrian or vehicular traffic or parking within the Community, which determination may be made by the Board of Directors in its sole discretion from time to time;

11.2.4. The business conforms to all zoning requirements and is lawful in nature; and

11.2.5. The business conforms to any rules and regulations and policies and procedures that may be imposed by the Board of Directors in its sole discretion from time to time.

**Section 11.3. Household Pets.**

No animals, horses, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in the Community; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Community. The Association shall have, and is hereby given, the right and authority, from time to time, to: set a maximum number of household pets; set a size or poundage limit on pets; regulate the type(s) of pets that are permitted to be kept; determine in its sole discretion that any dog(s), cat(s) or other household pet(s) are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to pets; or determine that an Owner is otherwise in violation of any provision of this Section. If the Board of Directors determines in its sole discretion that any of the foregoing have been or are being violated, the Board of Directors may take such action(s) as it determines in its sole discretion to correct the same. An Owner's right to keep household pets is coupled with the responsibility to pay for any damage caused by such pets, as well as all costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in Article 4 of this Declaration (Assessments).

**Section 11.4. Signs.**

No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Unit without the written approval of the Board of Directors, except for the following: (a) a name plate of the occupant and a street number; (b) subsequent to automatic termination of the Special Declarant Rights as provided in Section 1.35 of this Declaration (Special Declarant Rights), "For Sale," "Open House," or "For Rent" sign(s) of not more than a total of five (5) square feet in the aggregate, in a window(s) of each Condominium Unit or on each Lot; (c) two (2) security system signs no larger than one hundred (100) square inches each in a window(s) of the Unit; and (d) such other signs as are approved in writing by the Board of Directors or are otherwise expressly permitted by law. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant in connection with the sale, rental or use of one or more Units, or otherwise in connection with development of or construction in the Community, shall be permissible.

**Section 11.5. Antenna and Satellite Dishes.**

No exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Unit or the Common Elements unless such antenna, satellite dish, or other audio or visual device has been professionally installed and the installation of such device has been approved by the Board of Directors; provided, however that any such devices may be erected or installed by the Declarant during its sales or construction in the Community; and provided further, however, that the Association shall comply with all requirements of the Telecommunications Act of 1996, as amended, and all state, city, county and other applicable regulations. The Association shall be empowered to adopt rules and regulations governing the types of antenna (including certain satellite dishes) that are permissible and establishing reasonable, non-discriminatory rules and regulations relating to appearance, safety, location, maintenance or other matters.

**Section 11.6. Temporary Structures; Unsightly Conditions.**

Except as hereinafter provided, no structure of a temporary character, including but not limited to, a house-trailer, tent, shack, storage structure or out building shall be placed or erected on any Lot; provided however, that during the actual construction, alteration, repair or remodeling of a structure or other improvements, necessary temporary structures for storage of materials may be erected and maintained by the Declarant or Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be located in the Community so as to be visible from a parking area, street, or any other Unit.

**Section 11.7. Vehicular Parking, Storage and Repairs.**

11.7.1. No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (larger than 1 ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, nor any commercial vehicle, may be parked or stored in the Community, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however,

shall not restrict trucks or other commercial vehicles that are necessary for construction or for the maintenance, repair or replacement of Units, Common Property, other property, or any Improvements.

11.7.2. Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of one (1) week or longer, or which does not have an operable propulsion system installed therein, or which does not have a current license plate thereon; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

11.7.3. In the event the Board of Directors determines that a vehicle is parked or stored in violation of subsections 11.7.1 or 11.7.2 of this Section, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Board of Directors in its sole discretion from time to time, the Board of Directors shall have the right to remove the vehicle at the sole expense of the owner thereof.

11.7.4. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community.

11.7.5. This Section 11.7 shall be construed and applied in accordance with all applicable laws, including without limitation CCIOA.

**Section 11.8. Nuisances.**

No nuisance shall be permitted in the Community nor any use, activity or practice which is a source of annoyance or embarrassment to, or which offends or disturbs, any resident of the Community or which interferes with the peaceful enjoyment or possession and proper use of any Unit, or any portion thereof, by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant which are incidental to the development and construction of, and sales activities on, the Units. No noxious or offensive activity shall be carried on nor shall anything be done or placed in the Community which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others, and no unsightly conditions, structures, facilities, equipment or objects shall be so located as to be visible from a street or from any Unit.

**Section 11.9. No Hazardous Activities; No Hazardous Materials or Chemicals.**

No activities shall be conducted which are, or might be, unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged and no open fires shall be lighted or permitted except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace. Further, no hazardous materials or chemicals shall at

any time be located, kept or stored except in such limited quantities so as to not constitute a hazard or danger to person or property.

**Section 11.10. *No Annoying Light, Sounds or Odors.***

No light shall be emitted which is unreasonably bright or causes unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be permitted which is noxious or offensive to others.

**Section 11.11. *Restrictions on Trash and Materials.***

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate unless placed in a suitable container suitably located solely for the purpose of garbage pickup. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

**Section 11.12. *Leases.***

The term "lease," as used herein, shall include any agreement for the leasing or rental of a Unit, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Unit, or any portion thereof, under the following conditions:

11.12.1. All leases shall be in writing; and

11.12.2. All leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the Governing Documents; and that any failure by the lessee to comply with any of the Governing Documents, in any respect, shall be a default under the lease.

**Section 11.13. *Compliance with Master Declaration.***

All Owners and any other Persons who reside upon or use any portion of the Community shall comply with all terms and provisions of the Master Declaration, Articles of Incorporation, Bylaws and rules and regulations of the Master Association, as the same may be promulgated, enacted, adopted, amended, interpreted, repealed, reenacted, and enforced, from time to time.

**ARTICLE 12. PROPERTY RIGHTS IN THE COMMON PROPERTY**

**Section 12.1. *Owners' Easements.***

Subject to this Declaration, every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area, General Common Elements and those Limited Common Elements appurtenant to such Owner's Condominium Unit, plus a right and easement of ingress and egress over, across and upon the Common Area, General Common Elements and those Limited Common Elements appurtenant to such Owner's Condominium Unit, for the purpose of getting to

and from his Unit and public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to every Unit.

**Section 12.2. *Extent of Owners' Easements.***

Subject to the other provisions of this Article, the rights and easements of enjoyment created hereby are subject to the following: the Common Property may not be used in any manner which violates the statutes, rules or regulations of any governmental authority with jurisdiction over the Common Property; and no Owner may place any structure on the Common Property. In addition, such rights and easements are subject to the following rights of the Association:

12.2.1. The right of the Association to borrow money for the purpose of improving the Common Property and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Property to a Security Interest except in accordance with CCIOA; and

12.2.2. The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure; and

12.2.3. The right of the Association to enact, re-enact, issue, promulgate, amend, repeal and publish standards, guidelines, rules and regulations and policies and procedures, with which each Member shall strictly comply, including, but not limited to, the right to regulate and/or restrict vehicular parking and Improvements; and

12.2.4. The right of the Association to suspend the voting rights of a Member for any period during which any Assessment against such Member's Unit or any other amounts due from such Member to the Association remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Governing Documents; and

12.2.5. The right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding the foregoing, the granting of permits, licenses or easements for utilities, roads or for other purposes shall not be deemed a transfer within the meaning of this subsection; and

12.2.6. The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

12.2.7. The right of the Association to close or limit the use of any Common Property while maintaining, repairing and making replacements in the Common Property.

**Section 12.3. *Use of Common Property by Declarant.***

An easement is hereby reserved by the Declarant on, over, across, under and through the Common Property as may be reasonably necessary for the purpose of discharging any of Declarant's

rights or obligations or exercising any Special Declarant Rights or other rights of the Declarant and no Owner shall engage in any activity which will temporarily or permanently interfere with the Declarant's easements through the Common Property.

**Section 12.4. *Declarant's Right to Reallocate General Common Elements As Limited Common Elements.***

Prior to automatic expiration of the Special Declarant Rights, as provided in Section 1.35 of this Declaration, the Declarant may reallocate any General Common Elements as Limited Common Elements and may designate the Condominium Unit(s) to which such Limited Common Elements are appurtenant.

**Section 12.5. *Delegation of Use.***

Any Owner may delegate his right of enjoyment to the Common Property and facilities to the members of his family, his tenants, or contract purchasers who reside in his Unit.

**Section 12.6. *Limited Common Elements.***

Subject to the terms and provisions of this Declaration, every Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to such Owner's Unit, and such right shall be exclusive except as to those other Owners, if any, with a right to use such Limited Common Elements.

**Section 12.7. *New Additions to Common Property.***

The Declarant and the Association shall have the right to construct new additions to the Common Property. Ownership of any such additions to the Common Property shall be apportioned among all Units in proportion to their Allocated Interests. The Assessment liability for any such additions to the Common Property shall be apportioned among the Units as provided in Article 4 of this Declaration (Assessments). The construction of new additions to the Common Property shall not affect an Owner by way of modification of such Owner's voting power in the Association.

**Section 12.8. *Conveyance or Subjection of Common Property to a Security Interest.***

Conveyance or subjection to a Security Interest of Common Property shall be done only in accordance with CCIOA and this Declaration.

**Section 12.9. *Use of and Construction on Common Property.***

Subject to the rights of Declarant and the Association, as provided in this Declaration, there shall be no obstruction of the Common Property, nor shall anything be kept or stored on any part of the Common Property. Other than those Improvements erected or installed by Declarant in its completion of the Community, nothing shall be altered on, constructed in or removed from the Common Property.

**Section 12.10. *Designation of Common Property.***

Declarant in recording this Declaration has designated certain areas as Common Property, intended for the common use and enjoyment of Owners for recreation and other related activities, as provided in this Declaration and other applicable documents. The Common Property is not dedicated hereby for use by the general public.

**Section 12.11. *Duty to Accept Property and Facilities Transferred by Declarant.***

The Association shall accept title to all property, including personal property, equipment, and easements, if any, transferred to the Association by the Declarant, together with responsibility to perform all duties and functions of the Association which are set forth in this Declaration or otherwise assumed by the Association.

**ARTICLE 13. CONVEYANCE, OWNERSHIP AND TAXATION OF CONDOMINIUM UNITS**

**Section 13.1. *Contracts Entered into Prior to Recording of Condominium Map and Declaration.***

A contract or other agreement for the sale of a Condominium Unit entered into prior to the filing for record of the Condominium Map and/or this Declaration in the office of the Clerk and Recorder of Mesa County, Colorado, may legally describe such Condominium Unit in the manner set forth in Section 13.2 of this Declaration (Contracts Entered into Subsequent to Recording of Condominium Map and Declaration) and may indicate that the Condominium Map and/or this Declaration are to be recorded. Upon recordation of the Condominium Map and this Declaration in the County of Mesa, Colorado, such description shall be conclusively presumed to describe the corresponding Condominium Unit shown on the Condominium Map and such Condominium Unit shall be subject in all respects to this Declaration.

**Section 13.2. *Contracts Entered into Subsequent to Recording of Condominium Map and Declaration.***

Subsequent to the recording of the Condominium Map and this Declaration, every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Condominium Unit may legally describe that Condominium Unit as follows:

Condominium Unit \_\_\_\_\_, Condominium Building \_\_\_\_\_, Sundance Crossing, according to the Condominium Map thereof, recorded on \_\_\_\_\_, \_\_\_\_\_, at Reception No. \_\_\_\_\_, in the records of the office of the Clerk and Recorder of Mesa County, Colorado, and as defined and described in the Declaration of Covenants, Conditions and Restrictions of Sundance Crossing, recorded on \_\_\_\_\_, \_\_\_\_\_, at Reception No. \_\_\_\_\_ in said records.

**Section 13.3.     *Legal Effect of Description.***

Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Condominium Unit which legally describes said Condominium Unit substantially in the manner set forth in Section 13.2 of this Declaration (Contracts Entered into Subsequent to Recording of Condominium Map and Declaration), shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Unit, including the undivided interest in the Common Elements appurtenant thereto and all other appurtenant properties and property rights, and to incorporate all of the rights, limitations and burdens incident to ownership of a Condominium Unit as described in this Declaration and the Condominium Map. Each such description shall be construed to include a non-exclusive easement for ingress and egress to and from each Condominium Unit and the use of all the Common Area and General Common Elements, as well as all of the Limited Common Elements appurtenant to said Condominium Unit, all as more fully provided in this Declaration.

**Section 13.4.     *Taxation of Condominium Units.***

Each Condominium Unit shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority, in accordance with CCIOA. For the purpose of such assessments, the valuation of the Common Property shall be apportioned among the Condominium Units in proportion to the undivided interest in the Common Elements appurtenant to the Condominium Unit in question. The Association shall furnish to the Tax Assessor of Mesa County, Colorado, and to all other appropriate Persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

**Section 13.5.     *Inseparability.***

Each Condominium Unit, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Condominium Unit. Every conveyance, transfer, devise, lease, encumbrance or other disposition of a Condominium Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Condominium Unit, together with all appurtenant rights, interests, duties and obligations created by law or by this Declaration.

**Section 13.6.     *Non-Partitionability of Condominium Units.***

The Common Elements shall be owned in common by all of the Owners of Condominium Units and shall remain undivided and not subject to partition, such that any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Condominium Unit to which that interest is allocated is void. By the acceptance of a deed or other instrument of conveyance or assignment, each Owner of a Condominium Unit specifically waives such Owner's right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore,

each Owner of a Condominium Unit agrees that this Section may be pleaded as a bar to the maintenance of such an action. Any violation of this Section shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs, expenses and all damages that the Association incurs in connection therewith.

#### **ARTICLE 14. MECHANIC'S LIENS ON CONDOMINIUM UNITS.**

##### **Section 14.1. *Mechanic's Liens.***

No labor performed and/or materials furnished for use and incorporated in any Condominium Unit with the consent or at the request of the Owner thereof, such Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Condominium Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Individual Air Space of the Owner for whom such labor shall have been performed or such materials furnished. Each Owner of a Condominium Unit shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Condominium Unit of any other Owner, the Common Elements, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Condominium Unit.

##### **Section 14.2. *Enforcement by the Association.***

At its own initiative or upon the written request of any Owner or any Security Interest Holder, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided by Section 14.1 of this Declaration (Mechanic's Liens) by collecting from the Owner of the Condominium Unit on which the labor was performed and/or materials furnished, the amount necessary to discharge any such mechanic's lien, including all costs and reasonable attorney's fees incidental thereto, and obtain a discharge of such lien. In the event that the Owner of the Condominium Unit on which the labor was performed and/or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount, or any portions thereof, from time to time, to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section and such amount to be indemnified shall be and constitute an additional Assessment for collection by the Association subject to all of the provisions of Article 4 hereof (Assessments).

#### **ARTICLE 15. SECURITY INTERESTS**

##### **Section 15.1. *Applicability of Article.***

Unless and until a Condominium Unit is created within the Community, this Article shall not apply. This Article shall become applicable upon, and only upon, creation of a Condominium Unit that is subject to this Declaration.

##### **Section 15.2. *Limitation on Actions of the Association.***

15.2.1. Notwithstanding any provisions of this Declaration to the contrary, the Association shall not, except as provided by statute in case of condemnation or substantial

loss to the Units and/or Common Elements, unless it has obtained the prior written approval of the Owners (other than the Declarant) casting at least sixty-seven percent (67%) of the Association votes or of those Security Interest Holders holding at least sixty-seven percent (67%) of the First Security Interests (based upon one vote for each First Security Interest owned):

15.2.1.1. by act or omission seek to abandon or terminate the Community;

15.2.1.2. change the pro rata interest or obligations of any Unit in order to levy Assessments or charges, allocate distributions of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium Unit in the Common Elements (however, this requirement will be deemed waived to the extent necessary to allow phasing or add-ons in accordance with this Declaration);

15.2.1.3. partition or subdivide any Unit;

15.2.1.4. seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property by act or omission. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Property by the Community is not a transfer within the meaning of this clause. (However, this requirement will be deemed waived to the extent necessary to allow phasing or add-ons, in accordance with this Declaration);

15.2.1.5. use hazard insurance proceeds for losses to any condominium property in the Community (whether Condominium Units or Common Elements) for other than the repair or replacement of such condominium property.

**Section 15.3. *Approval by Security Interest Holders of First Security Interests.***

15.3.1. Notwithstanding anything to the contrary contained in this Declaration, any amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association of a material nature to Security Interest Holders shall be agreed to by Owners who represent at least sixty-seven percent (67%) of the Association votes and by Security Interest Holders of First Security Interests who represent at least fifty-one percent (51%) of the Units that are subject to such First Security Interests (and who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of Security Interest Holders of First Security Interests).

15.3.2. Any action to terminate the legal status of the Community after substantial destruction or condemnation occurs or for other reasons shall be agreed to by Owners who represent at least sixty-seven percent (67%) of the Association votes and by Security Interest Holders of First Security Interests who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of Security Interest Holders of First Security Interests and who represent at least fifty-one percent (51%) of the Units that are subject to such First Security Interests.

15.3.3. The implied approval of any Security Interest Holder of a First Security Interest shall be assumed if such Security Interest Holder fails to submit a response to any

written proposal for an amendment within sixty (60) days after such Security Interest Holder receives proper notice of the proposal delivered by certified or registered mail, return receipt requested.

**Section 15.4. Notice of Action.**

Upon written request to the Association identifying the name and address of the Security Interest Holder of a First Security Interest or insurer or guarantor of the First Security Interest, and the residence address of the Unit which is subject to such First Security Interest, such Security Interest Holder of a First Security Interest, or insurer or guarantor of a First Security Interest, shall be entitled to timely written notice of:

15.4.1. any condemnation loss or casualty loss that affects either a material portion of the Community or any Unit subject to a First Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor of a First Security Interest;

15.4.2. any default in the performance of any obligation under the Governing Documents by the Owner of a Unit subject to a First Security Interest held, insured or guaranteed by such Security Interest Holder, insurer or guarantor and not cured within 60 days, including but not limited to a delinquency in the payment of Assessments;

15.4.3. a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

15.4.4. any proposed action that requires the consent of a specified percentage of Security Interest Holders of First Security Interests as provided in this Article.

**Section 15.5. No Priority Over Rights of Security Interest Holders of First Security Interests.**

No provision of the Governing Documents gives an Owner or any other party priority over any rights of the Security Interest Holder of a First Security Interest on such Owner's Unit pursuant to its First Security Interest in the case of payment to the Owner of insurance proceeds or condemnation awards for losses to or taking of Units and/or Common Property.

**ARTICLE 16. DISPUTE RESOLUTION**

**Section 16.1. Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.**

16.1.1. Each Party (as defined below) agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims (as defined below) each alleges to have to the procedures set forth in this Article and not to a court of law.

16.1.2. By acceptance of a deed to a Unit, each Owner agrees to abide by the terms of this Article.

16.1.3. No Claim (as defined below) may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

**Section 16.2. Definitions Applicable to this Article.**

For purposes of this Article only, the following terms have the meanings set forth in this Section:

16.2.1. "AAA" means the American Arbitration Association or any other Person agreed to by the Claimant and Respondent in writing for the purpose of performing the functions of the American Arbitration Association under this Declaration.

16.2.2. "Claimant" means any Party having a Claim.

16.2.3. "Claim" means, except as excluded or exempted by the terms of this Article, any claim, grievance or dispute between one Party and another, regardless of how the same may have arisen or on what it might be based, including without limitation those arising out of or related to (i) the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Party under any of the Governing Documents; (ii) the design or construction of improvements; (iii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Party.

16.2.4. "Party" means each of the following: Declarant, its officers, directors, partners, members, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; any builder or contractor, its officers, directors, partners, members, employees and agents, who construct buildings, residences or other Improvements; and any Person not otherwise subject to this Declaration who agrees to submit to this Article.

16.2.5. "Respondent" means any Party against whom a Claimant asserts a Claim.

16.2.6. "Termination of Mediation" means a period of time expiring forty-five (45) days after a mediator has been agreed upon by the parties (however, a mediator shall be selected no later than thirty (30) days after the Claimant has given notice to the Respondent of the Claim and if the Claimant and Respondent are unable to agree on a mediator, one shall be chosen by the AAA) and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent) and upon the expiration of which the Claimant and Respondent have not settled the Claim.

**Section 16.3. Approval Required for Association Actions.**

Except as provided in Section 16.6 of this Declaration (Exclusions from "Claim"), the approval of eighty percent (80%) of a quorum (as provided in Section 16.4 of this Declaration (Notice and Quorum for Association Actions)) of the Association votes cast by Members voting in person or by proxy at a meeting duly called for this purpose, or voting pursuant to written ballot,

must be obtained before the Association shall have the power to institute action on any Claim pursuant to this Article, or to make any counterclaim or cross-claim in any lawsuit or other action brought against the Association. Such approval must be obtained in accordance with the requirements of Section 16.4 of this Declaration (Notice and Quorum for Association Actions).

**Section 16.4. Notice and Quorum for Association Actions.**

Written notice of any meeting of Members which includes a vote pursuant to Section 16.3 of this Declaration (Approval Required for Association Actions) shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. Such written notice, or if the vote is to be by written ballot then such written ballot, shall include the following information:

16.4.1. A statement regarding the nature of the Claim. Such statement shall include, without limitation, the name(s) of the proposed Claimant(s) and Respondent(s), the basis and reason for the Claim, and any other information necessary to adequately explain the nature of the proposed Claim; and

16.4.2. A good-faith estimate of the costs and fees, including court costs and other costs, the fees of consultants, expert witnesses and attorneys, reasonably anticipated to be incurred by or for the Association in prosecuting the Claim, with such estimate prepared by the primary attorney the Board proposes to have prosecute the Claim on its behalf; and

16.4.3. A statement advising Members that the costs and fees of prosecuting any Claim may substantially increase the amount of Assessments payable by the Owners to the Association; and

16.4.4. A good-faith estimate of the manner in which any monies reasonably anticipated to be recovered from the Claim will be distributed or paid to consultants, expert witnesses, the Association, its attorney(s) and any others, prepared by the primary attorney the Board proposes to have prosecute the Claim on its behalf; and

16.4.5. A good faith estimate of the projected time frame for resolution of the Claim; and

16.4.6. All terms and provisions of the agreement between the Association and the attorney(s) the Board proposes to have prosecute the Claim.

The presence of Members or of proxies, or if by ballot then receipt by the Association of written ballots, entitled to cast eighty percent (80%) of all of the Association votes shall constitute a quorum at any meeting at which the Members vote on approval of any Claim the Association wishes to bring.

**Section 16.5. Required Form of Proxy or Ballot.**

Each written proxy, and each ballot which purports to vote on, or authorize a vote on, approval of the Association bringing a Claim, shall contain the following statement:

With full knowledge and understanding that my annual Assessments may be significantly increased by the costs and fees associated with the proposed claim, I/we APPROVE the authority of the Association to bring such claim.

**Section 16.6. Exclusions from "Claim".**

Unless specifically exempted by this Article, all Claims between any of the Parties shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all Parties thereto otherwise agree in writing, "Claim" does not include the following, whether such are brought by lawsuit, counterclaim, cross-claim, mediation, arbitration or in any other manner, and the same shall not be subject to the provisions of this Article:

16.6.1. Any action by the Association to enforce any provision of Article 4 of this Declaration (Assessments); and

16.6.2. Any action by the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the Association or court may deem necessary in order to enforce any of the provisions of Article 5 (Design Review Committee) and/or Article 11 (Restrictions) of this Declaration; and

16.6.3. Any action between or among Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

16.6.4. Any action in which any indispensable party is not a Party, as defined in this Article.

**Section 16.7. Right to Inspect.**

Prior to any Party commencing any proceeding against another Party, including but not limited to an alleged defect of any Improvement, the Respondent shall have the right to be heard by the Claimant and, if any Claimant is the Association, by the Members, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or to otherwise correct the alleged defect; provided, however, any correction to, or redesign of, an Improvement shall be made upon terms and conditions reasonably acceptable to all affected Parties. In the exercise of the inspection rights contained herein, the inspecting Party shall:

16.7.1. Be careful to avoid unreasonable intrusion upon, or harm, damage or costs to the affected Party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any Improvements to the subject property.

16.7.2. Minimize any disruption or inconvenience to any Person who occupies the subject property.

16.7.3. Remove daily all debris caused by the inspection and located on the subject property.

16.7.4. In a reasonable and timely manner, at the sole cost and expense of the inspecting Party, promptly remove all equipment and materials from the subject property

and repair and replace all damage, and restore the subject property to the condition of the subject property as of the date of the inspection unless the subject property is to be immediately repaired.

16.7.5. Not permit any lien, claim or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the subject property. The inspecting Party shall indemnify, defend, and hold harmless the affected Owners and their tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorneys' fees, resulting from any breach of this Section by the inspecting Party.

**Section 16.8. Mandatory Procedures.**

16.8.1. *Good Faith Negotiations.* The Parties shall make every reasonable effort to meet in person and confer for the purposes of resolving the Claim by good faith negotiation. Any Party may be represented by attorneys and independent consultants to assist such Party in negotiations and to attend meetings.

16.8.2. *Notice.* Prior to proceeding with any claim against a Respondent, each Claimant shall give a notice to each Respondent, which notice shall state plainly and concisely:

16.8.2.1. the nature of the Claim, including all Persons involved and Respondent's role in the Claim;

16.8.2.2. the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

16.8.2.3. the specific relief and/or proposed remedy sought.

**16.8.3. Mediation.**

16.8.3.1. If the Parties do not resolve the Claim through negotiations within thirty (30) days after submission of the Claim to the Respondent(s), Claimant shall have an additional thirty (30) days to submit the Claim to mediation under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

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

16.8.3.3. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator shall issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

16.8.3.4. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

16.8.3.5. If the Parties agree to a resolution of any Claim through negotiation or mediation and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 16.8 of this Declaration (Mandatory Procedures). In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

**16.8.4. Binding Arbitration.**

16.8.4.1. Upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the parties to the Claim, there shall be one arbitrator who, to the extent feasible, shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

16.8.4.2. Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

16.8.4.3. The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all Parties to the Claim.

**Section 16.9. *Liability for Failure of Association to Maintain an Action.***

No director or officer of the Association shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a Claim if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was not acting in bad faith; and (c) the act or omission was not willful, wanton or grossly negligent.

**ARTICLE 17. GENERAL PROVISIONS**

**Section 17.1. Enforcement; Fines.**

17.1.1. This Section 17.1.1 is subject to Article 16 of this Declaration (Dispute Resolution). Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in the Governing Documents may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Except as otherwise provided in this Declaration, the Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings. Remedies for violation(s) of the Governing Documents shall be cumulative and no remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under any of such documents, the prevailing party shall be entitled to recover its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the Governing Documents, shall in no event be deemed a waiver of the right to do so thereafter.

17.1.2. Subject to the following sentence, the Association shall have the right to levy and collect fines (as provided in Article 4 of this Declaration (Assessments)) for the violation of the Governing Documents. Prior to collection of any fines, the Association, the Board of Directors, or an authorized management company of the Association, shall mail a notice of violation to the Person(s) alleged to be in violation of any such provision and such notified Person(s) has a right to a hearing upon submission to the Board of Directors of a written request for hearing, which is properly signed by such Person(s) and dated within ten (10) days after the notice of violation has been mailed or such other time as the Board of Directors may decide in its sole discretion from time to time; failure of a notified Person to request a hearing in writing within the required time period shall constitute a waiver of such right to a hearing.

**Section 17.2. Severability.**

All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, including without limitation any provision(s) of Article 16 of this Declaration (Dispute Resolution) by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

**Section 17.3. Conflict of Provisions.**

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

**Section 17.4. *Annexation.***

17.4.1. The Declarant may amend this Declaration at any time from time to time, until automatic termination of the Special Declarant Rights as provided in Section 1.35 hereof, without the consent of any Owner, any Security Interest Holder, or any other Person, in order to add additional real estate to the Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Community pursuant to this Section does not exceed ten percent (10%) of the total area described in the attached Exhibit A (or such larger percentage or number as may be permitted by CCIOA at the time such action is taken).

17.4.2. Except as otherwise specifically stated in the document pursuant to which property is annexed, all provisions of this Declaration, including, but not limited to, those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members, shall apply to Units in the annexed property immediately upon the effective date of the annexing document (which shall constitute the date of recording thereof unless otherwise stated in such document). Each annexation to this Declaration, if any, shall be deemed to constitute an amendment to this Declaration.

**Section 17.5. *Minor Violations of Setback Restrictions.***

If, upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of all other Units. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation," for the purpose of this Section, is a violation of not more than four (4) feet beyond the required setback lines or lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

**Section 17.6. *Subdivision or Replatting of Lots.***

The Declarant hereby reserves the right to subdivide or replat any Lot(s) owned by the Declarant in the Community. Without limiting the generality of the foregoing, the Declarant reserves the right to move any Lot lines(s) on Lot(s) owned by the Declarant, for the purpose of accommodating Improvements which are constructed or may be constructed. The rights provided for in this Section shall terminate automatically upon termination of the Special Declarant Rights, as provided in Section 1.35 hereof. No Lot may be further subdivided from that existing at the time such Lot becomes subject to this Declaration, except by, or with the consent of, Declarant.

**Section 17.7. *Declarant's Use.***

17.7.1. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for the Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Community such facilities as the Declarant deems appropriate, specifically including, without limiting the generality of the foregoing, maintaining signs, sales offices, management offices, model units and construction offices in such numbers, of such sizes,

and at such locations as the Declarant determines in its sole discretion from time to time. Any real estate used as a sales office, management office, model unit, or for the location of a trailer used as a construction or sales office, shall be a Unit or Common Property, as designated in any recorded document(s). Nothing contained in this Declaration shall limit the rights of the Declarant to conduct all construction, sales, and marketing activities as the Declarant deems necessary or desirable and to use the easements provided in this Declaration for those and other purposes. Further, nothing contained in this Declaration shall limit the rights of the Declarant or require the Declarant to obtain approvals: (a) to excavate, cut, fill or grade any property (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements; (b) to use any Improvements on any property as sales offices, management offices, model units and/or construction offices in connection with the development, construction or sale of any property; and/or (c) to require the Declarant to seek or obtain the approval of the Design Review Committee, the Board of Directors, or the Association for any such activity. The rights provided for in this Section shall terminate automatically as provided in Section 1.35 of this Declaration (Special Declarant Rights).

17.7.2. The Declarant anticipates constructing additional Condominium Buildings, Condominium Units, General Common Elements, Limited Common Elements, and other Improvements in the Condominium Phases. Hence, notwithstanding anything to the contrary, this Declaration and/or the Condominium Map may be amended and/or supplemented, in whole or in part, at any time(s) from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to complete any Condominium Phase(s), or any portion(s) thereof, and to otherwise construct, locate and provide for additional Condominium Building(s), Condominium Unit(s), General Common Elements and/or Limited Common Elements on the Condominium Phase(s) or any portion(s) thereof.

17.7.2.1. Each such amendment and/or supplement shall be effective upon recording the following in the office of the Clerk and Recorder of Mesa County, Colorado: one or more amendments or supplements to the Condominium Map depicting such additions and changes; and one or more special amendments or supplements to this Declaration, including without limitation, any amendment, supplement and/or replacement of the attached Exhibit B to this Declaration, subject to any further revisions to said Exhibit B by amendments or supplements to the Condominium Map and/or Declaration as provided in this Declaration.

17.7.2.2. Upon the recording of a Condominium Map in Mesa County, Colorado, with respect to a Condominium Phase, or any portion thereof, the Condominium Building(s) and other Improvements, other than the Individual Air Spaces, shown thereon shall become "Common Elements" under this Declaration, and the condominium units shown on such Condominium Map shall become "Condominium Units" under this Declaration. Subject to subsection 17.7.3 below, Declarant may construct or complete the Condominium Phases at any time and from time to time, and no assurances are made as to the order or timing of construction or completion of such Condominium Phases.

17.7.2.3. The Declarant is the Owner of any Condominium Units created pursuant to the foregoing and therefore is entitled to all proceeds with respect to such Condominium Units. Upon recording of a Condominium Map including one or more Condominium Units, the Allocated Interests among all Units shall be reallocated in accordance with Section 1.2 of this Declaration (Allocated Interests), and the undivided interest in the Common Elements appurtenant to each Condominium Unit shall be as provided in this Declaration.

17.7.3. The rights provided for in this Section 17.7 shall terminate automatically upon termination of the Special Declarant Rights, as provided in Section 1.35 hereof (Special Declarant Rights).

**Section 17.8. *Duration, Revocation, and Amendment.***

17.8.1. Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. Except as otherwise provided in this Declaration (including without limitation Section 17.4 (Annexation), Section 17.7 (Declarant's Use), and subsections 17.8.2 and 17.8.3, this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests; provided, however, that prior to automatic termination of the Special Declarant Rights, including without limitation the right to exercise any Development Rights, no amendment of this Declaration shall be effective without the prior written approval of the Declarant. Further, each amendment of this Declaration enacted by the Members shall be applicable only to disputes, issues, circumstances, events, claims or causes of action that arose out of circumstances or events that occurred after the date of recording of such amendment in all Counties in which any portion of the Community is located; and no such amendment shall be applied retroactively to any earlier occurring disputes, issues, events, circumstances, actions, claims or causes of action.

17.8.2. Notwithstanding anything to the contrary contained in this Declaration, the Declaration, Bylaws of the Association and/or Articles of Incorporation of the Association may be amended in whole or in part, at any time(s) from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of any of the Agencies or of recognized secondary mortgage market(s). Such right of amendment shall automatically terminate at such time as the Special Declarant Rights automatically terminate, as provided in Section 1.35 of this Declaration (Special Declarant Rights).

17.8.3. Notwithstanding anything to the contrary contained in this Declaration, the Declaration, Bylaws of the Association and/or Articles of Incorporation of the Association may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical, or technical errors. Such right of amendment shall automatically terminate at such time as the Special Declarant

Rights automatically terminate, as provided in Section 1.35 of this Declaration (Special Declarant Rights).

17.8.4. Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant to this Declaration, or as permitted by CCIOA, may be signed by the Declarant and shall require no other signatory.

**Section 17.9. Registration of Mailing Address.**

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and all notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by U.S. Mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Unit. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the 75% Control Period shall be sent by U.S. Mail, postage prepaid, to 8400 East Prentice Avenue, Suite 1500, Greenwood Village, Colorado 80111, unless such address is changed by the Association during the 75% Control Period; subsequent to termination of the 75% Control Period, the Association shall notify the Owners of a different address for notices.

**Section 17.10. HUD or VA Approval.**

During the 75% Control Period, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more First Security Interests, and if HUD or VA require such approval: annexation of additional real property (if the Declarant desires to obtain VA or HUD approval of the property that is being annexed); amendment of this Declaration, except as provided in subsections 17.8.2 and 17.8.3 hereof; termination of this Community; dedication of Common Property; or merger or consolidation of the Association, except as provided in Section 3.14 of this Declaration (Merger).

**Section 17.11. Transfer of Special Declarant Rights.**

A Special Declarant Right created or reserved under this Declaration may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the Community is located, and in accordance with CCIOA.

**Section 17.12. Eminent Domain.**

The taking by eminent domain of a Unit(s) and/or Common Property, or any portion thereof, shall be done in accordance with applicable law, including without limitation CCIOA.

**Section 17.13. Termination of Community.**

The Community may be terminated only in accordance with CCIOA.

**Section 17.14. Limitation on Liability.**

The Association, the Board of Directors, the Declarant, the Design Review Committee, and any officer, director, member, partner, agent or employee of any of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 17.18 of this Declaration (Waiver) shall apply to this Section.

**Section 17.15. No Representations, Guaranties or Warranties.**

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, the Design Review Committee, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, freedom from hazardous or toxic materials, substances or gases, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. The release and waiver set forth in Section 17.18 (Waiver) shall apply to this Section.

**Section 17.16. Disclaimer Regarding Safety.**

THE DECLARANT, THE ASSOCIATION, THE DESIGN REVIEW COMMITTEE, THE BOARD OF DIRECTORS, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE DESIGN REVIEW COMMITTEE, THE BOARD OF DIRECTORS, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS, RULES AND REGULATIONS OR POLICIES AND PROCEDURES OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 17.18 (WAIVER) SHALL APPLY TO THIS SECTION.

**Section 17.17. Development Within and Surrounding the Community.**

Each Owner acknowledges that development within and surrounding the Community may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses may change over time. Such development may entail changes to or alterations in the access to the Community, views of or from the Community or the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site

aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot subject to the foregoing, and waives and releases any claim against the Declarant, the Association, the Board of Directors, the Design Review Committee, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 17.18 (Waiver) shall apply to this Section

**Section 17.18. Waiver.**

By acceptance of a deed to a Unit, each Owner hereby releases, waives and discharges the Declarant, the Association, the Board of Directors, the Design Review Committee, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures, risks or other matters set forth in this Declaration, including without limitation, those contained in Sections 17.14, 17.15, 17.16 and 17.17.

**Section 17.19. Headings.**

The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

**Section 17.20. Gender.**

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders.

**Section 17.21. Run with Land; Binding Upon Successors.**

The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon the Community and all real property and Improvements which are now or hereafter a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Association and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.







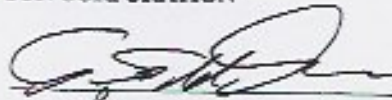
LENDER CONSENT

Consent is hereby given to the Declaration of Covenants, Conditions and Restrictions of Sundance Crossing, as amended and supplemented ("Declaration") and to the Condominium Map of Sundance Crossing, as amended and supplemented ("Condominium Map"). Further, the undersigned, as the record holder of one or more deeds of trust that encumber the property, or any portions thereof described on Exhibit A to this Declaration and on the Condominium Map, hereby subordinates the liens and interests of the undersigned under its deeds of trust to all terms and provisions of the Declaration and the Condominium Map.

Dated this 28<sup>th</sup> day of August, 2008.

LORDSON CORPORATION

By:  
Its:

  
\_\_\_\_\_  
Pres.

STATE OF COLORADO )

COUNTY OF Mesa )

ss.

The foregoing instrument was acknowledged before me this 28 day of August, 2008, by Todd DeNevi as President of Lordson Corporation.

Witness my hand and official seal.  
(S E A L)

  
\_\_\_\_\_

Notary Public

My commission expires: 9-12-11

Amanda Nesbitt  
Notary Public  
State Of Colorado

My Commission Expires 9-12-11

**EXHIBIT A**  
**TO**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS OF**  
**SUNDANCE CROSSING**

(Units and Condominium Phases)

Units:

Lots 1 through 119, inclusive, Block 2, Phase 2, as shown on the plat of Sundance Village Subdivision, recorded in the office of the Clerk and Recorder of Mesa County, Colorado.

Condominium Phases:

Lots 120 through 125, inclusive, Block 2, Phase 3, and Lot 1, Block 3, Phase 3, all as shown on the plat of Sundance Village Subdivision, recorded in the office of the Clerk and Recorder of Mesa County, Colorado.

RECEPTION #: 2457570, BK 4727 PG 684 09/16/2008 at 04:23:01 PM, 68 OF 70, R  
\$350.00 s \$1.00 Doc Code: COVENANTS Janice Rich, Mesa County, CO CLERK AND  
RECORDER

**EXHIBIT B**  
**TO**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS OF**  
**SUNDANCE CROSSING**

(Common Area)

Tracts A through O, inclusive, all as shown on the plat of Sundance Village Subdivision, recorded  
in the office of the Clerk and Recorder of Mesa County, Colorado.

**EXHIBIT C**  
**TO**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS OF**  
**SUNDANCE CROSSING**

(Certain Title Exceptions)

If recorded, the following documents are recorded in the office of the Clerk and Recorder of Mesa County, Colorado:

1. Taxes and assessments for the year of recording of the Declaration, and for subsequent years, not yet due and payable.
2. Right of the Proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted as reserved in United States Patent recorded on February 04, 1896 at Reception No. 22897 in Book 11 at Page 427.
3. Terms, conditions, provisions, obligations and restrictions of that certain Ordinance No. 2183 recorded on April 20, 1984 at Reception Number 1359574 in Book 1490 at Page 50.
4. Obligation created under The Homestead in Grand Junction Homeowners Association, as evidenced by instrument recorded on August 30, 2000 at Reception Number 1963288 in Book 2745 at Page 708.
5. Covenants, conditions and restrictions none of which contain a forfeiture or reverter clause, but omitting restrictions, if any, based on race, color, religion or national origin, as contained in Declaration of Condominium, recorded on August 30, 2000 at Reception Number 1963290 in Book 2745 at Page 709, and as amended by instrument recorded May 07, 2001 at Reception Number 1994988 in Book 2846 at Page 249, and as amended by instrument recorded November 09, 2001 at Reception Number 2024405 in Book 2956 at Page 984, and as further amended by instrument recorded December 20, 2001 at Reception Number 2031997 in Book 2986 at Page 611, and as further amended by instrument recorded July 01, 2004 at Reception Number 2200106 in Book 3689 at Page 38.
6. Easement as granted to Homestead in Grand Junction Homeowners Association, Inc. and terms, conditions and provisions of the agreement as set forth in Easement Deed and Agreement, recorded on July 01, 2004 at Reception Number 2200104 in Book 3689 at Page 26.
7. Easement as evidenced by and terms, conditions and provisions of the agreement as set forth in Easement Deed and Agreement, recorded on July 21, 2004 at Reception Number 2203538 in Book 3700 at Page 863.

8. Easement as evidenced by terms, conditions and provisions of the agreement as set forth in Reciprocal Easement Agreement and Deed, recorded on June 27, 2005 at Reception No. 2261121 in Book 3928 at Page 217.
9. Terms, conditions, provisions, obligations and restrictions of that certain Recording Memorandum recorded on March 23, 2006 at Reception Number 2308088 in Book 4119 at Page 42.
10. Utility easement as granted to Public Service Company of Colorado in instrument recorded on April 03, 2007 at Reception Number 2372903 in Book 4391 at Page 78.
11. Terms, conditions, restrictions, provisions, notes and easements as disclosed on Plat(s) of said Subdivision recorded on March 23, 2006 at Reception Number 2308085 in Book 4119 at Page 37.