

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ALCOVE,  
A TOWN HOME PLANNED COMMUNITY**

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ALCOVE,  
A TOWN HOME PLANNED COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ALCOVE, A TOWN HOME PLANNED COMMUNITY is made as of \_\_\_\_\_, 2022, by ONE KEYSTONE LLC, a Delaware limited liability company.

**ARTICLE I  
GENERAL**

1.1 Capitalized Terms. Capitalized terms used in this Declaration are defined in Article II below.

1.2 Purpose. This Declaration is executed to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners and to establish a procedure for the overall development, administration, maintenance and preservation of the Property.

1.3 The Neighbourhoods at Keystone. The Property is part of The Neighbourhoods at Keystone, a large planned community created pursuant to CCIOA, and the Property is subject to the Neighbourhoods Declaration and the other Neighbourhood Company Documents.

1.4 Declaration. One Keystone LLC, as Declarant and as owner of the Property, for itself and its successors and assigns, hereby declares that all of the Property will, from and after the date hereof, constitute a “planned community” under CCIOA and will be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the covenants, conditions, restrictions, reservations, easements, equitable servitudes and other provisions set forth in this Declaration in furtherance of, and the same will constitute, a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Property and to enhance the value, desirability and attractiveness of the Property. This Declaration will: (a) run with the Property at law and as an equitable servitude; (b) bind any Person having or acquiring any right, title or interest in any portion of the Property; (c) inure to the benefit of and be binding upon every part of the Property and every interest therein; and (d) inure to the benefit of, be binding upon and be enforceable by Declarant, each Owner and the Association.

1.5 Exhibits. The following exhibits are attached to and, by this reference, incorporated as part of this Declaration:

Exhibit A-1	Legal Description of the Property
Exhibit A-2	Legal Description of the Additional Land
Exhibit B	Easements, Licenses and Certain Other Recorded Matters Affecting the Property
Exhibit C	Common Elements
Exhibit D	Arbitration Rules
Exhibit E	Insurance Requirements



## **ARTICLE II** **DEFINITIONS**

The following terms will have the meanings set forth below when used in this Declaration.

- 2.1 Additional. As defined in Exhibit D.
- 2.2 Additional Land. The real property described on Exhibit A-2.
- 2.3 Appointed Additional. As defined in Exhibit D.
- 2.4 Arbitration Notice. As defined in Exhibit D.
- 2.5 Arbitrator. As defined in Exhibit D.
- 2.6 Articles. The Articles of Incorporation of the Association which have been or will be filed with the Secretary of State of the State of Colorado, as amended from time to time.
- 2.7 Assessment. An assessment, which may be a Common Assessment, Special Assessment or Specific Assessment, that is levied by the Association on one or more Lots pursuant to the terms of this Declaration.
- 2.8 Association. Alcove Homeowners Association, Inc., formed pursuant to Section 10.1, and its successors.
- 2.9 Award. As defined in Section 15.5(c)(ii).
- 2.10 Betterments. Any “improvements” or “betterments,” as those terms are commonly used in the insurance industry, to a Residence relating to upgraded or improved elements, fixtures or finishes of the Residences beyond those initially installed by the builder of the Residence, or reasonably comparable substitutes or replacements.
- 2.11 Bias Disclosure. As defined in Exhibit D.
- 2.12 Board. The board of directors of the Association.
- 2.13 Bound Party. As defined in Section 15.3.
- 2.14 Building. A residential building located on the Property that contains two or more Residences.
- 2.15 Bylaws. The Bylaws of the Association, as amended from time to time.
- 2.16 CAS. As defined in Exhibit D.
- 2.17 CCIOA. The Colorado Common Interest Ownership Act, Section 38-33.3-101, C.R.S., *et seq.*, as the same has been and may hereafter be amended from time to time, and any statute which from time to time may replace the same.

2.18 County. Summit County, Colorado, a political subdivision of the State of Colorado.

2.19 Claim. As defined in Section 15.3.

2.20 Common Allocations. The percentage allocated to each Lot derived from a fraction, the numerator of which is the value assigned to the Lot and the denominator of which is the sum of the values assigned to all Lots, as may be adjusted from time to time. For purposes of calculating the Common Allocations from time to time, each Improved Lot is assigned a value of 1.00 and each Unimproved Lot is assigned a value of zero.

2.21 Common Assessment. An Assessment levied on all Lots subject to assessment under Article XI to fund the Common Expenses as more particularly described in Section 11.5.

2.22 Common Elements. All real property, easements, possessory interests in property and Improvements within the Community owned or to be owned and maintained by the Association pursuant to this Declaration for the benefit, use or enjoyment of the Owners. Subject to Sections 7.1(c) and 7.2, the Common Elements are described on Exhibit C.

2.23 Common Expenses. Except for those costs and expenses expressly excluded below, all costs, expenses and financial liabilities incurred by the Association pursuant to this Declaration or the Bylaws, including, without limitation: all costs of operating, managing, maintaining, replacing or restoring the Common Elements and the Association's personal property, including without limitation snow removal and landscaping; taxes on the Common Elements to the extent payable by the Association; general administrative costs incurred by the Association; and contributions to the Reserve Fund. Common Expenses will not include costs or expenses to be funded by or payable through the levying of Special Assessments or Specific Assessments.

2.24 Community. The town home planned community created by this Declaration pursuant to CCIOA, the name of which is "Alcove."

2.25 Construction Activities. As defined in Section 14.7.

2.26 Declarant. One Keystone LLC, or any of its successors in interest or assignees who takes title to any portion of the Property for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant.

2.27 Declarant Control Period. The period of time beginning on the date this Declaration is recorded and ending on the first to occur of (a) 60 days after 75% of the maximum number of Lots that may be created pursuant to Section 3.2 have been conveyed to Owners other than Declarant; (b) two years after the last conveyance of a Lot by Declarant in the ordinary course of business; (c) two years after any right to add new Lots to the Community is last exercised by Declarant; or (d) the date on which Declarant, in its sole discretion, voluntarily terminates the Declarant Control Period pursuant to a Recorded statement of termination; provided, however, that in this last event, Declarant may require that, for the balance of what would have been the Declarant Control Period had Declarant not terminated the same, certain actions of the Association or the Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective. During the Declarant Control Period, Declarant will have

the right to appoint and remove the Directors and the officers of the Association to the extent permitted by CCIOA.

2.28 Declaration. This Declaration of Covenants, Conditions and Restrictions for Alcove, a Town Home Planned Community, including the Maps, as either or both of them is amended or supplemented from time to time.

2.29 Design Review Board. The Alcove Design Review Board, which may be formed pursuant to Section 12.2, which will have jurisdiction over all construction, alteration and removal of Improvements on any portion of the Property.

2.30 Design Guidelines. The Alcove Design Guidelines that may be adopted by the Design Review Board pursuant to Section 12.3.

2.31 Development Period. The period of time during which Declarant is entitled to exercise Special Declarant Rights, except the right to appoint and remove any Director or officer of the Association. The Development Period will commence upon the Recording of this Declaration and will terminate upon the occurrence of the earlier of: (a) the date on which Declarant executes and records an instrument by which Declarant voluntarily relinquishes all Special Declarant Rights; or (b) the tenth anniversary of the Recording of this Declaration unless reinstated or extended by agreement between Declarant and the Association.

2.32 Development Rights. The rights reserved by Declarant pursuant to Section 7.1.

2.33 Director. A member of the Board.

2.34 First Mortgage. A Mortgage that is Recorded and has priority of record over all other Recorded liens except those liens made superior by statute (e.g., general ad valorem tax liens and special assessments, mechanics' liens and, to the extent set forth in CCIOA, the Association's liens for Assessments).

2.35 Improved Lot. A Lot upon which a Residence has been constructed and issued a temporary or permanent certificate of occupancy by the County.

2.36 Improvements. All structures, improvements and appurtenances on or to real property of every type and kind including, without limitation, Residences and all other buildings, fixtures, utilities, patios, garages, facilities associated with regular or cable or satellite television, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, grading, drainage facilities, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, pipes, lines, meters and other facilities used in connection with water, sewer, gas, electricity, telephone or other utilities, as well as those construction activities necessary to build such items.

2.37 Insurance Requirements. As defined in Section 13.1.

2.38 Insured Permittee. Any Permittee who is required to maintain, who in fact does maintain, or who is listed as an additional insured under, a policy of property insurance covering a Lot, any portion thereof or any personal property located therein.

2.39 Leasing. As defined in Section 4.2.

2.40 Lot. A physical portion of the Property, whether improved or unimproved, that is designated for separate ownership pursuant to this Declaration and the Maps and on which a Residence may be constructed pursuant to applicable zoning or governmental approvals. Subject to Sections 7.1(d) and 7.2, the Lots are legally described and identified on the Maps and are listed on Exhibit A. There are two types of Lots: Improved Lots and Unimproved Lots. A particular Lot may change categories from time to time without the necessity of Recording a Supplemental Declaration.

2.41 Maps. Collectively, the [REDACTED] Plat, recorded in the Records on \_\_\_\_\_, 202\_\_, at Reception No. \_\_\_\_\_, and each map or plat with respect to all or a portion of the Property that is Recorded in the Records at any time and from time to time, as each may be amended or supplemented from time to time pursuant to this Declaration and CCIOA. Without limiting any other provision of this Declaration, the Maps may be supplemented or amended by a filing made pursuant to the County's regulations, references the Maps as originally recorded and otherwise satisfies the requirements of CCIOA. The Maps may include certain real property and lots not included in the Property and such additional real property may or may not be included in the Additional Land. The term "Maps" shall also include any maps or plats of all or any portion of the Additional Land that is annexed into the Community from time to time.

2.42 Member. A Person who is a member of the Association pursuant to Section 10.1.

2.43 Mold. As defined in Section 14.2.

2.44 Mortgage. An unpaid or outstanding mortgage, deed of trust, deed to secure debt or any other form of security instrument encumbering the Property or a portion thereof.

2.45 Mortgagee. A beneficiary or holder of a Mortgage.

2.46 Neighbourhood Company. The Keystone Neighbourhood Company, Inc., a Colorado nonprofit corporation, and its successors and assigns.

2.47 Neighbourhood Company Documents. The Neighbourhoods Declaration and the articles of incorporation, the bylaws and all rules and regulations of the Neighbourhood Company.

2.48 Neighbourhoods Declaration. That certain Declaration of Covenants, Conditions and Restrictions for The Neighbourhoods at Keystone dated on or about November 30, 1995, and recorded on December 1, 1995 in the Office of the Clerk and Recorder of Summit County, Colorado, at Reception No. 504399, as amended.

2.49 Noise Disturbances. As defined in Section 14.12.

2.50 Notice. As defined in Section 15.5(a).

2.51 Notice of Lien. As defined in Section 11.1(a).

2.52 Owner. A Person or Persons, including Declarant, owning fee simple title of record to any Lot from time to time. The term “Owner” will include a seller under an executory contract for sale and exclude a buyer thereunder and will include a landlord under a lease affecting a Lot and exclude a tenant thereunder.

2.53 Panel. As defined in Exhibit D.

2.54 Party or Parties. As defined in Section 15.5(a).

2.55 Party Appointed Arbitrators. As defined in Exhibit D.

2.56 Party Wall. The common wall, together with the underlying footings, foundation and the overlying portion of the Roof, which connects or is shared by two adjacent Residences and which has been or is constructed substantially along and over a portion of the boundary separating the Lots on which the Residences are situated. The Party Wall will not include sheet rock, interior paint, wall paper, molding, woodwork and other trim and finishes, or other non-structural, interior elements attached to, or incorporated in, the Party Wall.

2.57 Permittee. A Person, other than an Owner, who is a tenant or occupant of a Residence or a Person who is an agent, employee, customer, contractor, licensee, guest or invitee of an Owner or of such tenant or occupant.

2.58 Person. A natural person, corporation, partnership, limited liability company, trustee or other legal entity.

2.59 Post-Mediation Costs. As defined in Section 15.5(d)(i).

2.60 Property. The real property legally described in Exhibit A-1, the appurtenances thereto, and all Improvements now in place or hereafter constructed thereon; plus any Additional Land or other property that is annexed into the Property from time to time in accordance with Article VII, the appurtenances thereto, and all Improvements that are in place thereon as of such annexation or are thereafter constructed thereon. All easements and licenses and other matters of Record affecting the Property as of the date of this Declaration and known by Declarant are listed on Exhibit B.

2.61 Records. The official real property records of the County; the phrases “to Record” and “Recording” mean, respectively, to file or filing for recording in the Records, and the phrases “of Record” and “Recorded” mean having been recorded in the Records.

2.62 Reserve Fund. A reserve fund to be established and maintained by the Association for the periodic major repair or replacement of the Common Elements and for unbudgeted and unplanned Common Expenses incurred by the Association from time to time.

2.63 Residence. A single-family attached residential dwelling located on a Lot and any fixtures attached and other improvements appurtenant thereto (including without limitation decks, deck supports and patios), comprised of one or more connected rooms constituting a separate, independent housekeeping unit for permanent residential occupancy and containing at least one kitchen facility.

2.64 Respondent. As defined in Section 15.5(a).

2.65 Roof. The entirety of the roofing system of a Building, including felt, underlayment, shingles, flashing and similar elements, but excluding decks or deck supports or structures that may be attached thereto or located thereon from time to time.

2.66 Rules. The rules and regulations governing the use of the Property which may be adopted from time to time by the Board. The Rules will be binding upon all Owners and their Permittees.

2.67 Sales Facilities. As defined in Section 9.3.

2.68 Settlement Demand. As defined in Section 15.5(b)(v).

2.69 Settlement Offer. As defined in Section 15.5(b)(v).

2.70 Special Assessment. An Assessment levied in accordance with Section 11.6.

2.71 Special Declarant Rights. The rights of Declarant set forth in Article IX.

2.72 Specific Assessment. An Assessment levied in accordance with Section 11.7.

2.73 Supplemental Declaration. An amendment to this Declaration filed in the Records pursuant to this Declaration.

2.74 Taking. A taking by eminent domain or conveyance in lieu thereof.

2.75 Termination of Mediation. As defined in Section 15.5(b)(iv).

2.76 Termination of Negotiations. As defined in Section 15.5(b)(ii).

2.77 The Neighbourhoods at Keystone. The large planned community created by the Neighbourhoods Declaration.

2.78 Unimproved Lot. A Lot upon which one Residence may be constructed pursuant to applicable zoning or governmental approvals, but the construction of which has not commenced or is not completed, as evidenced by the issuance of a temporary or permanent certificate of occupancy by the County. Once the Improvements are complete on an Unimproved Lot and the County has issued a temporary or permanent certificate of occupancy for the Improvements, an Unimproved Lot will automatically become an Improved Lot and the Common Allocations will automatically be adjusted by the Association in accordance with the formulas set forth in Section 2.19, all without the necessity of recording a Supplemental Declaration.

2.79 Working Capital Fee. As defined in Section 11.13.

### **ARTICLE III**

#### **CREATION OF THE COMMUNITY**

3.1 Creation. Upon the Recording of this Declaration, the Property will be a “planned community” pursuant to CCIOA, and the name of the planned community will be “Alcove.” The Community is situated entirely within the County.

3.2 Number of Lots. Initially, there are \_\_ Lots in the Community. The maximum number of Lots that may be created in the Community pursuant to this Declaration is 24.

3.3 Subdivision of Lot. Except as otherwise provided in this Section 3.3, no Lot may be subdivided or otherwise modified. Notwithstanding the foregoing, but subject to the maximum number of Lots stated in Section 3.2, Declarant may subdivide any portion of the Property it owns pursuant to the exercise of its Development Rights.

3.4 Allocations.

(a) Votes. In all matters submitted to a vote of the Members, each Lot is allocated one vote.

(b) Common Expenses. Each Lot is allocated, and the Owner of each Lot is liable for, a percentage of the Common Expenses equal to such Lot’s Common Allocation. All other costs and expenses of the Association are allocated among the Lots as otherwise provided in this Declaration.

### **ARTICLE IV**

#### **USE RESTRICTIONS**

4.1 Residential and Business Uses.

(a) Residential Use. Except as set forth in this Section 4.1, each Lot will be used only for single-family attached residential and related purposes consistent with this Declaration and the Common Elements will be used only for street, parking, landscaping, drainage, utilities or other purposes related to the otherwise residential character of the Community.

(b) Conduct of Business Activities. No business or trade may be conducted in or from any Lot, except that an Owner or occupant residing in a Residence on a Lot may conduct business activities within such Residence so long as: (i) the existence or operation of the business activities is not apparent or detectable by sight, sound or smell from outside the Residence; (ii) the business activity conforms to all applicable zoning and other legal requirements; (iii) the business activity does not involve regular visitation to the Residence by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Property; and (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. Notwithstanding anything to the contrary, no Owner or occupant residing in a Residence on a Lot may conduct business activities that involve

renting or selling any Competing Merchandise (defined below) within the Property so long as Vail Summit Resorts, Inc. ("VSR") or its affiliate sells or rents one or more items of Competing Merchandise within the Keystone Ski Resort or Keystone Village. For purposes hereof, "Competing Merchandise" shall mean any product, merchandise, service or general sporting goods used for summer or winter recreation, including, but not limited to, ski jackets, ski pants, skis, snowboards, ski or snowboard boots, ski poles, helmets, ski mittens/gloves, ski accessory items (i.e., goggles, sunglasses, gators), fly fishing equipment and accessories and bike rentals for adults.

(c) Business or Trade. The terms "business" and "trade," as used in this provision, will be construed to have their ordinary, generally accepted meanings and will include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full- or part-time; (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

(d) Exceptions. Notwithstanding the above, the leasing of a Residence and the management of such Residence as rental property will not be considered a business or trade within the meaning of this Section 4.1. This Section 4.1 will not apply to any activity conducted by Declarant with respect to the development or sale of the Property, or to any activity conducted by Declarant or the Association that relates to the performance of their respective rights or obligations under this Declaration or otherwise benefits the Owners.

#### 4.2 Leasing of Lots or Residences.

(a) "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the Owner, for which the Owner receives any consideration or benefit including, without limitation, a rent, fee, service, gratuity or emolument, including short-term rentals. All lessees shall be specifically bound by all terms and conditions of the Articles, the Bylaws, the Rules and this Declaration and in the event of any failure of a lessee to comply therewith, the Association shall have the right and power to evict the tenants. The Owner will be liable for any violation of the Articles, the Bylaws, the Rules and this Declaration committed by such Owner's tenant, without prejudice to such Owner's right to collect any sums paid for the tenant. The Owner must make available to the lessee copies of this Declaration, the Articles, the Bylaws and the Rules.

(b) Notwithstanding any contrary provision of this Declaration or the Articles, the Bylaws and the Rules, the authorization of an Owner, set out in Section 4.2(a), above, to lease its Lot shall refer solely to rentals to the public conducted by the Owner directly or through rental agents and shall exclude the use or occupancy of Lots under timeshare, fractional ownership or interval exchange programs (whether the exchange is based on direct exchange of occupancy rights, cash payments, reward programs or other point or accrual systems) or other membership plans or arrangements (collectively, "Occupancy Plans") through which a participant in the plan or arrangement acquires an ownership interest in the Lot or the Improvements thereon with attendant rights of periodic use and occupancy or acquires contract rights to such periodic use and occupancy of the Lot or the Improvements thereon or a portfolio of accommodations including the



Lot or the Improvements thereon, and use of a Lot or the Improvements thereon for or under any such Occupancy Plans is prohibited.

4.3 Unightly or Unkempt Conditions. All portions of a Lot outside of enclosed structures will be kept in a clean and tidy condition at all times. Nothing will be done, maintained, stored or kept outside of enclosed structures on a Lot which, in the determination of the Board, causes an unclean, unhealthy or untidy condition to exist or is obnoxious to the senses. Any Improvements, equipment or other items which may be permitted to be erected or placed on the Lots will be kept in a neat, clean and attractive condition and will promptly be removed upon request of the Board if, in the judgment of the Board, they have become rusty or dilapidated or have otherwise fallen into disrepair. The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions is prohibited, unless either conducted entirely within an enclosed garage or, if conducted outside, begun and completed within 12 hours, and not done on a regular or frequent basis. No Owner or Permittee will dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances in or on any Common Element or any drainage ditch, stream, pond or lake or elsewhere on the Property, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff and such application complies with applicable law.

4.4 Quiet Enjoyment. Nothing will be done or maintained on any part of a Lot that emits foul or obnoxious odors outside the Lot or creates noise or other conditions that tend to disturb the peace, quiet, safety, comfort or serenity of the Owners or Permittees of other Lots. In addition, no noxious or offensive activity will be carried on upon any Lot nor will anything be done or placed on any Lot that is or may become a nuisance or cause any significant embarrassment, disturbance or annoyance to others. As used herein, the term “noxious or offensive activity” will not include any activities that are reasonably necessary to the development and construction of Improvements so long as such activities do not violate the statutes, rules or regulations of any governmental authority having jurisdiction with respect thereto and do not unreasonably interfere with the permitted use of another Lot or with any Owner’s or Permittee’s ingress and egress to and from a Lot.

4.5 Prohibited Conditions. The following conditions, structures and activities are prohibited on the Property:

(a) Antennas. No exterior antennas of any kind, including, without limitation, satellite dishes, will be permitted to be fixed to the exterior of any Building except with the approval of the Association, which approval may be granted in blanket form by the Rules with respect to particular types of antennas or satellite dishes.

(b) Tree Removal. No trees or shrubs will be removed except in compliance with Article XII.

(c) Landscaping. No trees, shrubs or other flora will be planted within five feet of the foundations of the Buildings.

(d) Air-Conditioning Units. No window air-conditioning units or evaporative coolers will be installed.

(e) Lighting. No light will be emitted from any Lot which is unreasonably bright or causes unreasonable glare or shines directly onto an adjacent Lot. Without limiting the foregoing, all exterior lighting visible from the street will not be permitted except as approved by the Design Review Board, provided, however, that (i) there will be no exterior floodlights, searchlights, spotlights or sodium vapor lights; and (ii) any exterior lighting approved by the Design Review Board must be “cutoff” fixtures directed to eliminate glare to neighboring properties. Decorative lights may be displayed seasonally, subject to the Rules.

(f) Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation or similar items will be permitted outside of any structure on a Lot, including, without limitation, lawn ornaments or statues.

(g) Energy Conservation Equipment. Subject to the provisions of Section 38-30-106.7, C.R.S., and Section 38-30-168, C.R.S., no solar energy collector panels or attendant hardware or other energy conservation equipment will be constructed or installed unless approved by the Design Review Board.

(h) Signs. No signs, banners or flags of any kind may be displayed to the public view from any Lot, including, without limitation, banners or similar items advertising or providing directional information, without the written consent of the Design Review Board, except (i) entry and directional signs installed by Declarant and signs erected pursuant to Section 9.3, (ii) one sign, not to exceed two feet by three feet in dimension, which may be used in connection with the sale of the Lot, and (iii) in accordance with §106.5 of CCIOA, an Owner may place (A) one (1) flag that does not bear commercial messages on a flagpole located on the Owner’s Lot, or in a window or balcony of the Residence thereon, the size of which flag and the size and location of any flagpole may be limited by the Design Review Board, and (B) one (1) sign that does not bear commercial messages within the boundaries of the Owner’s Lot or in a window of the Residence located thereon, the size, color, lettering and placement of which may be limited by the Design Review Committee.

(i) Utility Lines. No overhead utility lines, including lines for cable television, will be permitted, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(j) Animals and Pets. No animals of any kind, will be raised, bred, boarded or kept on any portion of the Property, except that a reasonable number of dogs, cats or other usual and common household pets, which are bona fide household pets, or any combination of the foregoing, may be kept on a Lot, subject to any Rules adopted by the Association and in accordance with applicable law. No pets will be kept, bred or maintained on the Property for any commercial purpose. All dogs must be kept on-leash while in the Common Elements.

(k) Garages; Parking. Garage doors will remain closed when not in use for ingress or egress of vehicles or persons. The Board may adopt Rules pertaining to vehicles and parking within the Property from time to time not inconsistent with this Declaration. Any vehicle parked in violation of any Rules may be towed at the direction of the Association and at the expense of the Owner of the affected Lot or the owner of the vehicle. Notwithstanding anything to the contrary in this Declaration, no parking shall be permitted in the driveways for Residences within Buildings 6, 7, 10 and 11; all Owners of such Residences and their Permittees shall be required to park in the garages of such Residences, or in guest parking spots within the Community.

(l) Fencing. Declarant may construct entryways, fences, fence pillars, walls or retaining walls on the Common Elements or those portions the Property owned by Declarant. No other Owners will construct, modify, replace, paint or obstruct any fence, fence pillars, walls or retaining walls without the approval of the Design Review Board. For purposes of this section, hedges will be considered to be the same as fences and subject to the same restrictions. (The term “wall” as used in this section will mean walls which are free-standing and intended to enclose the areas outside a structure.).

(m) Firepits; Grills. No more than one fire pit will be allowed on each Lot and any such fire pit will be gas operated. The design and location of all fire pits on the Property will be subject to approval by Design Review Board. One natural gas or electric barbecue grill shall also be allowed on each Lot. No wood-burning fires will be intentionally caused or created outside of a Residence located on any Lot. No solid-fuel burning devices, such as charcoal grills and wood burning smokers, grills, stoves or fireplaces, shall be used, kept or stored on the Property. Nothing in this Section will permit a fire pit or barbecue grill that may be prohibited by Section 4.7.

(n) Irrigation. Except as approved and provided by the Association, all sprinkler and irrigation systems serving the Lots will draw upon public water supplies only and will be subject to approval in accordance with Article XII of this Declaration. Private irrigation wells are prohibited on the Lots. All landscape irrigation by an Owner will be limited in amount and frequency to that which is reasonably necessary and appropriate, and will not be allowed to result in flooding, saturation or other adverse effects of, on or to other property; provided, however, no irrigation is permitted within five feet of the foundations of the Buildings.

(o) Grading, Drainage and Septic Systems. No Person will alter the grading of the Property without prior approval pursuant to Article XII of this Declaration. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris will be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers or storm drains, or materially alter the rate, volume or location of runoff from a Lot onto adjacent Lot(s) or Common Elements or from the Property onto adjacent property.

(p) Barns, Storage Sheds, Tents, Mobile Homes and Temporary Structures. Except as allowed by the Design Guidelines and approved by the Design Review Board, no barn, storage shed, tent, shack, mobile home or other accessory building or any other

structure of a temporary nature will be placed upon a Lot. This prohibition will not apply to restrict the construction or installation of temporary construction sales trailers or similar temporary structures used in connection with development and sale of the Property.

(q) Outside Storage. No personal property of any kind or type may be stored on any Lot except inside a Residence constructed on such Lot or any other Improvements (except enclosed garages as indicated in Section 4.5) constructed on a Lot that have been approved by the Design Review Board. This prohibition will not be interpreted to apply to normal and customary patio furniture and barbecue grills.

(r) Firearms, Fireworks and Explosives. The discharge of firearms, fireworks or explosives on the Property is prohibited. The term “firearms” includes “B-B” guns, pellet guns, soft pellet guns and other firearms of all types, regardless of size.

(s) Trash and Recycling. Every Owner and Permittee shall store all trash, garbage, debris and other household trash and recyclable material generated within each Lot and awaiting removal therefrom in sanitary, enclosed containers stored within the Residence on such Lot. Rubbish, garbage, debris, recyclable material and other household trash shall not be allowed to accumulate in any Residence. Each Owner and Permittee shall regularly remove all rubbish, garbage, debris, recyclable material and other household trash from such Residence and deposit the same in the Community’s centralized trash and recycling containers. The Association will contract for regular garbage and recycling pick-up from such centralized containers, the cost of which shall be included in the Common Assessments.

4.6 Roads and Common Drives. No motor vehicles may be driven or operated upon the Property except for roads and common drive and parking areas within the Property, in garages or, subject to the restrictions in Section 4.5(k), on driveways approved by the Design Review Board; provided that Declarant and the Association will be permitted to operate motor vehicles on the Property in connection with their respective activities under this Declaration.

4.7 Laws and Ordinances; Neighbourhood Company Documents. Every Owner and Permittee will comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Property. Any violation may be considered a violation of this Declaration. However, the Board will have no obligation to take action to enforce such laws, statutes, ordinances and rules. Every Owner and Permittee will also comply with the terms and conditions of the Neighborhood Company Documents.

4.8 Occupants Bound. All provisions of this Declaration, the Bylaws and the Rules, and the Neighbourhood Company Documents, will also apply to all occupants of any Lot and to Permittees of any Owner or occupant. Every Owner will cause all occupants of its Lot and its Permittees to comply with this Declaration, the Bylaws and the Rules, and the Neighbourhood Company Documents.

4.9 Exceptions for Construction. During the course of actual construction of Improvements, the above use restrictions in this Article IV will not apply to the extent reasonably necessary to permit such construction to be undertaken in a reasonable manner, provided that

nothing is done or occurs during the period of construction that will result in the violation of any such use restriction upon the completion of such construction.

4.10 Declarant's Exemption. Nothing contained in this Declaration will be construed to prevent (a) the exercise by Declarant of any Special Declarant Rights; or (b) the erection or maintenance by Declarant or its duly authorized agents, of temporary structures, trailers, improvements or signs, including without limitation the erection or maintenance of the same on or within the Common Elements, necessary or convenient to the development, marketing or sale of any portion of the Property.

4.11 Rules. In addition to the restrictions, conditions and covenants in this Article IV concerning the use of the Property, the Board from time to time may promulgate and amend reasonable Rules not in conflict with CCIOA, this Declaration or the Bylaws. Prior to the adoption or amendment of any Rule, the Board must notify each Owner about the proposed Rule or amendment to a Rule (whether in writing, via email or on a website) and the Owners must be allowed a reasonable opportunity to be heard at the Board meeting regarding such proposed new or amended Rule.

## **ARTICLE V** **MAINTENANCE**

### **5.1 Association's Responsibilities.**

(a) Maintenance of Common Elements. The Association will repair, maintain and keep in good condition, repair and working order the Common Elements, which repair and maintenance may pertain, without limitation, to:

- (i) All fences, fence pillars, walls or retaining walls installed by Declarant;
- (ii) All landscaping, including without limitation irrigation, and other flora, open spaces, and other Improvements situated upon the Common Elements;
- (iii) All landscaping, including without limitation irrigation, within public rights-of-way that abut or provide access to the Property (unless maintained by any governmental or quasi-governmental entity);
- (iv) Maintenance, repair and replacement of the drainage areas, trash facilities and other Improvements situated upon the Common Elements; and
- (v) Maintenance, repair and replacement of the private streets, driveways or pathways situated upon the Common Elements, including without limitation snow removal.

(b) Maintenance of Owners' Lots. Subject to the limitations set forth in Section 5.1(c), the Association will be responsible for the following:

(i) the maintenance, watering and replacement of all landscaping , including the maintenance of irrigation systems, equipment and time clocks, lawns, trees, shrubs, bushes, flowers and other flora, edging, retaining walls and fencing;

(ii) the maintenance, repair and replacement of Roofs, gutters and downspouts, exterior siding, masonry, soffits, fascia, exterior surfaces of garage doors, windows and exterior doors, and similar exterior components of the Residence on each Lot, including decks and patios;

(iii) the maintenance, repair and replacement of Party Walls; provided, however, each Owner will be solely responsible for the non-structural repair and maintenance of the interior surfaces of the Party Wall located within such Owner's Residence; and

(iv) the maintenance, repair and replacement of driveways, walkways, patios and other exterior concrete flatwork and exterior paved surfaces, including snow removal from driveways and front walkways;

(v) the maintenance, repair and replacement of exterior lighting fixtures, but specifically excluding replacement of light bulbs.

(c) Excluded Maintenance. Unless otherwise assumed by the Association under Subsection 5.2, or the responsibility of the Association under Section 5.1(b), each Owner shall be responsible for all maintenance, repair and replacement of Improvements on such Owner's Lot, including, without limitation, the following:

(i) the maintenance, watering and replacement of flowers planted by Owners as permitted under this Declaration;

(ii) the maintenance, repair and replacement of garage door openers and mechanical devices;

(iii) the maintenance, repair and replacement of all interior features of such Owner's Residence, including, without limitation, walls, floors, ceilings and appliances; and

(iv) the maintenance, repair and replacement of all electrical and plumbing fixtures within such Owner's Residence, other than those located within the exterior walls thereof or on the exterior thereof.

Each Owner will promptly report to the Association any defect or need for repairs for which the Association is responsible.

(d) Maintenance of Other Property. The Association may maintain property which it does not own, including, without limitation, any property that has been transferred to the County or dedicated to the public, if the Board determines that such maintenance is necessary or desirable.

5.2 Election to Perform Owners' Duties. The Association may elect to perform any of the maintenance or repair obligations of an Owner pursuant to Section 5.1(c), if (a) such Owner has failed, for more than 30 days after notice from the Association, to perform its responsibilities under this Declaration with respect to the maintenance or repair of its Lot; and (b) such failure has a material effect on the appearance of such Lot when viewed from any area outside such Lot or has a material adverse effect on the use of another Lot or any Common Element for its permitted and intended use; provided, however, that if such failure is not susceptible of being cured within such 30 day period, the Association will not be entitled to perform any repairs or maintenance if such Owner commences performance of its obligations within such 30 day period and thereafter diligently completes such performance. Such Owner will pay all costs (including, without limitation, reasonable attorneys' fees) incurred by the Association in exercising its rights under this Section 5.2, and such costs will be levied against such Owner as a Specific Assessment. Such payment will be made upon receipt of a demand from the Association therefor. If an Owner fails to make such payment within 30 days of receipt of a demand therefor, the Association will be entitled to take whatever lawful action it deems necessary to collect such payment including, without limitation, foreclosing its lien or instituting an action at law or in equity.

5.3 Neighbourhood Company. The rights and obligations of the Association and the Owners under this Article V are subject to the rights of the Neighbourhood Company under the Neighbourhood Company Documents.

## **ARTICLE VI** **PARTY WALLS**

6.1 Declaration of Party Walls. Each Party Wall is hereby declared to be a party wall appurtenant to the Lots on which the respective Residences sharing such Party Wall are located. The Owner of each Lot sharing a Party Wall will be deemed to own an undivided one-half interest in such Party Wall, together with the necessary or appropriate easements for the perpetual lateral and subjacent support, maintenance, repair, and inspection of the Party Wall, and with equal rights of joint use of such Party Wall. To the extent not inconsistent with the provisions of this Article VI and subject to the provisions of Article XV, the general rules of Colorado law regarding party walls or liability for property damage due to negligent, reckless or willful acts or omissions will apply thereto.

6.2 Restrictions on Use. Neither Owner will have the right to destroy, remove or make any structural changes in the Party Wall constituting a portion of such Owner's Residence which would jeopardize the structural integrity of such Owner's Residence or of the other Residence sharing the Party Wall. Neither Owner of a Party Wall will subject the Party Wall or such Owner's Residence to any use which in any manner whatsoever interferes with the equal use and enjoyment of the Party Wall or the adjacent Residence by the other Owner.

6.3 Intentional or Negligent Damage or Destruction. In the event that a Party Wall is damaged, destroyed or exposed to the elements due to the intentional or negligent act or omission of an Owner or such Owner's Permittee, such Party Wall will be repaired by the Association as set forth in Section 5.1(b); provided, however, that (i) the Owner responsible for such damage, destruction or exposure will compensate the other Owner for any damages sustained to the sheet rock, interior paint, wall paper, molding, woodwork and other trim and finishes, or other

non-structural, interior elements attached to, or incorporated in, the Party Wall within such Owner's Residence; and (ii) the Association will levy a Specific Assessment against the Owner responsible for such damage in order to pay for such repairs, including any temporary measures taken to protect the Residences from the elements or from further damage.

## **ARTICLE VII**

### **DEVELOPMENT OF THE PROPERTY**

7.1 Development Rights. Declarant hereby reserves the following Development Rights for the duration of the Development Period:

(a) Withdrawal of Property. To the extent permitted by CCIOA, Declarant reserves the right to amend this Declaration to withdraw all or any portion of the Property from the Community from time to time whether originally described in this Declaration or annexed into the Property pursuant to Section 7.1(b). Declarant will effect each such withdrawal by Recording a Supplemental Declaration. Upon withdrawal of any portion of the Property, such portion will become a part of the Additional Land and the Common Allocation for each remaining Lot will be recalculated in accordance with the formulas in Section 2.19. Any Supplemental Declaration used to effectuate a withdrawal pursuant to this Section 7.1(a) will not require the consent of any Person other than the Owner of the portion of the Property to be withdrawn, if other than Declarant. If the portion of the Property to be withdrawn includes any of the Common Elements, the Association will consent to such withdrawal upon the request of Declarant.

(b) Annexation of Additional Land. Declarant reserves the unilateral right, but not the obligation, to annex from time to time all or any portion of the Additional Land into the Community, causing it to be made part of the Property and subject to the provisions of this Declaration; provided, however, that such right of annexation shall apply only to those portions of the Additional Land owned in fee simple by Declarant at the time of annexation or for which the owner has consented to such annexation. With respect to any portion of the Additional Land annexed into the Community pursuant to this Section, Declarant reserves the unilateral right to create additional Lots and Common Elements within and from such annexed portion of the Additional Land as deemed appropriate by Declarant in its complete discretion. No annexation of any portion of the Additional Land by Declarant pursuant to this Section shall require the consent or approval of any other Owner or any Mortgagee. Declarant shall effect each such annexation by Recording a Supplemental Declaration. Upon and only upon the Recording of such a Supplemental Declaration, the restrictions of this Declaration shall apply to the annexed portion of the Additional Land in the same manner as if it had been originally subject to this Declaration. A Supplemental Declaration annexing all or any portion of the Additional Land must contain, in addition to the requirements of Section 210 of CCIOA, (i) a reference to this Declaration, which reference shall state the date of Recording and the recording information for this Declaration as initially Recorded; (ii) a statement that the provisions of this Declaration shall apply to the annexed portion of the Additional Land; and (iii) an adequate legal description of the annexed portion of the Additional Land.



(c) Creation and Conversion of Lots and Common Elements. Declarant reserves the right (i) to establish and create Lots upon any portion of the Property subject to Development Rights pursuant to this Declaration or the Maps (which shall include all portions of the Property pursuant to which a Map creating Lots has not been Recorded), and to establish, create and convert Common Elements as provided in Section 7.3.

(d) Modification of Lots. Subject to the limitations of Section 3.2, Declarant reserves the unilateral right to divide any of the Lots into additional Lots, and to change the boundary line of or reconfigure any Lots or other portions of the Property owned by Declarant as deemed appropriate by Declarant in its complete discretion.

7.2 Exercise of Development Rights. Declarant will exercise any Development Right by preparing, executing and Recording a Supplemental Declaration as necessary to effectuate the exercise of such Development Right, which Supplemental Declaration will be accompanied by any amendment or supplement to the Maps as required by CCIOA. If the exercise of Development Rights by Declarant results in the creation of additional Lots or a reduction in the number of Lots, then the Common Allocation for each Lot will be automatically recalculated pursuant to the formulas prescribed in Section 2.19. If Declarant, by exercising any Development Right, creates any new Common Elements, then the Supplemental Declaration will describe such newly created Common Elements. Declarant may, but will not be obligated to, exercise any or all of the Development Rights with respect to any portion of the Property or the Additional Land, in such order and at such times as Declarant elects, if at all, in Declarant's sole and absolute discretion, and the exercise of some or all of the Development Rights with respect to a portion of the Property or the Additional Land will not require that such Development Rights be exercised with respect to any other portion of the Property or the Additional Land. Except as expressly provided to the contrary in this Declaration, Declarant's exercise of any Development Right will not require the consent of the Association or any other Owner.

### 7.3 Common Elements.

(a) Generally. The initial Common Elements are described on Exhibit C. Declarant will be responsible for completing the construction of any Improvements that Declarant determines will be located on or that will constitute such Common Elements, including, without limitation, landscaping, monuments, drainage facilities, sidewalks, fences, walls and plantings, trash facilities and guest parking areas. Common Elements that comprise Improvements located on or within public rights-of-way will automatically become the property of the Association upon Declarant's substantial completion of such Improvements.

(b) Conversions. For the duration of the Development Period, Declarant reserves the unilateral right to convert any Lot or other portion of the Property owned by Declarant into Common Elements, so long as the pertinent Lot or portion of the Property is owned by Declarant or by an Owner who has agreed to the conversion with Declarant.

(c) Association's Obligation. The Association will accept any grant, conveyance or dedication to it of any Common Elements made pursuant to this Declaration by Declarant.

7.4 Map Amendments. Declarant reserves the right to amend the Maps as it applies specifically to any Lot or other portion of the Property or the Additional Land owned by Declarant, or owned by another Owner with such Owner's consent, or other Recorded documents, including without limitation this Declaration, in order to create any easements necessary for the orderly development of the Property or the Additional Land, or in order to create any easements for the use and convenience of the Association and the Owners. By taking title, each Owner of any Lot covenants and agrees to furnish cooperation (including any consent as required by the County) in connection with and not object to such proposed amendment so long as the amendment is sought in a manner that complies with the procedures prescribed in the applicable ordinances, rules and regulations of the County. No Owner required to cooperate with a proposed amendment to the Maps pursuant to this Section 7.4 will be required to incur any costs or expenses in connection with such cooperation.

7.5 Succession to Declarant's Interests. The rights and interests reserved to or otherwise allocated in favor of Declarant under this Declaration may be assigned or transferred by Declarant, at its election and in whole or in part, to another Owner or other transferee, but only by an instrument expressly assigning or transferring such rights and interests. Each transferee of any portion of the Property, by such transferee's acceptance of the transfer or conveyance of Record, and any third party transferee or owner of any portion of the Additional Lands, by its consent to a Supplemental Declaration by which the pertinent Additional Land is annexed into the Property, will be bound by and subject to all of Declarant's rights and interests under this Declaration governing the transfer of those rights and interests. Each such transferee and each Owner, and their successors in interest, will be bound to execute and deliver such documents as Declarant may require from time to time in order to verify and confirm Declarant's rights and interests under this Declaration.

## **ARTICLE VIII** **EASEMENTS**

8.1 Easement for Use, Access and Enjoyment in and to Common Elements. Declarant hereby establishes and grants to each Owner a nonexclusive easement of use, access and enjoyment in and to the Common Elements. Any Owner may extend its right of use and enjoyment to its tenants and Permittees and the Permittees of its tenants subject to reasonable regulation by the Board. Without limiting the generality of the foregoing, Declarant hereby grants to each Owner a nonexclusive perpetual easement over and across all walkways and other pedestrian access-ways and all private drives, roads and streets designated as Common Elements, including, without limitation, any access easements of Record, for the purpose of gaining pedestrian or vehicular access, as applicable, between the public streets and sidewalks adjoining the Property and such Owner's Lot or any other Common Elements. The easement granted by this Section 8.1 will be appurtenant to and pass with the title to the Lots and will be subject to:

- (a) This Declaration and any other applicable covenants, and any other easements, rights-of-way or other title matters Recorded against the Property;
- (b) The right of the Board to adopt Rules regulating the use and enjoyment of the Common Elements in a manner consistent with their intended purpose;

(c) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Elements subject to such approval requirements as may be set forth in this Declaration or CCIOA; and

(d) The right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of the Common Elements as security for money borrowed or debts incurred, subject to the limitations of CCIOA.

## 8.2 Easements Benefiting the Association.

(a) Declarant hereby establishes and grants to the Association a non-exclusive easement over each Lot and other portions of the Property (but excluding in any case the interior of any building Improvements for the purpose of: (i) permitting the Association reasonable and necessary access to the Property for the purpose of maintaining, repairing, replacing and improving the Property and the Improvements thereon in accordance with the provisions of this Declaration; (ii) installing, maintaining, repairing, replacing and improving exterior facades, Party Walls, Roofs, landscaping, fencing, sidewalks, irrigation and water distribution systems in accordance with the provisions of this Declaration; (iii) maintaining all landscaping and other flora on Owners' Lots and removing snow from sidewalks and driveways on Owners' Lots; and (iv) permitting the Association reasonable and necessary access to any of the Lots or Residences thereon for the purpose of performing any other maintenance or repair required of the Association on such Residence in accordance with the provisions of this Declaration; provided, however, that in using such easement, the Association will not unreasonably interfere with any Owner's quiet use and enjoyment of such Owner's Lot and Residence. The easements granted pursuant to this Section 8.2 will be subject to this Declaration and any other applicable covenants, and any other easements, rights-of-way or other title matters Recorded against the Property, and any other restrictions or limitations contained in any deed conveying the Common Elements to the Association.

8.3 Easements for Encroachments. In the event that, as a result of the construction, reconstruction, shifting, settlement, restoration, rehabilitation, alteration or improvement of any Improvement located on a Lot or the Common Elements or any portion thereof, any portion of any Lot or Common Elements now or hereafter encroaches upon any other Lot or Common Elements, Declarant hereby establishes and grants an easement for the continued existence and maintenance of such encroachment which will continue for so long as such encroachment exists and which will burden the Lot or Common Elements encroached upon and benefit the encroaching Lot or Common Elements. In no event, however, will an easement for any such encroachment be deemed established or granted if such encroachment is materially detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Lot(s) burdened by such encroachment or if such encroachment occurred due to willful and knowing misconduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

8.4 Easements Benefiting Declarant. Declarant hereby reserves such easements over and across the Common Elements, which easements will exist for the duration of the Development Period, as may be reasonably necessary for Declarant's exercise of any Special Declarant Right,

performance of any of Declarant's obligations hereunder, and the showing of the Property to prospective purchasers.

8.5 Easement for Utilities. Declarant reserves for itself and its successors, assigns and designees, (including, without limitation the Association and its successors, assigns and designees), perpetual non-exclusive easements upon, across, over and under all of the Property (but not through any structures) to the extent reasonably necessary for the purposes of monitoring, replacing, repairing, maintaining and operating fiberoptic systems, cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals, and all utilities, including, without limitation, water, sewer, telephone, gas, electricity and storm and surface water drainage, and for installing any of the foregoing on property which Declarant or the Association, respectively, owns or within easements designated for such purposes on the Maps. This reserved right must be exercised, and any specific easements established pursuant thereto, no later than the expiration of the Development Period. The designees of Declarant and the Association may include, without limitation, any governmental or quasi-governmental entity and utility company. Declarant specifically grants to the local water supplier, cable television provider, telephone company, internet provider, sanitary and/or storm sewer district or company, electric company, natural gas supplier and other utility providers easements across the Property for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. The easement provided for in this Section 8.5 will in no way affect, avoid, extinguish or modify any other Recorded easement on the Property. Any damage to a Lot resulting from the exercise of the easements described in this Section 8.5 will promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of such easements will not extend to permitting entry into the structures on any Lot, nor will it unreasonably interfere with the use of any Lot.

8.6 Owners' Easement for Utilities. In the event that any utilities lines or equipment are located as of the date of this Declaration, or are subsequently located due to practical necessity, in, on, over or through the Lot of another, Declarant hereby establishes and grants an easement for the existence and maintenance of such utilities that will burden the Lot upon which such utilities are located and benefit the Lot(s) served by such utilities. In no event, however, will an easement for any subsequent installed utilities be deemed established or granted if such utility easement is materially detrimental to or interferes with the reasonable use and enjoyment of the Lot burdened by such utility easement. In the event that the Owner of a Lot benefited by such utilities elects to perform maintenance, repair, replacement or other work relating to the utilities in the easement, such Owner will: (a) provide the other Owner with reasonable prior notice of such activities; (b) cause such activities to be performed in a workmanlike manner, and diligently complete the work following commencement; (c) cause the easement area to be returned to substantially the condition that existed prior to such activities; and (d) indemnify the other Owner against all losses and expenses arising out of damage to the other Lot, mechanics' liens and other claims arising out of such work, but excluding loss of use, inconvenience and similar temporary and normal losses incurred by the other Owner so long as the work is performed in a timely and reasonable manner. The Owner of the Lot burdened by any such utility easement will have the right, at its expense, to relocate such utilities on its Lot subject to the rules and regulations of the applicable utility provider.

8.7 Easement for Utility Meters. Declarant hereby establishes and grants an easement for the use and enjoyment of, including without limitation access to and from, any utility meters installed upon any Lot or thereafter modified by the applicable utility provider, which easement will burden the Lot upon which such utility meters are located and benefit the Owner(s) of the Lot(s) served by such utility meters. Any damage to a Lot resulting from the exercise of the easement described in this Section 8.7 will promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of such easement will not extend to permitting entry into the structures on any Lot, nor will it unreasonably interfere with the use of any Lot.

8.8 Right of Entry. Declarant reserves for the Association and other Persons described below an easement for the right, but not the obligation, to enter upon any Lot: (a) for emergency, security and safety reasons; (b) to inspect any Lot for the purpose of ensuring compliance with this Declaration, the Bylaws and the Rules; and (c) to remove nonconforming Improvements as provided in Section 12.7. Such right may be exercised by any member of the Board and the Association's officers, agents, employees and managers, the members of the Design Review Board pursuant to Article XII, and, for emergency, security and safety purposes, all police, fire and ambulance personnel and other similar emergency personnel in the performance of their duties. This right of entry will include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure such condition within a reasonable time after requested by the Board, but will not authorize entry into any residence without permission of the occupant, except by emergency personnel acting in their official capacities.

8.9 Additional Easements.

(a) Declarant's Right to Grant Easements. Declarant hereby reserves the non-exclusive right and power to grant and/or establish and enjoy, during the Development Period, such additional easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any of the Property or the Additional Land; provided, however that such easements may not materially adversely affect the use, enjoyment or value of any of the Property by the Owners. In addition, during the Development Period, Declarant may unilaterally subject any portion of the Additional Land that is made subject to this Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating the Owners to pay the costs incurred by the Association through Common Assessments. Such covenants and easements pertaining to the Additional Lands shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of such property and shall require the written consent of the owner(s) of such property, if other than Declarant.

(b) Association Right to Grant Easements. Notwithstanding anything to the contrary in this Declaration, the Board may grant easements over the Common Elements owned in fee simple by the Association, if any, for installation and maintenance of utilities, drainage, facilities and roads and for other purposes not inconsistent with the intended use of the Common Elements.

8.10 Easements Run with Land. Except as otherwise provided in this Article VIII, all easements established and granted pursuant to this Article VIII are appurtenant to and run with the Property and will be perpetually in full force and effect so long as this Declaration is in force and will inure to the benefit of and be binding upon Declarant, the Association, Owners, Permittees and any other Persons having any interest in the Property or any part thereof. The Lots and the Common Elements will be conveyed and encumbered subject to all easements set forth in this Article VIII, whether or not specifically mentioned in such conveyance or encumbrance.

## **ARTICLE IX** **SPECIAL DECLARANT RIGHTS**

9.1 Special Declarant Rights. In addition to and without limiting any other right reserved by or for the benefit of Declarant in this Declaration or by operation of CCIOA (all of which will also be Special Declarant Rights), Declarant reserves the following Special Declarant Rights, which, except as expressly provided below, may be exercised by Declarant for the duration of the Development Period, with no limitations on the extent to, or the order in which, such rights are exercised:

- (a) To complete any Common Elements or Improvements described on or in the Maps or this Declaration;
- (b) To exercise any of the Development Rights;
- (c) To maintain sales, construction and management offices and advertising signs on the Property as set forth in Section 9.3;
- (d) To merge or consolidate the Association with another common interest community of the same form of ownership;
- (e) To use easements through the Common Elements for the purpose of making Improvements within the Property or the Additional Land; and
- (f) To appoint and remove the Directors and the officers of the Association during the Declarant Control Period to the extent permitted by CCIOA.

9.2 Transfer of Special Declarant Rights. Declarant may transfer any or all of the Special Declarant Rights in accordance with Section 304 of CCIOA.

9.3 Models and Offices. During the Development Period, Declarant may maintain “Sales Facilities” (as defined below) upon any Lot owned by Declarant (or any other Lot with consent of its Owner) or any portion of the Common Elements. For purposes of this Section 9.3, “Sales Facilities” means such facilities as, in the reasonable opinion of Declarant, may be required, convenient or incidental to the development of, construction of Improvements of, or sale of Lots or other property owned by Declarant, including, without limitation, business offices, construction offices, management offices, signs, model homes and sales offices. The Sales Facilities may be of a number, size and location which Declarant determines will adequately accommodate Declarant’s development, sale and marketing of the Lots and the Property.

## **ARTICLE X**

### **THE ASSOCIATION**

10.1 **Formation; Membership.** The Association will be formed no later than the date the first Lot is conveyed to an Owner other than Declarant. Every Owner, including Declarant, will be a Member of the Association. When an Owner consists of more than one Person, all such Persons will, collectively, constitute one Member of the Association and all such Persons will be jointly and severally obligated to perform the responsibilities of Owner. Following a termination of this Declaration, the Association will consist of all Owners entitled to share in the distribution of proceeds of a sale of the Property. Membership in the Association will automatically terminate when a Person ceases to be an Owner, whether through sale, intestate succession, testamentary disposition, foreclosure or otherwise. The Association will recognize a new Owner as a Member upon presentation of satisfactory evidence of the sale, transfer, succession, disposition, foreclosure or other transfer of a Lot to such Owner. Membership in the Association may not be transferred, pledged or alienated in any way, except to a new Owner upon conveyance of a Lot. Any attempted prohibited transfer of a membership in the Association will be void and will not be recognized by the Association.

10.2 **Board of Directors.** The affairs of the Association will be governed by the Board, which may, by resolution, delegate any portion of its authority to an executive committee or an officer, managing agent or Director of the Association. Except as otherwise specifically provided by law or in this Declaration, the Articles or the Bylaws, the Board may exercise all rights and powers of the Association (including, without limitation, those powers itemized in Section 10.3) without a vote of the Members. Subject to the provisions of this Section 10.2 and Section 9.1(f), the qualifications and number of Directors, the term of office of Directors, the manner in which Directors will be appointed or elected and the manner in which Directors will be replaced upon removal or resignation will be as set forth in the Bylaws. In the performance of their duties, the Directors will act according to their ordinary business judgment, except to the extent CCIOA requires a greater standard of care.

10.3 **Association Powers.** Subject to the rights, powers and authority reserved by and conferred upon Declarant pursuant to this Declaration or CCIOA, the Association will serve as the governing body of the Community and will have all the powers, authority and duties as set forth in (i) this Declaration and the Bylaws, (ii) the Colorado Revised Nonprofit Corporation Act, C.R.S. 7-121-101 et seq., and (iii) Section 302 of CCIOA. The Association may, but will not be obligated to:

- (a) Adopt and amend the Bylaws, and make and enforce the Rules, consistent with the rights, duties, terms and conditions established by this Declaration and the Bylaws;
- (b) Subject to Section 11.1(e), adopt and amend budgets for revenues, expenditures and reserves and assess and collect any Assessments and any other amounts due from Owners or others to the Association;
- (c) Hire and terminate managing agents and other employees, agents and independent contractors;

- (d) Except as otherwise provided in Section 12.2, appoint the members of the Design Review Board;
- (e) Perform services for one or more Members either directly or through the use of an independent contractor;
- (f) Manage extraterritorial activities or improvements pursuant to a contract;
- (g) Exercise any of the enforcement powers set forth in Section 15.7 or elsewhere in this Declaration;
- (h) Institute, defend or intervene in litigation or administrative proceedings in its own name only;
- (i) Make contracts and incur liabilities in accordance with the properly adopted and ratified budget;
- (j) Borrow funds to cover Association expenditures and pledge Association assets as security therefor;
- (k) Cause additional Improvements to be made as a part of the Common Elements in accordance with the properly adopted budget, or otherwise in accordance with this Declaration;
- (l) Regulate the use, maintenance, repair, replacement and modification of the Common Elements in accordance with the properly adopted and ratified budget or otherwise in accordance with this Declaration;
- (m) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property (including, without limitation, one or more Lots);
- (n) Grant easements, leases, licenses and concessions through or over the Common Elements;
- (o) Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements and for any services provided to Owners;
- (p) Enforce the terms of the Declaration, Bylaws and Rules as provided for in this Declaration;
- (q) Impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments;
- (r) Provide for the indemnification of its officers and Directors as provided in the Bylaws or the Articles and maintain directors' and officers' liability insurance;
- (s) Subject to the requirements of CCIOA, assign its right to future income, including the right to receive Assessments; and



- (t) Exercise any other powers necessary or appropriate for the governance and operation of the Association.

This Declaration may not and is not intended to impose any limitations on the powers of the Association to deal with Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with any other Person.

10.4 Bylaws. The Association may adopt Bylaws for the regulation and management of the Association, provided that the provisions of the Bylaws will not be inconsistent with the provisions of this Declaration or CCIOA. The Bylaws may include, without limitation, provisions regarding the voting rights of the Owners, the appointment or election of the Board, and the appointment or election of officers of the Association.

## **ARTICLE XI**

### **FINANCIAL MATTERS AND ASSESSMENTS**

11.1 Financial Matters. The Board, on behalf of the Association, will discharge the following obligations with respect to financial matters:

- (a) Books and Records. The Board will cause to be maintained full and complete books and records of the Association's business and operations, including, without limitation, current copies of this Declaration and all Supplemental Declarations, the Bylaws, the Articles, the Rules, the approved budget for the current fiscal year, financial statements, books and records reflecting all assets, liabilities, capital, income and expenses of the Association, and supporting materials, such as bank statements and invoices, for, unless otherwise permitted or required by CCIOA, at least the shorter of: (i) the prior five fiscal years; or (ii) all of the fiscal years in which the Association has been in existence. All of such books and records will be made available for inspection by any Owner or Owner's authorized representatives during normal business hours upon reasonable prior written request.

- (b) Returns. The Board will cause to be prepared and filed before delinquency any and all tax, corporate or similar returns or reports that the Association is required by law to prepare and file.

- (c) Audit of Association Records. The books and records of the Association will be subject to an audit, using generally accepted accounting standards, or a review, using statements on standards for accounting and review services, at least once every two years by a person selected by the Board. Such person need not be a certified public accountant except in the case of an audit. The audit or review provided for under this Section 11.2(c) will only be required in the event the Association has annual revenues or expenditures of at least \$250,000.00 and such audit is requested by the Owners of at 33% of the Lots represented by the Association. Nothing contained in this Section 11.2(c) will be construed to prohibit the non-mandatory audit or review of the books and records of the Association.

- (d) Preparation of Budget. The Board may, and if levying Assessments will, cause to be prepared and adopt annually, a proposed budget for the Association not less

than 45 days prior to the beginning of each fiscal year of the Association. The proposed budget will include (i) the estimated revenue and expenses of the Association for such fiscal year, in reasonable detail as to the various categories of revenue and expense, and (ii) if a Reserve Fund has been established, the current cash balance of the Reserve Fund, the amount anticipated to be spent during such fiscal year from the Reserve Fund for major repair or replacement of the Common Elements and a statement of the amount required to be added to the Reserve Fund during such fiscal year to cover anticipated withdrawals and adequately address contingencies and anticipated needs in future fiscal years.

(e) Ratification of Budget. Within 90 days after adoption by the Board of any proposed budget for the Association, the Board will send by ordinary first-class mail or otherwise deliver to all Owners a summary of the proposed budget and will set a date for a meeting of the Owners to consider the proposed budget within a reasonable time after mailing or other delivery of the summary. Unless at that meeting Owners owning a majority of the Lots in the Community vote to veto the proposed budget, the proposed budget will be deemed approved, whether or not a quorum is present. In the event that the proposed budget is vetoed, the budget last proposed by the Board and not vetoed by the applicable Owners will continue in effect until such time as a subsequent budget proposed by the Board is not vetoed by the Owners. For the first fiscal year of the Association, the Board may adopt Declarant's estimated budget for the Association and assess Common Assessments, provided that the Board submits such budget to the Owners for consideration in accordance with the foregoing provisions within 90 days after adopting the same.

11.2 Annual Financial Statements. The Board will cause to be prepared annually a report with respect to the financial condition of the Association. Such report will consist of a balance sheet as of the end of the preceding fiscal year, an operating (income) statement for such fiscal year and a statement of changes in the Association's financial position for such fiscal year. A copy of such annual report will be distributed to each Owner within 120 days after the close of each fiscal year.

11.3 Reserve Fund. If the Association establishes a Reserve Fund, the Board will cause the Reserve Fund to be maintained in a bank account that is separate from the bank account(s) used for the Association's ordinary receipts and disbursements.

11.4 Creation of Assessments. There are hereby created assessments for such Association expenses as may be authorized from time to time pursuant to this Declaration. There will be three types of Assessments: (a) Common Assessments; (b) Special Assessments; and (c) Specific Assessments. Each Owner, by accepting a deed for any Lot, is deemed to covenant and agree to pay these Assessments pursuant to the terms and conditions of this Declaration.

11.5 Common Assessments. Each Lot is subject to Common Assessments for the Lot's share of Common Expenses as allocated pursuant to Section 3.4(b). Common Assessments will be calculated, paid, adjusted and reconciled in accordance with the following provisions:

(a) Budget and Payment. The Association will set the Common Assessments for each fiscal year at a level which is reasonably expected to produce total income for the Association for such fiscal year equal to the total Common Expenses set forth in the budget

adopted by the Board and not vetoed by the Owners. In determining the total funds to be generated through the levy of Common Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any Assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to Common Assessments during the fiscal year.

(b) Reconciliation. As soon as reasonably possible after the end of each fiscal year, the Board will cause the actual Common Expenses incurred by the Association during such fiscal year to be reconciled against the Common Assessments received by the Association from the Owners. If there is a surplus of funds at the end of the year, the Board may apply such surplus to the reserves of the Association or may refund the surplus to the Owners either directly or as a credit against future Common Assessments, in proportion to their respective Common Allocations. To the extent that any individual Owner has paid more than its Common Allocation of such actual Common Expenses, the Board may either refund the overpayment to the Owner or credit such overpayment against such Owner's obligation for Common Assessments for the next ensuing fiscal year. To the extent any individual Owner has underpaid its Common Allocation of such actual Common Expenses, the Board may either demand in writing that such Owner pay the amount of such underpayment of Common Assessments to the Association within a specified period of time, as determined by the Board, after the Board notifies such Owner of such underpayment (which period of time may not be less than 30 days), or the Board may include such underpayment in such Owner's obligations for Common Assessments for the next ensuing fiscal year.

11.6 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the Reserve Fund. Subject to Section 11.1, each Lot is subject to Special Assessments as follows: (a) in the case of Special Assessments for the Common Elements or that otherwise benefit all the Owners, each Lot is subject to the Lot's Common Allocation of the Special Assessments levied by the Association; and (b) in the case of a Special Assessment not covered by clause (a) above, the Special Assessments will be levied against the benefited Lots and each benefited Lot will be allocated a percentage share of the Special Assessment equal to a fraction, the numerator of which is the Lot's Common Allocation and the denominator of which is the sum of the Common Allocations for every benefited Lot. No Special Assessment proposed by the Association will be levied until it is ratified by the Owners of the Lots that will be subject to such Special Assessment. A proposed Special Assessment will be ratified unless Owners representing a majority of the votes allocated to the Lots that will be subject to the Special Assessment vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. During the Development Period, any proposed Special Assessment will also require Declarant's consent. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board will have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials. Without limiting the generality of the foregoing, the Board may levy Special Assessments to cover certain costs of restoration or replacement of Common Elements in the event of damage, destruction or Taking of such Common Elements.

11.7 Specific Assessments. The Association will have the power to levy Specific Assessments against one or more particular Lots as follows:

(a) To cover the costs, including overhead and administrative costs, of providing benefits, items or services to such Lot or occupants thereof, upon request of the Owner of such Lot pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which may include, without limitation, landscape maintenance and snow removal), which Specific Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Association;

(b) To cover liabilities and costs (including, without limitation, attorneys' fees) incurred in bringing the Lot into compliance with the terms of this Declaration, the Bylaws or the Rules, or costs incurred as a consequence of the conduct of the Owner or such Owner's Permittees (including, without limitation, any costs incurred at the election of Declarant or the Association to cure a breach or violation of any provision of this Declaration, the Bylaws or the Rules by such Owner or Permittees); provided, however, the Board will give the Owner of such Lot notice and an opportunity to be heard as provided in the Bylaws before levying any Specific Assessment under this Section 11.7(b); and

(c) To cover costs and expenses incurred by the Association that may be levied as Specific Assessments pursuant to the express terms of this Declaration.

11.8 General Provisions. Any payment or documentation required to be received by the Association will be deemed received in a timely manner if sent to the address provided for the Association by first class mail, postage prepaid, and postmarked no later than the date such payment or documentation is due, provided that the Association thereby actually receives such payment or documentation.

11.9 Declarant's Obligation for Assessments. Until the Association levies Assessments, Declarant will pay the Association's costs and expenses. After Assessments commence as provided in Section 11.11, Declarant's obligations for Assessments may be satisfied in the form of cash or by "in kind" contributions of services or materials to the Association, or by any combination of these.

11.10 Lien for Assessments.

(a) Perfection and Priority of Lien. The Association will have a lien against each Lot to secure payment of delinquent Assessments, as well as interest (computed from the due date of such Assessment at a rate of 8% per annum or such lower rate set by the Board), late charges in such amount as the Board may establish by resolution, costs and reasonable attorneys' fees. Such lien will be perfected upon the Recording of this Declaration and no further claim of lien will be required. Notwithstanding the foregoing and without limitation on the effectiveness or perfection of the lien against each Lot, the Association will have the right, but not the obligation, subject to applicable law, to prepare and Record a "Notice of Lien" in a form satisfactory to the Board which may set forth (i) the amount of any Assessment, charge, fine or other amount due and owing to the

Association; (ii) the date such amount was due and payable and the date from which interest accrues; (iii) a recitation of the costs and expenses (including reasonable attorneys' fees) incurred in attempting to collect the unpaid amount as of the date of recording of such Notice of Lien; (iv) the Lot encumbered by the lien; and (v) the name or names, last known to the Association, of the Owner of the Lot. Such lien will be superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law are superior, (b) liens for charges against the Lot imposed pursuant to the Neighbourhoods Declaration; and (c) the lien or charge of any First Mortgage made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments will be prior to a First Mortgage to the extent provided by CCIOA.

(b) Enforcement of Lien. Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of mortgages under the laws of the State of Colorado, subject to any limitations set forth in CCIOA. The Association may bid for a Lot at any foreclosure sale and acquire, hold, lease, mortgage and convey such Lot. While a Lot is owned by the Association following foreclosure: (i) no right to vote will be exercised on behalf of the Association as Owner of such Lot; (ii) no Assessments will be levied against such Lot; and (iii) each other Lot will be charged, in addition to its usual Assessments, its pro rata share of the Assessments that would have been charged the Lot acquired by foreclosure had such Lot not been acquired by the Association. Subject to any limitations set forth in CCIOA, the Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(c) Transfer of Lot. The sale or transfer of any Lot will not affect an existing lien for previous Assessments or relieve such Lot from any lien for subsequent Assessments. Upon sale or transfer of a Lot pursuant to foreclosure of a First Mortgage, the amount of Assessments included in any lien extinguished by foreclosure of a First Mortgage will become Common Expenses collectible as Common Assessments levied against the Lots subject to Common Assessments, excluding, however, the Lot acquired through the foreclosed First Mortgage.

11.11 Commencement of Assessments. The obligation to pay Common Assessments and Special Assessments will commence as to each Lot on the first day such Assessments are levied. The obligation to pay Specific Assessments will commence as to any Lot when the Association levies the Specific Assessments against the Lot pursuant to this Declaration. The first annual Common Assessments and Special Assessments levied on each Lot will be prorated according to the number of months remaining in the fiscal year at the time Assessments commence on the Lot.

11.12 Failure to Assess. Failure of the Board to fix Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification or release of any Owner's obligation to pay Assessments. In such event, each Owner will continue to pay Common Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

11.13 Working Capital Fee. To provide the Association with sufficient working capital and funds to cover the cost of unforeseen expenditures, to defray operating expenses, to purchase

additional equipment or services, or to fund the general operations and obligations of the Association, a “Working Capital Fee” will be established in an amount equal to two months’ Common Assessments (based on the then current budget for the Association) for each Lot. Following the issuance by the County of a temporary or permanent certificate of occupancy for the Improvements on a Lot, the first Owner of such Lot other than the Declarant, and any successor Owner of such Lot, will be required to contribute to the Association an amount equal to two months’ Common Assessments as a Working Capital Fee. No Owner will be entitled to a refund of the amount contributed as a Working Capital Fee by such Owner or by such Owner’s transferee upon the subsequent transfer of the Lot. Amounts contributed as the Working Capital Fee will not constitute advance payments of Common Assessments, and will not be maintained by the Association in a segregated fund. The Working Capital Fee will constitute, and will be enforceable as, a Specific Assessment.

11.14 Administrative Fee. To defray the administrative costs incurred by the Association and/or any management company or agent engaged by the Association arising out of or relating to the transfer of a Lot, upon any transfer of a Lot the Owner acquiring such Lot may be required to pay an administrative fee to the Association or its management company or agent in a fixed amount determined by the Board from time to time in its reasonable discretion based on the normal and customary expenses so incurred, which fee will be due upon the closing of such transfer of the Lot. The foregoing administrative fee will constitute, and will be enforceable as, a Specific Assessment.

11.15 Exempt Property. The following property will be exempt from payment of Assessments: (i) all Common Elements owned in fee simple by the Association, if any; and (ii) any property dedicated to and accepted by any governmental authority or public utility.

## **ARTICLE XII**

### **ARCHITECTURAL STANDARDS**

#### **12.1 General Requirements.**

(a) Compliance and Approval. Subject to Sections 12.1(b), 12.1(d) and 12.8, no Improvements, including, without limitation, landscaping, will be constructed, installed, modified, renovated on any Lot, nor will any Improvements on any Lot be demolished or removed except with the prior approval of the Design Review Board pursuant to this Article XII and any approvals required pursuant to the Neighbourhood Company Documents.

(b) Interior Modifications; Modifications in Accordance with Original Plans. Any Owner may remodel, paint or redecorate the interior of structures on a Lot without approval of the Design Review Board pursuant to this Article XII; provided however, such remodel does not, either during the remodel or after completion, impair the structural stability, or building systems of, including, without limitation, any acoustical separation assemblies or other components designated to mitigate the transmission of sound through walls and other physical separations, or diminish the support of any portion of the Building. Nothing in this Declaration will be construed to allow uses or Improvements inconsistent with applicable zoning.

(c) Use of Licensed Architects. All Improvements constructed on any portion of the Property will be designed by and built in accordance with the plans and specifications of a licensed architect; provided, however, that the Design Review Board may waive this requirement for one or more Lots or Owners, in its sole and absolute discretion.

(d) Declarant and Common Elements Exempt; Declarant Approvals. Notwithstanding any provisions to the contrary contained in this Declaration, this Article XII will not apply to the activities of Declarant. Furthermore, in the event that Declarant, before the formation of the Design Review Board or at any time during the Development Period, renders any written approval of any specified Improvements at the request of and for the benefit of any Owner, the Design Review Board will be bound by that approval as if it had given such approval in the first instance pursuant to the terms of this Declaration.

(e) No Amendment without Declarant's Consent. This Article XII may be amended during the Development Period only with Declarant's written consent.

12.2 Design Review Board. Responsibility for promulgating and enforcing the Design Guidelines and review of all applications for Improvements subject to review under this Article XII is vested in the Design Review Board, and not the Association, which has no role in design or architectural review for the Property, except to the extent the Association, acting through the Board, may be authorized to appoint members to the Design Review Board, as provided for below. The Design Review Board will consist of an odd number of members, with a minimum limit of one member and a maximum limit of five members, who will be natural Persons. During the Development Period, Declarant will have the exclusive right, in its full discretion, to appoint and remove all members of the Design Review Board. Declarant may surrender its right to appoint the members of the Design Review Board by a Recorded instrument executed by Declarant. After such period or upon Declarant's earlier surrender of its right to appoint and remove the members of the Design Review Board, the Board will have the exclusive right, in its full discretion, to appoint and remove all members of the Design Review Board.

12.3 Design Guidelines. The Design Review Board may adopt Design Guidelines at an initial organizational meeting or at any time thereafter. The Design Guidelines, if any, will provide guidance to Owners regarding matters of particular concern to the Design Review Board in considering applications hereunder. The Design Review Board will have sole and full authority to amend the Design Guidelines. Any amendments to the Design Guidelines will be prospective only and will not apply to require modifications to plans or removal of structures previously approved by the Design Review Board. The Design Guidelines will be automatically deemed to include any other design, construction, use or landscaping guidelines, requirements or restrictions contained in any other Recorded documents affecting all or substantially all of the Property, including, without limitation, the Maps.

12.4 Procedures. The Design Review Board may meet from time to time as necessary to perform its duties hereunder. The vote of the majority of all of the members of the Design Review Board, or the written consent of a majority of all of such members, will constitute an act of the Design Review Board. In the event that the Design Review Board fails to approve or

disapprove any application within 30 days after submission of all information and materials reasonably requested, the application will be deemed rejected.

12.5 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, will not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

12.6 Limitation of Liability. Review and approval of any application pursuant to this Article XII are made on the basis of aesthetic considerations only and the Design Review Board will not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for ensuring compliance with building codes and other governmental requirements, for ensuring that the proposed Improvements do not interfere or encroach upon property boundaries, easements or setbacks, for changes in drainage on either the Owner's Lot or any adjacent property, or for ensuring compliance of such improvements with any specific requirements of this Declaration (e.g., restrictions on altering established drainage). Neither Declarant, the Association, the Board, the Design Review Board nor any member of any of the foregoing will be held liable for the approval or rejection of any submittal, nor any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the Design Review Board and its members will be defended and indemnified by the Association as provided in the Articles.

12.7 Enforcement.

(a) Removal of Improvements. Any Improvement constructed, installed, modified or renovated on or to any Lot in violation of this Article XII will be deemed to be nonconforming. Upon written request from the Design Review Board, the Owner of the Lot on which such Improvement is located will, at such Owner's own cost and expense, remove such Improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming work or, if applicable, cure such nonconformance by bringing the Improvement into compliance with the requirements of the Design Review Board. Should an Owner fail to remove and restore or cure as required, then the Association, acting through the Board, in accordance with Section 10.3, will have the right, to enter the Lot, remove the nonconforming Improvement, and restore the Lot to substantially the same condition as previously existed. All costs of any such entry, removal and restoration, together with interest at the maximum rate then allowed by law, may be assessed against the subject Lot and collected as a Specific Assessment.

(b) Completion of Work. Unless otherwise specified in writing by the Design Review Board, any approval granted under this Article XII will be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association, acting through the Board in accordance with Section 10.3, will be authorized to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment.



(c) Exclusion from Property. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article XII may be excluded from the Property. Neither Declarant nor the Design Review Board will be held liable to any Person for exercising the rights granted by this Section 12.7.

(d) Legal and Equitable Remedies. In addition to the foregoing, Declarant and/or the Design Review Board will have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article XII and the decisions of the Design Review Board.

12.8 Variances and Exemptions. The Design Review Board, in its sole discretion, may:  
(a) permit variances from the substantive or procedural provisions of the Design Guidelines; or  
(b) exempt any Lot from the requirements of the Design Guidelines.

### **ARTICLE XIII** **INSURANCE, DAMAGE AND TAKINGS**

13.1 Association's Insurance. The Association's responsibilities with respect to insurance will be as follows and, except as expressly provided to the contrary in this Declaration, the cost of all insurance maintained by the Association hereunder will be included in Common Expenses:

(a) Property Insurance. The Association will maintain property insurance upon the Common Elements, the Residences (but, unless otherwise determined by the Association, not the finished interior surfaces of the walls, floors and ceilings of the Residences, or any interior improvements, finishes, fixtures or other betterments within a Residence) and any personal property of the Association, if any, all as more particularly set forth on Exhibit E ("Insurance Requirements") as "Association" responsibilities (collectively, the "Association Insured Property"), in such amounts, against such risks, and containing such provisions as the Board may reasonably determine from time to time, but at a minimum insuring against all risks of direct physical loss as the result of fire or other hazard for 100% of the full replacement cost of the Association Insured Property (excluding land, excavations, foundations and other items normally excluded from property policies) less a deductible in an amount not to exceed \$10,000, at the time such insurance is purchased and at each renewal date; provided, however, that such property insurance will not cover any personal property not owned by the Association. Such property insurance will be maintained in the name of the Association, for the use and benefit of all Owners and Mortgagees, who may be named as additional insureds, as their interests may appear. To the extent available on reasonable terms, such property insurance will further (i) contain no provisions pursuant to which the insurer may impose a so-called "co-insurance" penalty; (ii) permit a waiver of claims among, and provide for a waiver of subrogation by the insurer as to claims against, the Association, its directors, officers, employees and agents, each Owner and the members of such Owner's household, each Mortgagee, any other person for whom the Association or any Owner or Mortgagee may be responsible, and any Insured Permittee; (iii) be written as a primary policy, not contributing with and not supplemental to the coverage that any Owner may carry;

(iv) provide that, notwithstanding any provision that gives the insurer an election to restore damage in lieu of making a cash settlement, such option will not be exercisable if the proper party(ies) elect not to restore the damage in accordance with the provisions of this Declaration or CCIOA; (v) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (vi) provide that it may not be cancelled, nor may coverage be reduced, without 10 days' prior notice to the Association and all additional insureds named therein. In the event of an insured loss, the deductible will be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after providing notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners or their Permittees, then the Board may assess the full amount of such deductible against such Owners and their Lot as a Specific Assessment.

(b) Liability Insurance. The Association will maintain commercial general liability insurance insuring against damage, injury or death caused by the negligence of the Association or any of its Members, officers, directors, employees agents or contractors while acting on its behalf, with all Owners and First Mortgagees named as additional insureds, in such amounts and with such coverage as may be determined from time to time by the Board; provided that, to the extent available on reasonable terms, such liability insurance will (i) have a combined single occurrence limit of not less than \$1,000,000; (ii) contain a "severability of interest" or "cross-liability" endorsement which will preclude the insurer from denying the claim of any named or additional insured due to the negligent acts, errors or omissions of any other named or additional insured; (iii) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner may carry; (iv) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; (v) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use, ownership or maintenance of the Common Elements and legal liability arising out of lawsuits related to employment contracts of the Association; and (vi) provide that it may not be cancelled, nor may coverage be reduced, without 30 days' prior written notice to the Association and all additional insureds named therein. The liability insurance required to be maintained under this Section 13.1(b) will not include coverage for any liability arising out of the operation, use, ownership or maintenance of any portion of a Lot that does not comprise a Common Element.

(c) Worker's Compensation and Employer's Liability. The Association will maintain such worker's compensation and employer's liability insurance as may be determined from time to time by the Board, provided that such insurance will in no event be maintained in an amount or with coverages less than that required by applicable law.

(d) Automobile Insurance. If the Association operates owned, hired or non-owned vehicles, the Association will maintain comprehensive automobile liability

insurance at a limit of liability of not less than \$1,000,000 for combined bodily injury and property damage.

(e) Directors' and Officers' Insurance. The Association may maintain directors' and officers' liability coverage in such amount as it determines from time to time.

(f) Fidelity Insurance. The Association will maintain fidelity insurance or bonds covering losses resulting from dishonest or fraudulent acts committed by the Association's directors, officers, managing agents, trustees, employees or volunteers, which may include one or more of the Owners, who handle or manage the funds collected and held for the benefit of the Association. Such policy or bond (i) must name the Association as the insured or obligee (as the case may be), (ii) include a provision requiring at least 30 days' written notice to the Association before any cancellation of, or material modification in, such policy, (iii) provide coverage in an amount equal to the estimated maximum of funds subject to such handling or management, including reserves, but no less than three months' Common Assessments against all Lots, based on the Common Assessments most recently approved by the Board, plus the amounts held in the reserve fund; and (iv) contain waivers by the issuer of any bond or by the insurer of all defenses based on exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. If the Association engages a managing agent that will handle funds of the Association, such managing agent must also maintain fidelity insurance satisfying the foregoing requirements and provide evidence of such coverage to the Board.

(g) Other Insurance. The Association may procure and maintain such other insurance as the Board may from time to time deem appropriate to protect the Association or the Owners.

(h) Qualifications of Insurers. All policies of insurance required to be maintained by the Association will be placed with insurers that are generally accepted as reputable insurers and that are licensed in the State of Colorado.

13.2 Owners' Insurance. The Owners' responsibilities with respect to insurance will be as follows:

(a) Property Insurance. Each Owner will maintain at its expense (or will cause its Permittee to maintain at its expense) property insurance upon those portions of its Residence not constituting Association Insured Property, and all personal property of Owner, as more particularly set forth in the Insurance Requirements as "Owner" responsibilities, in such amounts (but in no event less than 100% of the replacement cost), against such risks, and containing such provisions as the Owner may reasonably determine from time to time. Such property insurance will (i) permit a waiver of claims among, and provide for a waiver of subrogation by, the insurer as to claims against the Association, its directors, officers, employees and agents, each Owner and the members of such Owner's household, each Mortgagee, any other person for whom the Association or any Owner or Mortgagee may be responsible, and any Insured Permittee; and (ii) be written as a primary

policy, not contributing with and not supplemental to the coverage that the Association may carry.

(b) Liability Insurance. Each Owner will maintain at its expense bodily injury and property damage liability insurance for the benefit of such Owner and such additional insureds as it may elect to name, in such amounts and with such coverage as are from time to time be customarily maintained by prudent owners of similar property; provided that such liability insurance will (i) have a combined single occurrence limit of not less than \$300,000; (ii) be written as a primary policy, not contributing with and not supplemental to any coverage that the Association or another Owner may carry; and (iii) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use, ownership or maintenance of such Owner's Lot.

(c) Other Insurance. Each Owner may obtain additional insurance, at its own expense, affording personal property, association assessment, loss of rents, personal liability and any other coverage obtainable, to the extent and in the amount such Owner deems necessary to protect its own interests; provided that any such insurance will contain waivers pursuant to Section 13.5 and will provide that it is without contribution as against the insurance maintained by the Association.

(d) Assignment of Proceeds. If a casualty loss is sustained and there is a reduction in the amount of proceeds that would otherwise be payable under any policy of insurance carried by the Association due to the existence of any insurance carried by an Owner or Permittee, such Owner or the Owner of such Permittee's Lot will be liable to the Association to the extent of such reduction and will pay the amount of such reduction to the Association upon demand; such Owner also hereby assigns the proceeds of its insurance, to the extent of such reduction, to the Association.

13.3 Certificates of Insurance; Notices of Unavailability. Each Owner will provide to the Association at the Association's request, certificate(s) of insurance evidencing the insurance required to be carried under Sections 13.2(a) and 13.2(b). The Association will, upon the request of any Owner, provide certificates of insurance evidencing the insurance required to be carried by the Association under Section 13.1. If the insurance described in Sections 13.1(a) and 13.1(b) is not reasonably available or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly will cause notice of such fact to be given to all Owners.

13.4 Failure to Comply; Forced Policies; Liability of Association. In the event that any Owner fails to obtain the insurance, or fails to provide the Association with certificates of insurance evidencing the insurance, required to be carried under Section 13.2(a) and 13.2(b), the Association may, but will not be obligated to, obtain such insurance on behalf and at the expense of such Owner. Any insurance so obtained by the Association will not be a Common Expense, but will be an expense of the Owner on whose behalf such insurance is obtained, and the Board may assess the amount of the premium therefor, plus an administrative fee, against such Owner's Lot as a Specific Assessment. The provisions of Section 13.3 and this Section 13.4 notwithstanding, the Association will have no liability to any Owner, Permittee, Mortgagee or other third party, for any

claim, loss, cost, expense or obligation arising out of or resulting from the Association's failure to perform, or negligent performance of, any of its obligations, or its failure to exercise any of its rights, under Section 13.3 or this Section 13.4.

13.5 Waiver of Claims. The Association will make no claim against any Owner or the members of such Owner's household, any Mortgagee, any other person for whom any Owner or Mortgagee may be responsible, or any Insured Permittee, and no Owner, Mortgagee or Insured Permittee will make any claim against the Association, its directors, officers, employees or agents, or any other Owner, Mortgagee or Insured Permittee or any of their respective employees, agents, officers or directors, for any loss or damage to any portion of the Property or any personal property located thereon, and all such claims are hereby waived, to the extent that such loss or damage would be covered by any property insurance policy upon the affected property that is required to be maintained by or for the benefit of the waiving Person under this Declaration (assuming such insurance policy is maintained on a 100% replacement cost basis), that is in fact maintained by such Person, or under which such Person is named as an additional insured. All property insurance policies carried by the Association or any Owner or Insured Permittee will contain a waiver of subrogation in accordance with the preceding sentence. For purposes of this Section 13.5, the deductible amount under any property insurance policy required to be, or in fact, maintained by a waiving Person will be deemed to be "covered" by such policy so that, in addition to waiving claims for amounts in excess of such deductible (up to the covered limits, or deemed covered limits, of such policy), such waiving Person waives all claims for amounts within such deductible. The foregoing notwithstanding, to the extent that any provisions contained in this Section 13.5 would result in an insured party's insurance coverage being reduced, impaired or voided, such provisions of this Section 13.5 will be deemed inoperative and of no effect.

13.6 Proceeds. Except as provided in Section 13.2(d), the Association will have no claim to and each Owner will be entitled to receive all proceeds of any insurance policy maintained by such Owner. The Board will be solely responsible for adjustment of any losses under insurance policies maintained by the Association and is hereby irrevocably appointed the agent of all Owners, Mortgagees and other Persons having an interest in the Property for purposes of adjusting all claims arising under insurance policies maintained by the Association and executing and delivering releases upon the payment of claims. The Association will be entitled to receive all proceeds of any insurance policy maintained by the Association, except that the Association will hold in trust any proceeds under casualty insurance for Owners and their First Mortgagees, as their interests may appear, to the extent they are due such proceeds, and except that other insured parties under liability insurance policies will be entitled to proceeds arising out of their insured losses. The Board will disburse the proceeds of any property insurance relating to damage to any Common Element in accordance with Section 13.8.

13.7 No Abatement. Each Lot will continue to be subject to Assessments following any damage to any portion of the Project, without abatement or modification as a result of such damage.

13.8 Damage and Destruction.

(a) Property Insured by Association.

(i) Immediately after damage or destruction to all or any part of the Association Insured Property covered by insurance written in the name of the Association, the Board or its duly authorized agent will file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means the repair or restoration of the damaged property to substantially the condition in which it existed prior to the damage, allowing for changes necessitated by changes in applicable building codes.

(ii) Any damage to or destruction of the Association Insured Property will be repaired or reconstructed unless, within 60 days after the loss, (1) this Declaration is terminated, or (2) a decision not to repair or reconstruct is made by Members representing at least 67% of the votes in the Association (including, if a Residence will not be rebuilt, the votes of the Owner of such Residence), and, if the damage or destruction occurs during the Development Period, the vote of Declarant. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60 day period, then such period will be extended until such funds and information are available. However, such extension will not exceed 60 additional days. No Mortgagee will have the right to participate in the determination of whether damage or destruction to the Association Insured Property will be repaired or reconstructed.

(iii) If a decision not to repair or reconstruct the damage or destruction to the Association Insured Property is made pursuant to Section 13.8(a)(ii) and no alternative improvements are authorized, the affected property will be cleared of all debris and ruins and thereafter will be maintained by the Association in a neat and attractive landscaped condition.

(iv) Any insurance proceeds attributable to damage to Association Insured Property to be repaired or reconstructed will be applied to the costs of repair or reconstruction and then, if any insurance proceeds remain, distributed among the Owners in proportion to the Common Allocation for each of their Lots. Any insurance proceeds attributable to damage to Association Insured Property not to be repaired or reconstructed will be distributed (1) to the extent attributable to Residences not to be repaired or reconstructed, to the Owners thereof and their First Mortgagees, as their interests may appear, and (2) to the extent attributable to Common Elements, among the Owners in proportion to the Common Allocation for each of their Lots.

(v) If insurance proceeds are insufficient to cover the costs of repair or reconstruction of any Association Insured Property, the Board of Directors may levy a Special Assessments to cover the shortfall.

(vi) Each Lot will continue to be subject to Assessments following any damage to any portion of the Association Insured Property, without abatement as a result of such damage.

(b) Property Insured by Owners. Each Owner covenants and agrees that in the event of damage or destruction to that portion of his or her Residence not constituting Association Insured Property, the Owner will proceed promptly to repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XII. The Owner will pay any costs of such repair and reconstruction that are not covered by insurance proceeds.

### 13.9 Takings.

(a) Taking of Lots. In the event of a Taking of all or any part of any Lot, the Owner thereof will be solely responsible for negotiating with the condemning authority concerning the award for such Taking and will be entitled to receive such award after the liens of all Mortgagees on the affected Lot or portion thereof have been satisfied or otherwise discharged. If only part of a Lot is acquired by a Taking, the Owner of such Lot will be responsible for the restoration of its Lot as necessary to return the Lot to a safe and lawful condition that does not adversely affect the use or enjoyment of the other Lots or Common Elements or detract from the general character or appearance of the Property. Any such restoration must be completed in accordance with the provisions of Article XII. If a Taking occurs by which the condemning authority acquires all or any part of one or more Lot(s) in such a manner that such Lot(s) is or are no longer subject to this Declaration, then the Association will consider and pass an amendment to this Declaration revising the allocations made among the various Lots hereunder.

(b) Taking of Common Elements. If a Taking involves a portion of the Common Elements, the Association will restore or replace such Common Elements to the extent feasible and economically cost-efficient, unless within 60 days after such Taking unless Members representing at least 67% of the total votes of the Association and, if the Taking occurs during the Development Period, Declarant will otherwise agree. Any such construction will be in accordance with plans approved by the Board. If the award made for such Taking is insufficient to cover the costs of restoration or replacement, the Board of Directors may levy Special Assessments to cover the shortfall. If a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds will be disbursed to the Association and used for such purposes as the Board will determine.

## ARTICLE XIV DISCLOSURES

14.1 Drainage and Soil Condition. The soils within Colorado consist of both expansive soils and low-density soils which may adversely affect the integrity of the Residences, Common Elements and other Improvements on the Property if the Lots, Residences and the Common Elements are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a re-alignment of soil grains, thereby resulting in consolidation and/or collapse of soils. DECLARANT HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING THE PRESENCE OF EXPANSIVE

AND/OR LOW-DENSITY SOILS ON THE PROPERTY. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME, EACH OWNER, BY TAKING TITLE TO A LOT, ACCEPTS SUCH DISCLAIMER, AND AGREES THAT DECLARANT AND ITS AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT OR ITS AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, RELATED TO ANY PRESENCE OF EXPANSIVE AND/OR LOW-DENSITY SOILS ON THE PROPERTY, INCLUDING ANY LIABILITY OR LOSS ARISING FROM ANY PERSONAL INJURY, PROPERTY DAMAGE OR LOSSES OR DEATH ARISING FROM OR ASSOCIATED WITH THE PRESENCE OF EXPANSIVE AND/OR LOW DENSITY SOILS ON THE PROPERTY, WHETHER AND WHENEVER KNOWN OR UNKNOWN, OR SUSPECTED OR UNSUSPECTED.

14.2 Mold Disclosure. Mold, mildew, fungi, bacteria and microbiologic organisms (collectively, "Mold") are present in soil, air and elsewhere in the environment. Mold can proliferate in various environments, including, among others, damp areas such as bathrooms and within walls and partitions. Certain parties have expressed concerns about the possible adverse effects on human health from exposure to Mold. Due to various reasons, including the varying sensitivities of different individuals to various types of Mold and other contaminants, as of the Recording of this Declaration, no state or federal standards regarding acceptable levels of exposure to Mold exist. According to the Consumer Product Safety Commission and the American Lung Association, some diseases or illnesses have been linked with biological pollutants in the indoor environment, including some forms of Mold. However, it is believed that many of these conditions may also have causes unrelated to the indoor environment. Therefore, as of the Recording of this Declaration, it is unknown how many potential health problems relate primarily or exclusively to indoor air quality or Mold. Each Owner, by taking title to a Lot, is advised that Declarant and the Association are not qualified and have not undertaken to evaluate all aspects of this very complex issue. Each Owner, by taking title to a Lot, acknowledges that Declarant and the Association have not performed any testing or evaluation of, and make no representations or warranties, express or implied, concerning, the past, current or future presence or absence of Mold in any Lot, any Improvements, any Common Elements or within any adjacent lands within the vicinity of the Property. Declarant and the Association recommend that each Owner, at the Owner's expense, conduct its own investigation and consult with such experts as the Owner deems appropriate regarding the occurrence and effects of Mold, the potential sensitivity or special risk the Owner, his family members and other individuals who will occupy or use such Owner's Lot and any Common Elements may have with respect to Mold, and methods to reduce or limit Mold within such Owner's Lot.

When excessive moisture or water accumulates indoors, Mold growth can and will occur, particularly if the moisture problem remains unaddressed. There is no practical way to eliminate all Mold in an indoor environment. The key to controlling indoor Mold growth is to control moisture. Each Owner, by taking title to a Lot, agrees to maintain the Lot and the Improvements thereon in such a manner as to reduce the potential for increased Mold formation or growth, including, without limitation, keeping dryer and other vents and/or fans clear and functioning, and preventing and repairing plumbing, window and other leaks and sources of moisture. Each Owner, by taking title to a Lot, agrees to make periodic inspections of the Lot and the Improvements thereon for the presence of Mold or conditions which may increase the ability of Mold to propagate within such Owner's Lot, the Improvements thereon or any Common Elements, and to monitor



the Lot and the Improvements thereon on a continual basis for excessive moisture, water or mold accumulation. If water or moisture is discovered in or around the Lot or the Improvements thereon, the Owner, by taking title to a Lot, agrees to immediately seek to eliminate the source of the water or moisture. Failure to eliminate the source of moisture can result in additional damage and the growth of Mold. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME, EACH OWNER, BY TAKING TITLE TO A LOT, AGREES THAT DECLARANT WILL NOT BE RESPONSIBLE FOR AND OWNER WILL NOT BE ENTITLED TO DAMAGES, AND EACH OWNER WILL INDEMNIFY DECLARANT AND THE ASSOCIATION AND HOLD DECLARANT AND THE ASSOCIATION HARMLESS FROM DAMAGES, INCLUDING IN ALL CASES PERSONAL INJURY OR PROPERTY DAMAGE, CAUSED BY THE PRESENCE OF MOLD AND/OR WATER OR MOISTURE IN SUCH OWNER'S LOT, THE IMPROVEMENTS THEREON OR OTHER PORTIONS OF THE PROPERTY TO THE EXTENT THAT THE DAMAGES ARE CAUSED BY: (I) THE OWNER'S NEGLIGENCE OR FAILURE TO PROPERLY MAINTAIN AND MONITOR THE LOT AND THE IMPROVEMENTS THEREON; OR (II) THE OWNER'S FAILURE TO PROMPTLY TAKE APPROPRIATE CORRECTIVE MEASURES AND MINIMIZE ANY DAMAGE CAUSED BY WATER OR MOISTURE (INCLUDING, WITHOUT LIMITATION, FAILURE TO PROMPTLY NOTIFY AND ENGAGE THE HELP OF APPROPRIATE PROFESSIONALS OR EXPERTS).

14.3 Radon Disclosure. The Colorado Department of Health and the Environment, the United States Environmental Protection Agency, and other agencies and parties have historically detected elevated levels of naturally occurring radon gas in residential structures throughout the State of Colorado, which has not been an uncommon occurrence, and such occurrences of, and long-term exposure to, elevated levels of radon gas may be harmful to human health and may also adversely affect the value of the Property. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME, (I) DECLARANT HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING RADON GAS OR THE POSSIBILITY OF RADON GAS ENTERING THE PROPERTY, AND (II) EACH OWNER, BY TAKING TITLE TO A LOT, ACCEPTS SUCH DISCLAIMER, AND AGREES THAT DECLARANT AND ITS AFFILIATES WILL NOT HAVE ANY OBLIGATIONS OR LIABILITIES FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT OR ANY OF ITS AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, RELATED TO ANY OCCURRENCE OF RADON GAS THAT MAY AFFECT THE PROPERTY, INCLUDING ANY LIABILITY OR LOSS ARISING FROM ANY PERSONAL INJURY, PROPERTY DAMAGE OR LOSSES, OR DEATH ARISING FROM OR ASSOCIATED WITH ANY OCCURRENCE OR PRESENCE OF RADON GAS ON THE PROPERTY, WHETHER AND WHENEVER KNOWN OR UNKNOWN, OR SUSPECTED OR UNSUSPECTED.

14.4 Naturally Occurring Radioactive Material Disclosure. In certain isolated locations in the Denver metropolitan area, above average naturally occurring radioactive materials have been detected. No federal or state regulations or standards address acceptable levels of naturally occurring radioactive materials in residential areas. Each Owner, by taking title to a Lot, acknowledges that Declarant is not qualified and has not undertaken to evaluate all aspects of this issue. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME, (I) DECLARANT HEREBY DISCLAIMS ANY AND ALL

REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING THE PRESENCE OF NATURALLY OCCURRING RADIOACTIVE MATERIALS ON THE PROPERTY, AND (II) EACH OWNER, BY TAKING TITLE TO A LOT, ACCEPTS SUCH DISCLAIMER, AND AGREES THAT DECLARANT AND ITS AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT OR ITS AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, RELATED TO ANY OCCURRENCES OF NATURALLY OCCURRING RADIOACTIVE MATERIALS IN THE SOIL ON THE PROPERTY, INCLUDING ANY LIABILITY OR LOSS ARISING FROM ANY PERSONAL INJURY, PROPERTY DAMAGE OR LOSSES OR DEATH ARISING FROM OR ASSOCIATED WITH ANY OCCURRENCE OR PRESENCE OF NATURALLY OCCURRING RADIOACTIVE MATERIALS IN THE SOIL ON THE PROPERTY, WHETHER AND WHENEVER KNOWN OR UNKNOWN, OR SUSPECTED OR UNSUSPECTED.

14.5 Geologically Sensitive Area. The Property may be located in a geologically sensitive area that may be subject to rock or debris slides.

14.6 Mountain Activities. The Property is located adjacent to or in the vicinity of skiing facilities and other all-season recreational areas (the “Mountain Recreational Areas”). The Mountain Recreational Areas are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance of the Mountain Recreational Areas (the “Mountain Activities”). The Mountain Activities may include, without limitation: (a) movement and operation of passenger vehicles (including, without limitation, buses, vans and other vehicles transporting passengers over adjacent streets and over, around and through the Mountain Recreational Areas), commercial vehicles and construction vehicles and equipment; (b) activities relating to the construction, operation and maintenance of roads, trails, ski trails, skiways and other facilities relating to the Mountain Recreational Areas (including, without limitation, tree cutting and clearing, grading and earth moving and other construction activities, construction, operation and maintenance of access roads, snow-making equipment, chairlifts, gondolas, buses or other transportation systems, operation of vehicles and equipment relating to trash removal, snow removal, snow grooming, and over-the-snow or over-the-terrain transportation purposes, and operation of safety and supervision vehicles); (c) activities relating to the use of the Mountain Recreational Areas (including, without limitation, skiing, snow-boarding, ski-patrol activities, and other over-the-snow activities, hiking, horseback riding, alpine slide, bicycling and other recreational activities); (d) ski racing and organized events and competitions relating to the activities described in clause (c) above; (e) concerts, festivals, art and other shows and displays, fireworks displays, outdoor markets and other performances and special events; (f) lodging cabins, restaurants, clubs, restrooms and other public use facilities; (g) public access to adjacent U.S. Forest Service lands; (h) public parking facilities and the traffic related thereto; and (i) other activities permitted by law. The Mountain Activities may occur during daytime and nighttime and may be temporarily or permanently interrupted, discontinued or modified, in whole or in part, from time to time. EACH OWNER, BY TAKING TITLE TO A LOT, AGREES THAT DECLARANT, VSR AND THEIR RESPECTIVE AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT, VSR AND THEIR RESPECTIVE AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, ARISING FROM DISTURBANCE OF THE PROPERTY IN CONNECTION WITH MOUNTAIN ACTIVITIES OR DUE TO THE

EXISTENCE, OCCURRENCE, OR THE TEMPORARY OR PERMANENT INTERRUPTION, DISCONTINUANCE OR MODIFICATION OF THE MOUNTAIN ACTIVITIES OR THE RECONFIGURATION OF THE MOUNTAIN RECREATIONAL AREAS.

14.7 Construction Activity. The Property is located in an area that is subject to or near ongoing construction activities (collectively, the “Construction Activities”). The Construction Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Construction Activities may include, without limitation: (a) construction traffic (including, without limitation, construction vehicles, equipment and vehicles used or owned by Seller, VSR, their respective affiliates, adjacent landowners, and the employees, agents and contractors of any of them; and (b) construction activities (including, without limitation, grading, excavation, clearing, site work, relocation of roadways and public utilities and construction of improvements) relating to the Community or nearby properties. Each Owner, by taking title to a Lot, acknowledges that Construction Activities may disturb the Property and such Owner’s use and occupancy of the Property. EACH OWNER, BY TAKING TITLE TO A LOT, AGREES THAT DECLARANT, VSR AND THEIR RESPECTIVE AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT, VSR AND THEIR RESPECTIVE AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, ARISING FROM DISTURBANCE OF THE PROPERTY IN CONNECTION WITH CONSTRUCTION ACTIVITIES OR DUE TO THE EXISTENCE, OCCURRENCE, OR THE TEMPORARY OR PERMANENT INTERRUPTION, DISCONTINUANCE OR MODIFICATION OF THE CONSTRUCTION ACTIVITIES.

14.8 Commercial Activities. A variety of commercial activities (the “Commercial Activities”) are and may be conducted within the Property and nearby and adjacent to the Property (the “Commercial Activity Areas”). The Commercial Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Commercial Activities may include, without limitation: (a) operation of full-service hotel(s) and/or timeshare, vacation club or similar facilities which may include health spa(s) with associated swimming pool(s) and other indoor or outdoor recreational facilities; (b) meetings, conferences, banquets and other group events; (c) sales and rentals of clothing, skis, ski-related equipment, other over-the-snow equipment, bicycles, and other recreational equipment; (d) sales of tickets for chairlifts, gondolas, other transportation systems, and other activities and events conducted on the Mountain Recreational Areas; (e) indoor and outdoor restaurant and bar operations (including, without limitation, the sale of food and alcoholic and non-alcoholic beverages for on-site and off-site consumption) and preparation of hot and cold food (through the use of barbecue grills, fire pits and other smoke and/or odor producing means) and beverages at indoor and outdoor facilities on and immediately adjacent to the Property; (f) sales of services relating to skiing, other over-the-snow activities, and other recreational activities (including, without limitation, tuning, waxing, repairing, mounting of bindings on, renting, storing and transporting skis, snowboards and similar equipment, ski schools and other forms of individual and group lessons, tours and excursions); (g) public use of the adjacent properties for access to the Mountain Recreational Areas, vehicle passenger drop-off and pick-up, locker room, changing room, rest room and lounge purposes in designated areas, and short-term clothing and equipment storage; (h) parking activities (including, without limitation, activities relating to valet parking or parking relating to adjacent properties); (i) the installation, operation and maintenance of illuminated and non-illuminated signage; (j) concerts and other outdoor and indoor entertainment, performances and special events, which may

include amplified live or recorded music; and (l) any other uses or activities permitted by law. EACH OWNER, BY TAKING TITLE TO A LOT, AGREES THAT DECLARANT, VSR AND THEIR RESPECTIVE AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT, VSR AND THEIR RESPECTIVE AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, ARISING FROM DISTURBANCE OF THE PROPERTY IN CONNECTION WITH CONSTRUCTION ACTIVITIES OR DUE TO THE EXISTENCE, OCCURRENCE, OR THE TEMPORARY OR PERMANENT INTERRUPTION, DISCONTINUANCE OR MODIFICATION OF THE COMMERCIAL ACTIVITIES OR THE RECONFIGURATION OF THE COMMERCIAL AREAS.

14.9 Use Rights. Each Owner, by taking title to a Lot, acknowledges that no right is created or arises from this Declaration or from ownership of any Lot, either: (a) to use the Mountain Recreational Areas (including, without limitation, the Keystone ski area) or the Commercial Activity Areas; or (b) to any waiver or discount of the prices charged for lift tickets or other fees charged to users of the Mountain Recreational Areas or the Commercial Activity Areas. Any right that an Owner acquires to use the Mountain Recreational Areas or Commercial Activity Areas may be created or arise, if at all, only through a separate agreement with or license granted by the owners or operators of the Mountain Recreational Areas or Commercial Activity Areas and is not derived in any way through this Declaration, or ownership of a Lot. Notwithstanding the proximity of the Property to skiing operations conducted in the Mountain Recreational Areas, neither Declarant nor VSR has, or will have, any obligation to provide or assure any Lot of “ski-in” or “ski-out” access in the course of the use of those skiing facilities, and each Owner acknowledges that such access may not be available and that in any case neither Declarant, VSR, nor their respective affiliates control the provision of such access. Without limitation on the generality of the foregoing, each Owner specifically acknowledges that means and ways of access from and to Mountain Recreational Areas are presently owned and controlled by the United States Forest Service.

14.10 No View Easement. Each Owner, by taking title to a Lot, acknowledges and agrees that there is no easement or other right, express or implied, for the benefit of any Owner, any Lot or any portion of the Property for light, view or air included in or created by this Declaration or as a result of ownership of any portion of the Property. Each Owner acknowledges and agrees that any view, sight lines, or openings for light or air available from the Property as of the date hereof, may be blocked or altered in whole or in part in the future by virtue of natural or unnatural causes, including, without limitation, future construction or expansion of commercial or residential buildings or facilities, future construction or expansion of ski lifts, gondolas, and associated poles and towers, or by natural (including, without limitation, disease or insects such as pine beetles) or unnatural loss or alteration of vegetation or mountain slopes. EACH OWNER, BY TAKING TITLE TO A LOT, AGREES THAT DECLARANT, VSR AND THEIR RESPECTIVE AFFILIATES SHALL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT, VSR AND THEIR RESPECTIVE AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, RELATED TO ANY LOSS OF LIGHT, AIR, OR VIEW THAT MAY AFFECT THE PROPERTY.

14.11 Other Properties. Each Owner, by taking title to a Lot, acknowledges that other properties are located adjacent to and in the general vicinity of the Property (the “Other

Properties”) and that the Other Properties may be developed pursuant to the land uses permitted by Summit County, Colorado’s zoning ordinances, as well as any other governmental rules, regulations, or policies in effect now or in the future which are applicable to the Other Properties (collectively, the “Ordinances”), and further acknowledges that the zoning for the Property and the Other Properties is established and governed by the Ordinances. Any amendment of those Ordinances requires approval of Summit County, Colorado. Each Owner, by taking title to a Lot, acknowledges that it has not relied upon any statements or representations regarding the Property or the Other Properties, including, without limitation, any representations made by Declarant, or any agents or employees of Declarant or any real estate agency or any agent, except for those statements and representations expressly set forth in this Declaration and the Ordinances.

14.12 Noise Disturbances. The Property is located in a resort location, and each Lot is part of a multi-family community and shares one or more common walls with other residential units within the Community, and that due to these factors, there may be a certain amount of unpredictable noise disturbances on the Property (the “Noise Disturbances”). The Noise Disturbances may include, without limitation, street noise from pedestrians and automobiles, and noise from residential units and commercial activities adjacent to the Property, including, but not limited to, voices, music, televisions, appliances, walking, running, opening and closing of doors, falling objects, cabinet and furniture operation and plumbing and HVAC operation. The Residences within the Community contain certain acoustical separation assemblies and other components deemed appropriate by Declarant to assist with mitigating the transmission of sound through walls and other physical separations. However, it is impossible to completely sound proof the Residences within the Community. Purchaser hereby acknowledges that Noise Disturbances may disturb the Property and each Owners’ use and occupancy of the Property. EACH OWNER, BY TAKING TITLE TO A LOT, AGREES THAT DECLARANT AND ITS AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT OR ITS AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, ARISING FROM NOISE DISTURBANCES.

## **ARTICLE XV** **CONSTRUCTION DEFECTS, DISPUTES,** **DISPUTE RESOLUTION AND LITIGATION**

### 15.1 Testing for Construction Defects.

(a) The Association will not undertake or authorize any testing, including, without limitation, investigative testing, destructive testing or invasive testing of any kind for defects in construction of any Residence or other Improvement without first determining, based upon the presence of some readily observable evidence or condition, that a defect may exist. In making such a determination the Board will rely on the opinions and/or the conclusions of a qualified expert (*e.g.*, a structural engineer); even in the event such evidence or conditions exist, the Association will not be obligated to authorize or undertake such testing.

(b) In determining whether to authorize such testing, the Board will be governed by the following considerations:

(i) Whether the Association's position is strong enough to justify taking any other or further action;

(ii) Whether, although a technical violation may exist or may have occurred, it is of such a material nature as to be objectionable to a reasonable Person or to justify expending the Association's resources; and

(iii) Whether it is in the Association's best interests, based upon hardship, expense, inconvenience or other reasonable criteria, to pursue the matter further.

(c) Notwithstanding the foregoing, under no circumstances will the Association authorize such testing as is contemplated under this Section 15.1 unless the nature of the suspected defect is such that:

(i) It poses a significant risk to life, health, safety or personal property; and

(ii) It threatens or affects the structural integrity, functionality, or performance of the Property (or a portion thereof) for its intended use.

(d) In the event the Board undertakes or authorizes testing for construction defects, then prior to any testing taking place, Declarant and others responsible for the construction will be entitled to notice of the alleged defect, access to the area of the alleged defect, and an opportunity to inspect the area and repair any defect that is found to exist. Declarant and others responsible for construction will also be entitled to be present during any testing and may record (via videotape, audio tape, still photographs, or any other recording method) all testing conducted and all alleged defects found.

(e) In the event that testing discloses any defects, Declarant and others responsible for construction will be given a reasonable amount of time, based on the nature and extent of the defect, to repair or correct the condition. If Declarant or others responsible for construction fail to repair or correct the condition, the Board will have the right, but not the obligation, to proceed with a Claim pursuant to this Article XV of this Declaration. In determining whether to proceed with such a Claim, the Board will be governed by the same standards as set forth in Section 15.6 below.

15.2 Consensus for Association Litigation. Except as provided in this Section 15.2, the Association will not commence a judicial or administrative proceeding, including, without limitation, any proceeding required under Section 15.5 below, without: (a) the approval of at least 75% of the Owners; (b) the affirmative vote of Declarant so long as Declarant owns any portion of the Property or the Additional Land, and (c) in the event of a judicial or administrative proceeding seeking equitable relief or seeking an unspecified amount of damages or damages in excess of \$25,000, (i) the decision to commence such proceeding will be taken at an annual or special meeting of the Association; (ii) a budget for such proceeding, including all fees and costs and assuming trial and applicable appeals, will have been prepared by the attorneys who will be engaged by the Association for such purpose, and will have been mailed or delivered to all Owners and posted at the principal office of the Association at least 30 days prior to such meeting; and

(iii) at such annual or special meeting the Owners representing at least 75% of the votes in the Association approve the decision to commence, and the proposed budget for, such proceeding, and will concurrently approve the imposition of a Special Assessment to fund the costs of such proceeding in accordance with the approved budget (the Association will be authorized to expend funds for such proceeding in excess of the amount contemplated by the approved budget only after an amended budget has been approved in accordance with the procedures specified above). This Section 15.2 will not apply, however, to: (i) actions brought by the Association to enforce the terms of this Declaration, the Bylaws or the Rules (including, without limitation, the foreclosure of liens); (ii) proceedings involving challenges to ad valorem taxation; or (iii) counterclaims brought by the Association in proceedings instituted against it. This Section 15.2 will not be amended unless such amendment is approved by at least 75% of the votes in the Association and pursuant to the same procedures, necessary to institute proceedings, as provided for herein. Prior to the Association or any Owner's commencing any judicial or administrative proceeding which arises out of an alleged defect of any Residence or any other Improvement, Declarant and others responsible for the construction will have the right to be heard by the Owners and to access, inspect, correct the condition of, or redesign any portion of the Residence or Improvements, including any improvement as to which a defect is alleged. In addition, the Association or the Owner will notify the builder who constructed the subject improvement prior to retaining any other expert as an expert witness or for other litigation purposes.

15.3 Alternative Method for Resolving Disputes. In accordance with and in furtherance of Section 124 of CCIOA, Declarant; the Association, its officers, directors, and committee members; any Owner; all Persons subject to this Declaration; and any Person not otherwise subject to this Declaration who agrees to submit to this Section 15.3 (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 15.4 of this Declaration (each, a "Claim"), to the procedures set forth in Section 15.5 of this Declaration.

15.4 Claims. Unless specifically exempted below, all Claims arising out of or relating to the following matters will be subject to the provisions of Section 15.5 of this Declaration: (i) the interpretation, application or enforcement of this Declaration, or the rights, obligations and duties of any Bound Party under this Declaration, (ii) the development, design, construction or alteration of the Residences or other Improvements, (iii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Party; (iv) any post-closing dispute under any purchase and sale agreement between Declarant and an Owner; or (v) any limited warranty agreement between Declarant and an Owner. Notwithstanding the above, unless all parties thereto otherwise agree, the following will not be Claims and will not be subject to the provisions of Section 15.5 of this Declaration:

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article XI of this Declaration (Financial Matters and Assessments);

(b) Any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the

Association's ability to act under and enforce the provisions of Article IV (Use Restrictions); and

(c) Any suit between or among Owners, to the extent such suit asserts a Claim which would constitute a cause of action independent of this Declaration.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 15.5.

#### 15.5 Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (Claimant and Respondent are hereinafter referred to individually, as a "Party," or, collectively, as the "Parties") will notify each Respondent in writing (the "Notice"), stating plainly and concisely (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim; (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

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

(ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant will have 30 additional days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Denver, Colorado metropolitan area.

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

(iv) Any settlement of the Claim through mediation will be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator will issue a notice of termination of the mediation proceedings



(“Termination of Mediation”). The Termination of Mediation notice will set forth that the Parties are at an impasse and the date that mediation was terminated.

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

(c) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, Claimant will have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit D or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if Claimant fails to appear for the arbitration proceeding, the Claim will be deemed abandoned, and Respondent will be released and discharged from any and all liability to Claimant arising out of such Claim; provided, however, that nothing herein will release or discharge Respondent from any liability to Persons other than Claimant.

(ii) This Subsection 15.5(c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award (the “Award”) will be final and binding with no right to appeal, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(d) Allocation of Costs of Resolving Claims.

(i) Each Party, including, without limitation, any Owner and the Association, will share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding (“Post Mediation Costs”). Under no circumstances will either Party be entitled to recover its Post Mediation Costs, including any attorneys’ fees (except as specifically provided under Section 123 of CCIOA), from the other Party. BY TAKING TITLE TO A LOT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND WILL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS’ FEES (EXCEPT AS SPECIFICALLY PROVIDED UNDER SECTION 123 OF CCIOA) IN CONNECTION WITH THE ARBITRATION OF A DISPUTE UNDER THIS SECTION 15.5(d).

(ii) Any Award which is equal to or more favorable to Claimant than Claimant’s Settlement Demand will add Claimant’s Post Mediation Costs to the

Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer will award to such Respondent its Post Mediation Costs. With respect to any Award which is less favorable to Claimant than Claimant's Settlement Demand yet more favorable to Claimant than Respondent's Settlement Offer, each Party will bear its own Post Mediation Costs.

(e) Limitation on Damages. No Party, including, without limitation, any Owner and the Association, will be entitled to receive any award of damages in connection with the arbitration of a Claim other than such Party's actual damages, and to the extent permissible under applicable law, as may be in effect from time to time, Declarant, the Association and any Owner will be deemed to have waived their right to receive any damages in a dispute other than actual damages, including, without limitation, attorneys' fees (except as specifically provided under Section 123 of CCIOA), special damages, consequential damages, and punitive or exemplary damages. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME, BY TAKING TITLE TO A LOT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND WILL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY DISPUTE UNDER SECTION 15.5(c), THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION DEFECTS, MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.

(f) Multiple Party Claims. Multiple Party Claims not consolidated or administered as a class action pursuant to the following sentence will be subject to, and will be arbitrated individually. Only with the written request of all Parties involved, but not otherwise, the arbitrator may: (i) consolidate in a single arbitration proceeding any multiple Party Claims that are substantially identical; and (ii) arbitrate multiple Claims as a class action in accordance with the rules and procedures adopted by Construction Arbitration Services, Inc.

(g) Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 15.5(b) above and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section 15.5. In such event, the Party taking action to enforce an agreement or Award will 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 or Award, including, without limitation, attorneys' fees and court costs to the extent specifically provided under Section 123 of CCIOA.

15.6 Legal Proceedings. Subject to the provisions of Sections 15.1 through 15.5 of this Declaration, the Association will have the right, but not the obligation, to institute legal proceedings to enforce all rights under this Declaration, the Bylaws and the Rules. The decision to institute legal proceedings by seeking the approval of at least 75% of the Owners pursuant to Section 15.2 of this Declaration, will be in the sole discretion of the Board and will be governed by the considerations detailed in Section 15.2, if applicable. Failure to commence such legal proceedings will not constitute a waiver of any such rights. ANY LIMITATIONS ON DAMAGES AND ALL WAIVERS OF LIABILITY AND RIGHTS TO AWARDS OF DAMAGES SET FORTH IN ANY SECTION OF THIS DECLARATION WITH RESPECT TO OWNERS, INCLUDING, WITHOUT LIMITATION, SECTIONS 15.5(c), 15.5(e) AND 15.5(f), WILL APPLY WITH EQUAL FORCE AND EFFECT WITH RESPECT TO THE ASSOCIATION IN ANY LEGAL PROCEEDINGS INSTITUTED BY THE ASSOCIATION UNDER THIS SECTION 15.6. THE PROVISIONS OF SECTIONS 15.1 THROUGH 15.6 WILL BE BINDING UPON DECLARANT, THE ASSOCIATION AND THE OWNERS TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME.

15.7 Enforcement of Declaration, Bylaws, and Rules.

(a) Sanctions and Self-Help. After notice and an opportunity to be heard as provided in the Bylaws, the Association, acting through the Board or any authorized agent, may: (i) impose sanctions (including, without limitation, reasonable monetary fines and suspension of the Owner's right to vote in Association matters) for violations of this Declaration, the Bylaws, or the Rules; (ii) exercise self-help to cure any violations of this Declaration, the Bylaws or the Rules that an Owner fails or refuses to cure; and (iii) suspend any services it provides to any Owner who is more than 15 days delinquent in paying any Assessment or other charge due to the Association. All of the remedies set forth in this Declaration and the Bylaws will be cumulative of each other and any other remedies available at law or in equity. If the Association prevails in any action to enforce the provisions of this Declaration, the Bylaws, or the Rules, it will be entitled to recover all costs, including, without limitation, attorneys' fees and court costs to the extent specifically provided under Section 123 of CCIOA, reasonably incurred by it in such action.

(b) No Waiver. In no event will the Association's failure to enforce any covenant, restriction or rule provided for in this Declaration, the Bylaws, or the Rules constitute a waiver of the Association's right to later enforce such provision or any other covenant, restriction or rule.

(c) Owner Enforcement. Except as necessary to prevent a violation or attempted violation that results or would result in direct and immediate physical damage to an Owner's Lot or the Improvements thereon, no Owner may prosecute any proceeding at law or in equity to enforce the provisions of this Declaration, the Bylaws or the Rules except as provided for below. An Owner may institute a proceeding to enforce a provision

of this Declaration, the Bylaws or the Rules only if the Board does not, at its election, take action to enforce such provisions within 60 days after the Owner gives written notice to the Board specifying the violation or attempted violation of the provisions of this Declaration, the facts and circumstances surrounding the violation, and the name of the Person alleged to have violated or attempted to violate the provisions of this Declaration, the Bylaws or the Rules. Nothing in this Section 15.7 is intended or will be construed to limit Declarant's exercise or enjoyment of any rights reserved or granted to Declarant pursuant to this Declaration or CCIOA.

## **ARTICLE XVI** **CONVEYANCING AND ENCUMBRANCING**

16.1 Lots. A description of any Lots in accordance with the requirements of Colorado law for the conveyance of real property will, if included in an otherwise proper instrument, be sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only such Lot but also all easements, rights and other benefits appurtenant thereto as provided in this Declaration. A Person who becomes an Owner will promptly notify the Association of his or her ownership of a Lot. An Owner may encumber his or her Lot as he or she sees fit, subject to the provisions of this Declaration.

16.2 Transferee Liability. In the event of any voluntary or involuntary transfer of a Lot to any Person (other than to a Person taking title through a foreclosure of a First Mortgage), the transferee will be jointly and severally liable with the transferor of such Lot for all unpaid Assessments against such Lot up to the time of transfer, without prejudice to such transferee's right to recover from the transferor any amounts paid by such transferee hereunder.

## **ARTICLE XVII** **AMENDMENT; DURATION AND TERMINATION**

17.1 Amendment. Except as otherwise specifically provided in this Declaration or CCIOA, this Declaration may be amended only as follows:

(a) Amendment by Declarant. Declarant may unilaterally amend this Declaration during the Development Period in the exercise of its Development Rights to the extent permitted by CCIOA. Additionally, notwithstanding any contrary provision contained in this Declaration, during the Development Period, Declarant may unilaterally amend this Declaration and/or the Maps to correct any clerical, typographical or technical errors, and may amend this Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association.

(b) Amendment by Members. This Declaration may be amended by the affirmative vote or written consent, or any combination thereof, of Members representing a majority of the total votes in the Association and, if such amendment occurs during the Development Period, with the consent of Declarant; provided, however, that any

amendment which changes the uses to which any Lot is restricted, creates or increases Special Declarant Rights, increases the maximum number of Lots, or changes the boundaries of any Lot or the voting rights or Assessment allocation of any Lot must be approved by the affirmative vote or written consent, or any combination thereof, of Members representing at least 67% of the total votes in the Association and, if such amendment occurs during the Development Period, with the consent of Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause of this Declaration will not be less than the prescribed percentage of affirmative votes required for action to be taken under such clause. Amendments to this Declaration will be prepared, executed, Recorded and certified by the President or Vice President of the Association.

(c) Consent of Declarant. During the Development Period, no amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant. Without limiting the generality of the foregoing, during the Development Period, Article XV may not be amended without the written consent of Declarant.

(d) Effective Date; Change in Conditions. Any amendment will become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year of its Recording or such amendment will be presumed to have been validly adopted. In no event will a change of conditions or circumstances operate to amend any provisions of this Declaration.

#### 17.2 Duration and Termination.

(a) Perpetual Duration. Unless terminated as provided in Section 17.2(b), this Declaration will have perpetual duration. If Colorado law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration will automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein.

(b) Termination. This Declaration may not be terminated within 12 years of the date of Recording without the consent of all the Owners and, during the Declarant Control Period, the consent of Declarant. Thereafter, it may be terminated only by an instrument signed by Owners who represent at least 67% of the votes in the Association. Any termination instrument will be Recorded and must comply with the termination procedures set forth in CCIOA. Nothing in this Section 17.2(b) will be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

### **ARTICLE XVIII** **GENERAL PROVISIONS**

18.1 Indemnity. No Owner will hold or attempt to hold the Association or its employees or agents liable for, and each Owner will indemnify and hold harmless the Association, its employees and agents from and against, any and all demands, claims, liens (including, without limitation, mechanics' and materialmen's liens and claims), causes of action, fines, penalties,

damages, liabilities, judgments, costs and expenses (including, without limitation, attorneys' fees and costs of litigation) incurred in connection with or arising from:

- (a) The use or occupancy or manner of use or occupancy of the Common Elements by such Owner or such Owner's Permittees;
- (b) Any activity, work or thing done, permitted or suffered by such Owner in or about the Common Elements or any other property owned by the Association; or
- (c) Any acts, omissions or negligence of such Owner or such Owner's Permittees;

except to the extent that any injury or damage to persons or property on the Common Elements or any other property owned by the Association is proximately caused by or results proximately from the negligence or deliberate act of the Association or its agents or employees. Nothing contained in this Section 18.1 will be construed to provide for any indemnification which would violate applicable laws, as may be in effect from time to time, void any or all of the provisions of this Section 18.1, or negate, abridge, eliminate or otherwise reduce any other indemnification or right which the Association or the Owners have by law.

18.2 Use of the Name "Alcove". No Person will use the name "Alcove" or any derivative in any printed or promotional material without Declarant's prior written consent. However, the Association will be entitled to use the name "Alcove" in its name.

18.3 Severability. In the event any provision of this Declaration is deemed illegal or invalid by judgment or court order, a legally valid provision similar to the invalidated provision will be substituted therefor. Invalidation of any provision of this Declaration, in whole or in part, or of any application of a provision of this Declaration, by judgment or court order will in no way affect other provisions or applications of this Declaration.

18.4 Governing Law. This Declaration will be governed by and construed under the laws of the State of Colorado.

18.5 Captions. The captions and headings on this instrument are for convenience only and will not be considered in construing any provisions of this Declaration.

18.6 Notices. Except for notices concerning meetings of the Association or the Board, which will be given in the manner provided in the Bylaws, any notices required or permitted hereunder or under the Bylaws to be given to any Owner, the Association or the Board will be sent by certified mail, first-class postage prepaid, return receipt requested, to the intended recipient at, in the case of notices to an Owner, the address of such Owner at its Lot; in the case of notices to the Association or the Board, the address of the Association's registered agent. All notices will be deemed given and received three business days after such mailing. Any Owner may change its address for purposes of notice by notice to the Association in accordance with this Section 18.6. The Association or the Board may change its address for purposes of notice by notice to all Owners in accordance with this Section 18.6. Any such change of address will be effective five days after giving of the required notice.

18.7 CCIOA. This Declaration will be subject to all mandatory requirements of CCIOA. In the event of any conflict between any term or provision of this Declaration and any mandatory provision of CCIOA, the mandatory provisions of CCIOA will control in all instances, and neither Declarant nor the Association will have any liability to any party for actions taken in conformity with CCIOA, notwithstanding the fact that such actions may be contrary to the provisions of this Declaration. In the event of any conflict between any term of provision of this Declaration and any permissive or non-mandatory provision of CCIOA, the provisions of this Declaration will control in all instances.

18.8 Declarant Liability. Except as otherwise provided in CCIOA, to the extent permissible under applicable law, as may be in effect from time to time, no Person holding the status of, or exercising any rights or performing any obligations of, Declarant under this Declaration will be liable to any Owner or Mortgagee for any acts or omissions of another Person holding such status, or exercising any rights or performing any obligations associated with the status of Declarant.

18.9 No Merger. Notwithstanding that Declarant currently holds title to all the Property, and notwithstanding that a subsequent Owner may own or hold title to more than one Lot, any such commonality of interests will not result in or cause any merger and extinguishment, in whole or in part, of any provisions of this Declaration, it being intended by Declarant, for its benefit and the benefit of its successors in interest, that the terms of this Declaration not be merged by virtue of those common ownership interests to any extent, but instead that such terms be and remain in full force and effect upon and following the making and Recording of this Declaration.

**[Remainder of Page Intentionally Blank]**

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

DECLARANT:

One Keystone LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO                    )  
                                                  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of One Keystone LLC, a Delaware limited  
liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



The undersigned hereby consents to the creation and recording of the Declaration, which consent is executed this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

The Keystone Neighbourhood Company, Inc.,  
a Colorado nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO                    )  
                                                          ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of The Keystone Neighbourhood  
Company, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

The undersigned hereby consents to the creation and recording of the Declaration, which consent is executed this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

Vail Summit Resorts, Inc.,  
a Colorado corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO                    )  
                                                          ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of Vail Summit Resorts, Inc., a Colorado  
corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF THE PROPERTY**

*[to be added prior to execution]*

**EXHIBIT A-2**

**LEGAL DESCRIPTION OF THE ADDITIONAL LAND**

*[to be added prior to execution]*

**EXHIBIT B**

**EASEMENTS, LICENSES AND OTHER MATTERS OF RECORD  
AFFECTING THE PROPERTY**

1. ***[TO BE INSERTED PRIOR TO RECORDING]***

**EXHIBIT C**

**COMMON ELEMENTS**

*[TO BE INSERTED PRIOR TO RECORDING]*

## **EXHIBIT D**

### **ARBITRATION RULES**

Claimant will submit a Claim to arbitration under these Arbitration Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's submission of the Claim to arbitration ("Arbitration Notice").

1. Any arbitration conducted under these Rules and in connection with any Claim arising out of or relating to the interpretation, application, or enforcement of the Declaration, or relating to the design or construction of the Common Elements, will conform with and be subject to the rules and procedures adopted and routinely applied by Construction Arbitration Services, Inc. ("CAS").

2. The Parties will select a panel of arbitrators (the "Panel") as follows ("Party Appointed Arbitrators"): all Claimants will agree upon one Party Appointed Arbitrator, and all Respondents will agree upon one Party Appointed Arbitrator. The Party Appointed Arbitrators will, by agreement, select one Additional arbitrator ("Additional").

3. If the Panel is not selected under Rule 1 within 45 days from the date of the Arbitration Notice, any Party may notify the nearest chapter of The Community Associations Institute, for any dispute arising under the Declaration, the Bylaw, or the Rules, or CAS for any dispute relating to the design or construction of improvements on the Common Elements, which will appoint one Additional ("Appointed Additional") and will notify the Appointed Additional and all Parties in writing of such appointment. The Appointed Additional will thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees will have no further duties involving the arbitration proceedings.

4. No Person may serve as an Additional in any arbitration in which that Person has any financial or personal interest in the result of the arbitration. Any Person designated as an Additional or Appointed Additional will immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Additional or Appointed Additional after receipt of that Additional's Bias Disclosure, such Additional or Appointed Additional will be replaced in the same manner in which that Additional or Appointed Additional was selected.

5. The Appointed Additional or Additional, as the case may be ("Arbitrator") will fix the date, time and place for the hearing. The place of the hearing will be at a place mutually agreed to by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator will take into consideration the amount of time reasonably required to determine Claimant's damages accurately.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but will hear Claimant's case and decide accordingly.

7. All Persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator will determine any relevant legal issues, including whether all indispensable Parties are Bound Parties or whether the Claim is barred by the statute of limitations.

8. The hearing will be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The Arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.

9. Notwithstanding the foregoing, multiple Party disputes or Claims not consolidated or administered as a class action pursuant to the following sentence will be subject to, and will be arbitrated individually. Only with the written request of all Parties involved, but not otherwise, the Arbitrator may: (a) consolidate in a single arbitration proceeding any multiple Party Claims that are substantially identical; and (b) arbitrate multiple Claims as a class action in accordance with the rules and procedures adopted by CAS.

10. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance will be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and will immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional will be replaced by another independent licensed professional selected by the Arbitrator.

11. No formal discovery will be conducted in the absence of order of the Arbitrator or express written agreement among all the Parties. The only evidence to be presented at the hearing will be that which is disclosed to all Parties at least 30 days' prior to the hearing; provided, however, no Party will deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and will produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator will be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence will not be necessary. The Arbitrator will be authorized, but not required, to administer oaths to witnesses.

12. The Arbitrator will declare the hearings closed when satisfied the record is complete.

13. There will be no post hearing briefs.

14. The Award will be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the



Parties. The Award will be in writing, will be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it will be in summary form.

15. Except with respect to awards of attorneys' fees and expenses only to the extent specifically provided under Section 123 of CCIOA, no Party will be entitled to receive any award of damages in connection with the arbitration of a Dispute other than such Party's actual damages. All Parties to an arbitration conducted under these Rules will be deemed to have waived their right to receive any damages other than actual damages, including, without limitation, special damages, consequential damages, and punitive or exemplary damages.

Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

## **EXHIBIT E**

### **INSURANCE REQUIREMENTS**

<b>RESIDENCE EXTERIORS</b>	
Residence-structure, including foundation, column, girders, beams and supports	Association
Siding, sheathing, wrap, brick, trim, molding, and other exterior facade surfaces	Association
Exterior stoops, steps, and concrete surfaces	Association
Gutters and downspouts	Association
Porches, patios and balconies	Association
Roof shingles and roof underlay	Association
Shutters and awnings	Association
Chimneys and chimney caps	Association
Windows	Association
Skylights	Association
Exterior doors	Association
Garage doors	Association
Storm doors	Association
Exterior light fixtures	Association
<b>UTILITIES</b>	
The following utilities lying inside the Lot boundaries, including such pipes, lines, etc., installed or laying within the walls, floors or ceilings of a Residence <ol style="list-style-type: none"><li>1. Ducts</li><li>2. Conduits</li><li>3. Water pipes</li><li>4. Electrical wiring</li><li>5. Telephone wiring</li><li>6. Cable wiring</li></ol>	Association
The following utilities inside the Lot boundaries, regardless of location: <ol style="list-style-type: none"><li>1. Furnaces and other heating equipment</li><li>2. Air conditioners and other cooling equipment</li><li>3. Thermostats</li><li>4. Electrical outlets</li><li>5. Telephone outlets</li><li>6. Light switches</li><li>7. Hot water equipment</li></ol>	Owner

<b>RESIDENCE INTERIORS</b>	
Furnishings, including all personal property such as furniture, electronics, jewelry and clothing	Owner
Window coverings	Owner
Permanent fixtures, including but not limited to: <ul style="list-style-type: none"> <li>1. Ceiling fans</li> <li>2. Hand rails</li> <li>3. Cabinets</li> <li>4. Countertops</li> <li>5. Bathtubs and showers</li> <li>6. Sinks</li> <li>7. Toilets</li> </ul>	Owner
Appliances, including but not limited to: <ul style="list-style-type: none"> <li>1. Oven</li> <li>2. Range</li> <li>3. Refrigerator</li> <li>4. Dishwasher</li> <li>5. Washer/Dryer</li> <li>6. Countertop microwave</li> <li>7. Built-in microwave</li> </ul>	Owner
Fireplaces (including facade, screen, chimney back, flue, and damper)	Owner
Unfinished surfaces of walls, floors and ceilings, including but not limited to: <ul style="list-style-type: none"> <li>1. Studs</li> <li>2. Insulation</li> <li>3. Drywall</li> <li>4. Hardware</li> <li>5. Any material lying within such walls, floors and ceilings, such as pipes, wiring and plumbing</li> </ul>	Association
Finished surfaces of perimeter walls and ceilings, including but not limited to: <ul style="list-style-type: none"> <li>1. Paint</li> <li>2. Wallpaper</li> <li>3. Paneling</li> <li>4. Texture</li> </ul>	Owner
Finished surfaces of floors, including but not limited to: <ul style="list-style-type: none"> <li>1. Tile</li> <li>2. Vinyl</li> <li>3. Hardwood</li> <li>4. Carpeting</li> </ul>	Owner
Any components lying between the perimeter drywall and the Residence exterior or the adjacent Residence, including but not limited to: <ul style="list-style-type: none"> <li>1. Insulation</li> <li>2. Girders</li> <li>3. Beams</li> <li>4. Pipes</li> <li>5. Wiring</li> </ul>	Association

6. Plumbing	
Subflooring	Association
Unfinished portions of Party Walls	Association