

44 PAGE DOCUMENT

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WEXFORD ESTATES SUBDIVISION

This Declaration of Covenants, Conditions, and Restrictions, hereinafter referred to as "Declaration" or "CC & Rs," is made this 15th day of June, 2015, by Wexford3 , LLC, a Colorado limited liability company (hereinafter "Declarant").

RECITALS:

- A. Declarant is the owner of certain real property situate in Mesa County, Colorado, known and described on the Plat (as defined below). As Lot 1 of Wexford Subdivision and Lot 2 of Wexford Subdivision, the plat of Wexford Subdivision was recorded on June 7, 2007, at Book 4441, Page 789-790, at Reception No. 2384382 with the Mesa County Clerk and Recorder's office, as amended by the Plat.
- B. Declarant intends that the Property will be a planned community and will be subject to these covenants, conditions, restrictions and easements for the benefit of all lots in the Property and the Owners thereof. A homeowners association has been established for the purpose of assessing, managing and administering the Property.
- C. The Association will receive title to the Common Elements and Limited Common Elements, as shown on the Plat, and corresponding Association Property, prior to the conveyance of the first Lot.
- D. The maximum number of lots in the planned community is seventy four (74).
- E. The legal description of the Property being subjected to this Declaration is shown on Exhibit A.
- F. Easements burdening the Property are as shown on the Plat of the Property and/or described herein, or as granted by separate instrument.

NOW, THEREFORE, Declarant hereby declares that the Recitals are a substantive part of this Declaration and that all of the Property shall be held, used, sold and conveyed subject to the following easements, covenants, conditions, restrictions, and equitable servitudes which are for the purpose of protecting the economic value within the Property, and which will run with the Property and shall inure to the benefit of each Owner thereof. and bind all persons. their heirs. successors. and assigns who hold any right, title, or interest in the Property or any part thereof.

ARTICE 1 DEFINITIONS

Section 1.1 Act shall mean the Colorado Common Interest Ownership Act as set forth in § 38-33.3-101, *et seq.* C.R.S.

Section 1.2 [omitted]

Section 1.3 Arbitration means the requirement under Section 11 herein that disputes regarding the Declaration and the Association be resolved by arbitration.

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

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

Section 1.6 Association, HOA shall mean and refer to Wexford Estate Homeowners Association, a Colorado non-profit corporation, its successors and assigns.

Section 1.7 Association Property shall mean all of the Property, real and personal, owned by the Association, including all of the Common Elements (*i.e.* General Common Elements, Tracts and Limited Common Elements).

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

Section 1.9 Boundaries, when interpreting conveyance or plans, shall mean the then existing physical boundaries in accordance with the original plans.

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

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

Section 1.12 Common Elements, sometimes "Common Area," shall mean all real property or interest therein owned, leased or maintained by the Association (including without limitation the entry signage and/or monument, Private Roads and Tracts as the case may be. as shown on the Plat). but shall excluded Lots owned by any Owner other than the Association.

Section 1.13 Common Expenses shall mean expenditures made by or on behalf of, or financial liabilities of, the Association, together with any allocations to reserves.

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

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

Section 1.15 Declarant shall mean Wexford3, LLC, its successors and assigns, and any person or entity to which it shall have assigned any rights hereunder by an express written and recorded assignment (but specifically excluding Purchasers).

Section 1.15 Declarant's Rights shall mean the rights granted to the Declarant by law and pursuant to this Declaration, including without limitation, the Declarant's right to:

- a) Complete the improvements as indicated on the Plat, plans or this Declaration;
- b) Exercise any developmental rights and creating Lots, Common Elements and Limited Common Elements on the Property;
- c) Maintain on the Property sales offices, models, management offices, and advertising, including signs;
- d) Use of easements through the Common Elements and Limited Common Elements for the purpose of making improvements and performing maintenance in the Community;
- e) Appoint or remove officers of the Association and any members of the Board during the Declarant's Control Period as described in Section 3.3; and
- f) Assert statutory right and those rights described in Section 3.3 and as otherwise reserved in the Declaration

Section 1.16 Declarant Control Period shall have the meaning given it in Section 3.3.

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

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

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

Section 1.20 Eligible Security Holder shall mean a holder of the First Mortgage (as defined in section 1.32 below) on a Lot who has requested notice from the Association of matters of which the holder is entitled to notice by reason of this Declaration or the Bylaws.

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

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

Section 1.23 [omitted]

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

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

Section 1.26 Improvement (or Improvements) means any structure or appurtenance thereto of every type and kind placed in the Property.

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

Section 1.28 Lot means, individually or collectively, any separately numbered Lot(s) shown on the Plat or any supplemental Plan for any portion of the Property, recorded in the office of the clerk and recorder of Mesa County, Colorado, as the same may be amended from time to time, that is designated for separate ownership and that may be conveyed in fee in compliance with all applicable subdivision regulations.

Section 1.29 [omitted].

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

Section 1.31 Member, Membership shall mean any person holding a membership in the Association, as provided in this Declaration, and shall also refer to an Owner as defined in Section 1.35. Membership shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations, including liability for Assessments, contained in the Governing Documents.

Section 1.32 Mortgage (sometimes Security Interest) shall mean and refer to a deed of trust as well as a mortgage or other documents pledging any Lot or any interest in a Lot as security for payment of a debt or obligation. First Mortgage means any Mortgage which is not subordinate to any other lien or encumbrance, except liens for taxes or other liens which are given priority by any applicable laws.

Section 1.33 Mortgage shall mean and refer to the holder of a Security Interest, whether a beneficiary or holder under the security interest

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

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

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

Section 1.37 Purchaser means a Person, other than the Declarant (or a successor of Declarant), who acquires legal title to the fee simple interest in any Lot or portion thereof

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

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

Section 1.40 Private Roads shall mean and refer to the private roads and public utility and drainage easements owned by the Association, if any, as shown on the Plat, including but not limited to "Tract D", as more particularly described on the Plat.

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

Section 1.42 [omitted]

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

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

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

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

Other terms are defined below

ARTICLE 2 ASSOCIATION PROPERTY

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

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

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

Section 2.3 Easements

- a) Owner Easements. Every Owner of a Lot shall have a right and easement of ingress, egress, use and enjoyment in and to the Association Property which

shall be appurtenant to and shall pass with the title to every such Lot, subject to the following provisions:

- (i) The right of the Association to establish uniform Rules and Regulations pertaining to the use of the Association Property.
 - (ii) The right of the Association to suspend the voting rights of an Owner for any period during which any Lot assessment or installment remains unpaid for thirty (30) days past its due date (hereinafter called a "Delinquent Assessment"); also for a period not to exceed thirty (30) days for any infraction of its published Rules and Regulations after reasonable written notice and an opportunity for a hearing before the Board as set forth in the Bvlaws.
- b) Encroachment Easement. In the event: (i) any improvement on a Lot encroaches upon an adjoining Lot or Association Property, or (ii) the Association Property encroaches upon a Lot as a result of the initial construction, or as the result of repair, shifting, settlement, or movement of any portion thereof, an easement for the encroachment and for the maintenance of same, shall exist so long as the encroachment exists. Further each Lot Owner and the Association are hereby granted an easement over all adjoining Lots and Association Property for the purpose of a accommodating any minor encroachment, due to engineering errors, in original construction, settlement or shifting of the walls and fences, and architectural or other appendants.
- c) Utility Easement. Each Lot is subject to all easements appearing on the Plat, other easements of record, and easements for the use and benefit of sewer/water and other utilities created by this Declaration and which serve Lots and the Association Property. Easements may include, but are not limited to, those for cable television, sewers, water, gas, electrical, irrigation systems, landscaping, and drainage. No Owner shall interfere in any way with the initiation, installation or access to or for maintenance, replacement, or repair of said utilities, irrigation systems, landscaping, or in any manner, obstruct or change the direction or flow of drainage channels in such easements.
- d) Association Landscape Easement. The Association shall have a right and easement of ingress and egress over and on each Lot for purposes of maintaining and replacing landscaping, stormwater, drainage and/or irrigation facilities, and the Common Elements. No Owner shall interfere with the Association's right to maintain the Common Elements, landscaping and

stormwater, drainage and/or irrigation facilities, as set forth herein and elsewhere in this Declaration. However, the Association is not responsible to maintain landscaping on any Lot.

Section 2.4 Other Easements. Easements are reserved throughout the Property, including, but not limited to, utility easements for utility services, pedestrian and vehicular access easements and drainage and irrigation easements for associated drainage and irrigation, all as more particularly described on or dedicated to the City on the Plat, as applicable.

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

- a) A non-exclusive easement over the Association Property for the purpose of making repairs to the Association Property and to Lots if access thereto is not reasonably available;
- b) The right to the non-exclusive use of the Association Property during the Declarant's Control Period for the purpose of developing the Project. The use of the Association Property by Declarant and its agents shall not unreasonably interfere with the use thereof by any Owner,
- c) An easement over the Property to discharge Declarant's obligations under this Declaration, and
- d) An easement to exercise any of Declarant's rights under this Declaration.

Section 2.6 Declarant's Easement. Declarant hereby reserves for itself the right (a) to establish from time to time access, utility, drainage and other easements, permits or licenses over, across, through and under the Property for Declarant and other persons and (b) create other reservations, exceptions and exclusions for the benefit of Declarant and other persons, on the condition that (i) the parties benefited by the easement, license, permit, reservation exception or exclusion to minimize interference with the use of the Property by the Owners to the extent practicable; and (ii) if the parties benefited by the easement, license, permit, reservation, exception or exclusion construct or install any improvements on the Property pursuant to the same, the benefited parties shall promptly repair any damage caused to the Property thereby at their sole cost and expense.

Section 2.7 Delegation of Use. Any Owner entitled to the right of use of the Association Property may delegate that right to his/her tenants or contract purchasers who reside in the Dwelling located on Owner's Lot, subject to the Rules and Regulations prescribed by the Board by giving written notice thereof to the Association. An Owner who has so delegated his/her right shall not be entitled to use and enjoyment of the Association Property for so long as such delegation remains in effect.

Section 2.8 Recorded Licenses and Easements. The Property shall be subject to (i) all licenses and easements as shown on any recorded plat or map affecting the Property, and (ii) any other licenses and easements of record or of use as of the date of

recordation of this Declaration. The recording data for all presently recorded licenses and easements appurtenant to or included in the Property have been set forth on Exhibit B attached thereto. In addition, the Property is subject to all easements created or permitted by this Declaration.

ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

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

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

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

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

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

(d) Not later than the termination of Declarant's control, the Owners shall elect a Board of not less than three (3) no more than seven (7) members, at least a majority of which shall be Owners other than Declarant or designated representative Owners other than the Declarant.

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

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

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

(h) Within ninety days after the end of the Declarant's control period and no later

than ninety days after each fiscal year thereafter, the Association shall make available the information provided by C.R.S. § 38-33.3-209.4(2), as amended.

Section 3.4 Declarant's General Rights and Reservation. Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to subdivide or re-subdivide any portion of the Property, or to complete improvements to and on the Property owned solely or partially by Declarant, or to alter the foregoing or its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of developing the Property. The rights of Declarant hereunder shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags, and sales offices as may be reasonably necessary to conduct its business of completing the work and disposing of the Lots by sale, resale, lease, or otherwise. Each Owner by accepting a deed to a Lot hereby acknowledges that the activities of the Declarant may temporarily or permanently impair the view of such Owner and may constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairments inconvenience or nuisance. This Declaration shall not limit the right of Declarant any time prior to acquisition of title to a Lot in the Project by a purchaser from Declarant to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, as may from time to time be reasonably necessary for the proper development and disposal of the Property. The Declarant may use any Lots owned by Declarant in the Project as model home complexes, real estate sales offices, or leasing offices. Declarant need not seek or obtain Architectural Committee approval of any Improvement constructed or placed on any portion of the Property by Declarant. Any rights of the Declarant in this Declaration or in any portion of the Property may be assigned by the Declarant to any successor in interest by a written assignment in Recordable form. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as developer of the Property, will be required before any amendment to this Article shall be effective. Each Owner hereby grants, upon acceptance of his/her deed to the Lot, an irrevocable, special power of attorney to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise its rights under this Article. Declarant and prospective purchasers of Lots shall be entitled to the nonexclusive use of the Association Property and any recreational facilities thereon, without further cost for access, ingress, egress, use, or enjoyment in order to show the Property to its prospective purchasers and dispose of the Property as provided herein. Declarant, its successors, and tenants shall also be entitled to the nonexclusive use of any portions of the Property that comprise Private Streets and walkways for the purpose of ingress, egress, and accommodating vehicular and pedestrian traffic to and from the Property. The use of the Association Property by Declarant shall not unreasonably interfere with the use thereof by other Owners. The Association shall provide Declarant with all notices and other documents to which an Owner is entitled pursuant to this Declaration. The rights and reservations of Declarant

set forth in this Article shall terminate upon the expiration of the Declarant's Control Period.

ARTICLE 4 COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

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

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

The full annual and special assessments, together with late fees, interest, costs, and when applicable, reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessments are made, Each assessment, together with late fees, interest, Costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment became due. The personal obligation for delinquent assessments shall be appurtenant to the Lot and shall pass to an Owner's successors in title, whether or not expressly assumed in writing by such successor.

- (d) The Board of Directors shall prepare on an annual basis a budget for the daily operation of the Association, including reserve studies, and cause the budget to be approved by the Board and presented to the Members for approval.
- (e) The Board shall adopt a budget in accordance with the procedures and requirements of 38-33.3-303(4)(a), C.R.S., to wit: the Board shall mail a written summary of the proposed budget (and any proposed amendment) amendment to all of the Owners. shall set a date for a meeting of the Owners to consider the budget or amendment, and shall give notice of such meeting to the Owners. The proposed budget or amendment shall be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of Owners. If the proposed budget or amendment is vetoed, the budget last proposed by the Board and not

vetoed by the owners shall continue to apply until a subsequent budget proposed by the Board is not vetoed by the Owners. Any such special assessment shall be assessed to the Owners by dividing the total number of Lots subject to the provisions of this Declaration, unless the special assessment should be assessed to fewer than all of the Lots, and assessing the resulting amount to the Owner(s) of such Lot(s), such assessment to be paid in installments or a lump sum as the Board shall determine.

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

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

- (a) From and after January 1st of the year immediately following the conveyance of the first Lot in the Property to an Owner, the maximum annual assessment of the Association may, without a vote of the Membership, be increased by the Board each year thereafter not more than fifteen percent (15%) above the maximum assessment set for the previous year. This 15% increase is based on the maximum annual assessment even though the actual assessment is charged at a rate less than the maximum.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot in the Property to an Owner, the maximum annual assessment may be increased above fifteen percent (15%) only by the vote or written assent of fifty-one percent (51%) of the total Voting Power (as defined in the Bylaws) of the Association.
- (c) The Board of Directors may fix the annual assessment at any amount not in excess of the fifteen percent (15%) maximum.

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

- (a) A majority of the total Voting Power of the Association;
- (b) a majority of the total Voting Power of the Association;
- (c) a majority of the total Voting Power of the Members other than the Declarant;
and
- (c) a majority of the total Voting Power of the affected Members or voting class

of Members if any group of Members or voting class of Members is responsible for all of an assessment or a disproportionate share of an assessment.

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

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

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

Section 4.7 Membership Approval. Any action authorized under Sections 4.3 or 4.4 above which requires Owner approval shall be taken at a meeting called for that purpose, written notice of which must state the time, place, and the items to be considered at the meeting shall be given to all Members by first class mail, or personal service, not less than twenty-one (21) days nor more than sixty (90) days before the meeting. A quorum for such meeting shall be a majority of the Voting Power of the Membership of the Association (or voting class of Members or affected Members, if applicable). If the required quorum is not present, another meeting maybe called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty percent (20%) of the Voting Power of the Membership of the Association: provided. however. if

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

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

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

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

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

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

Lot from the time the assessment is due.

- (a) At any time after any assessment levied by the Association against any Lot has become delinquent, the Board may record with the Mesa County Recorder a "Notice of Delinquent Assessment and Claim of Lien" as to such Lot. Such notice shall be signed by an Officer or Director of the Association, its manager or attorney. A copy of said notice may be recorded and may be or be sent by certified or registered mail, return receipt requested, to the then current address of the Owner in the Association's files.
- (b) immediately upon the mailing of any notice of delinquency pursuant to this Section, the amounts delinquent and all subsequent installments, whether delinquent or not, together with costs (including attorneys' fees) and interest accruing thereon, shall be and become immediately due. The notice shall also secure all other payments and/or assessments, together with interest, costs, fines, where applicable, and attorneys' fees with respect to said Lot following such recording.
- (c) In the event the delinquent assessments and all other assessments which have become due and payable with respect to the Lot, together with all costs (including attorney's fees) and accrued interest on such amounts, are fully paid or otherwise satisfied prior to the completion of the foreclosure sale, the Board shall record a signed satisfaction and release of said lien.
- (d) Each assessment lien may be foreclosed as and in the same manner as the foreclosure of a deed of trust and mortgage upon real property under the laws of the State of Colorado, or may be enforced by sale; to such ends a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Lot Owners, shall have the power to bid for the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage, or convey the same. Suits to recover a money judgment for unpaid assessments, rent, and attorneys' fees are permitted without foreclosing or waiving the lien securing the same.

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

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

- (a) Liens and encumbrances recorded before the recording of the Declaration;
- (b) Liens for real estate taxes and other governmental assessments or charges against
- (c) Other than as provided in sections 4.13 and 4.14, a First Mortgage on the Lot recorded before the date on which the assessment sought to be enforced

- became delinquent;
- (d) Mechanics and materialmen's liens;
 - (e) Association liens with earlier priority, and
 - (f) Liens imposed pursuant to the Architectural Rules.

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

Recording of the Declaration constitutes record notice and perfection of the lien. No further recording of any claim of lien for assessment under this Section is required, except a notice of delinquent assessment must be served upon the Owner before commencement of foreclosure. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of the assessments becomes due.

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

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

Section 4.15 Estoppel Certificate. The Association shall within fourteen (14) calendar days after written request by a Lot Owner or holder of a Security Interest on a Lot, provide a certificate setting forth all or any of the following information as may be requested by the party (a) the amount of the unpaid assessment on the Lot, (b) whether or not the Owner or the Lot is delinquent or in violation of any provision hereunder, (c) the amount of the assessment, including installment payments thereof, paid by the Owner during the year in which the request is received, (d) the amount of any delinquent assessments, penalties, interest, attorney fees and other charges on the Owners Lot as provided by the Association documents, (e) whether all insurance requirements established by this Declaration are being satisfied and (f) a listing of each of the Master Association

Document and amendments thereto, with recording information, if applicable. A properly executed certificate of the Association as to the status of any assessment on a Lot shall be binding upon the Association the Board and every Lot Owner as of the date of its issuance.

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

Section 4.17 Working Capital Fund

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

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

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

ARTICLE 5 DUTIES AND POWERS OF THE ASSOCIATION

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

- (a) Own, maintain, and otherwise manage all of the Association Property and all facilities, improvements, and landscaping thereon.
- (b) Pay any real and personal property taxes and other charges assessed against the Association Property.
- (c) Notwithstanding Section 2.2(b) hereof, grant easements where necessary for access and for utilities and sewer facilities over, upon, and under the

- Association Property to serve the Property and the Lots.
- (d) Maintain liability insurance and such other policy or policies of insurance as provided in Sub-Section (I)(iii) below.
 - (e) Have the authority to employ a Manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any such contract with a person or firm appointed shall not exceed a term of one (1) year unless approved by the vote of a majority of the Members of the Association.
 - (f) Enforce applicable provisions of the Governing Documents of the Association.
 - (g) Establish and enforce uniform Rules and Regulations regarding the Community, including the levy reasonable fines and penalties for violation thereof.
 - (h) Have the right upon notice to an Owner, to enter upon any Lot and to enforce Owners' obligations under the Governing Documents.
 - (i) Establish and maintain an adequate reserve fund as part of the annual assessments for the periodic maintenance, repair, and replacement of improvements to the Association Property.
 - (j) Cause all officers or employees having fiscal responsibilities to be bonded, if and as the Board of Directors may deem appropriate; and purchase Directors' and Officers' Liability Insurance as it deems necessary.
 - (k) Review annually all insurance policies and bonds maintained by the Association.
 - (l) Acting for itself and for all Owners, obtain and maintain at all times insurance of the type of policy and amount as set forth hereinafter for the benefit of the Owners and the Association as its interest may appear. Payments of premiums for such insurance shall be considered a purpose for which assessments may be levied by the Association pursuant to Article 4 hereof:
 - (i) A fire insurance policy with extended coverage and inflation guard endorsements for the full insurable replacement value of all structures and improvements located on the Association Property, if any. Such policy or policies shall provide for a maximum deductible as defined by the Board.
 - (ii) The Association shall obtain a policy or policies insuring the Association, its officers and Board of Directors, Owners and employees against any liability to the public, the Owners, contract purchasers in possession, their invites or tenants, incident to ownership or use of the Association Property. Limits of liability under such policy shall not be less than \$1,000,000.00 for personal injury and \$300,000.00 for property damage for each occurrence. Such policy or policies shall be issued on a comprehensive liability basis to provide cross-liability endorsements wherein the rights of the named insured under the policy shall not be prejudiced as respects the right of action of any such insurance against any other named insured.

Said policy or policies shall include a severability of interest endorsement which will preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners

- (iii) The Association may obtain Fidelity bond or policy insuring the Association against dishonest acts by its offices, Directors, trustees, and employees who are responsible for handling funds of the Association. Such coverage if obtained, shall be not less than one hundred percent (100%) subject to a maximum deductible of \$1000.00, adjusted for inflation of the estimated annual operating expenses.
 - (iv) All insurance policies required under this Article shall be written by a company licensed to do business in Colorado.
 - (v) Exclusive authority to adjust losses under policies obtained by the Association pursuant to this Article, shall be vested in the Association or its authorized representatives.
 - (vi) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.
- (m) Exercise the powers provided in the Act where not in conflict with this Declaration.
- (n) Have and exercise any rights or privileges given to it expressly by this Declaration, or reasonably implied from the provisions of the Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights, or privileges.
- (o) Section 38-33.3-303 C.R.S. provides for the exercise of care in the performance of the duties of the officers and members of the Board of the HOA: (i) If appointed by the Declarant, the officers and members of the Board are required to exercise the care required of fiduciaries of the Owners; (ii) for officers and members of the Board not appointed by Declarant, no members of the Board and no officer shall be liable for actions taken or omissions made in the performance of the such member's duties except for wanton and willful acts or omissions. Except as provided otherwise by the foregoing sentence, and except as provided for in §7-128-402, C.R.S., the Association shall indemnify and hold harmless Declarant and any member of the Board, and any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages, charges, liabilities, obligations, fines, penalties, claims, demands, or judgments and any and all expenses, including, without limitation, attorney's fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person, or of the Association, the Board, or any committee of the Association, provided that such person

has acted in conformity with applicable law, including the provisions of said Sections 38-33.3-303 and §7-128402, C.R.S. and 7-128-403, C.R.S.

- (p) Within ninety days after assuming control from Declarant, the Board shall make available to Owners upon reasonable notice:
- (i) The name of the association;
 - (ii) The name of the association's designated agent or management company, if any;
 - (iii) A valid physical address and telephone number for both the association and the designated agent of management company, if any;
 - (iv) The name of the common interest community;
 - (v) The initial date of recording of the declaration; and
 - (vi) The reception number or book and page for the main document that constitutes the declaration.
- (q) To promote responsible governance, the association shall:
- (i) Maintain accurate and complete accounting records;
 - (ii) Adopt policies, procedures, and rules and regulations concerning:
 - a. Investment of reserve funds;
 - b. Procedures for the adoption and amendment of policies, procedures, and rules; and
 - c. Procedures for addressing disputes arising between the association and Lot owners.

ARTICLE 6 MAINTENANCE AND REPAIR OBLIGATIONS

Section 6.1 If any Owner shall permit any Residence, or Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which it may have to correct the situation. In addition, the Board shall have the right, but not the duty, after notice and hearing as provided in the Bylaws, to enter upon such Owner's Lot to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a single Lot assessment enforceable as set forth in this Declaration.

Section 6.2 **Damage to Association Property by Owner.** The cost of any maintenance, repairs, or replacements by the Association on tile Association Property or to landscaping on an Owner's Lot maintained by the Association arising out of or caused by the willful or negligent act of an Owner, his/her tenants, or their Families, guests, or invitees shall after notice and hearing, be levied by the Board as an, assessment against such Owner.

To the extent permitted by Colorado law, each Member shall be liable to the Association

for any damage to the Association Property not fully reimbursed to the Association by insurance (including without limitation any deductible amounts under any insurance policies against which the Association files a claim for such damage) if the damage is sustained because of the negligence, willful misconduct or unauthorized or improper installation or maintenance of any Improvements by the Member, his/her guests, tenants or invitees, or any other persons deriving their right and easement of use and enjoyment of the Association Property from the Member, or his/her or their respective family, guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserve, the right, after notice and hearing as provided in the Bylaws, to levy a single Lot assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the member may be liable as described above. In the case of joint ownership of a Lot, the liability of the Owners shall be joint and severable, except to the extent the Association shall have previously contracted in writing with the joint Owners to the contrary. After notice and hearing as provided in the Bylaws, the cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a single Lot assessment against such Member's Lot, and may be enforced as provided herein.

ARTICLE 7 ARCHITECTURAL COMMITTEE

Section 7.1 Architectural Committee Approval of Improvements.

- (a) Approval Generally. Before commencing construction or installation of any Improvement within the Community other than the initial construction of Lots by the Declarant, the Owner planning such Improvement must submit to the Association's Architectural Committee a written request for approval. The Owner's request shall include color schemes, exterior finish, structural plans, specifications, and plot plans satisfying the requirements of this Article and Section. Unless the Architectural Committee's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Architectural Committee shall base its decision to approve, disapprove, or conditionally approve the proposed Improvement on the criteria described in this Article and Section.
- (b) Modification to Approved Plans Must Also be approved. Once a work of Improvement has been duly approved by the Architectural Committee, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate written submission to, and review and approval by, the Architectural Committee. If the proposed modification will have, or is likely to have, a material affect on other aspects or components of the work, the Architectural Committee, in its discretion, may order the Owner, or Owner's contractors

and agents, to cease working not only on the modified component of the Improvement, but also on any other affected component.

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

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

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

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

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

Section 7.5 Architectural Rules. The Architectural Committee may, from time to time with approval of the Board of Directors, adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the provisions hereof by setting forth: (a) the standards and procedures for

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

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

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

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

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

Section 7.8 Enforcement.

- (a) In addition to other enforcement remedies set forth in this Declaration, the Architectural Committee shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or inequity. In addition, the Architectural Committee shall have the authority to order an abatement of any construction, alternation or other matter for which approval is required, to the extent that it has not been approved by the Architectural Committee or if it does not conform to the plans and specifications submitted to the Architectural Committee. No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.
- (b) Owner fails to remedy any noticed noncompliance within thirty (30) days from the date of such notification, the Architectural Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall beheld regarding the alleged noncompliance. The hearing date shall not be more than thirty (30) days nor less than fifteen (15) days after the notice of the noncompliance is issued by the Board to the Owner, to the Architectural Committee and, in the discretion of the Board, to any other interested party.
- (c) At the hearing, the Owner, representative(s) Of the Architectural Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance and if so the nature there of and the estimated cost of correctina or removing the same. If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, at its discretion, may grant. If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board at its option, may either cause the removal of the non-complying Improvement or remedy the noncompliance and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not properly repaid by the Owner to the Association, the Board shall recover such expenses through the levy of an assessment against such Owner.
- (d) The approval by the Architectural Committee of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring approval of the Architectural Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval by the same or some other Owner.

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

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

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

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

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

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

ARTICLE 8 USE RESTRICTIONS/DECLARANTS EXCEPTIONS

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

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

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

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

occupants to use streets, driveways, and guest parking spaces within the planned community.

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

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

Section 8.5 Landscape. (a) The Association shall have the right to maintain but shall not be responsible for the maintenance, repair and appearance of landscaping the Common Areas and the front yard areas of the Lots; (b) Within six (6) months from the date of becoming an Owner, such Owner shall install, keep and maintain in good repair and appearance the rear areas enclosed by vinyl fencing at least three (3) feet high, tan in color, and all portions of the Lot and Residence thereon; in the event such owner fails to so maintain the front and rear areas, the Association shall have the right to do so, and the costs thereof shall be assessed against such lot and Residence as a special assessment; (c) the Association shall maintain all landscaping in Common Areas, including the detention facility, and required landscaping in adjacent public right-of-way; (d) the Association shall also maintain, and cut weeds (if any), in the portion of the D 1/2 Road right-of-way that is adjacent to the Property, each in accordance with the City's ordinances.

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

Section 8.7 Prohibited Structures. No sheds, outbuildings or the like are allowed after

the initial construction on a lot, without the prior written approval of the Architectural Control Committee

Section 8.8 Nuisance. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within the Project, and no odor shall be permitted to arise there from so as to render the Project or any portion thereof unsanitary, unsightly, or offensive. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Lot so as to be detrimental to any other Lot or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, noisy or smoky vehicles, large power equipment or large power tools, unlicensed off road motor vehicles, or other items which may unreasonably disturb other Owners or their tenants shall be located, used, or placed on any portion of the Project. Front yard and porch areas shall not be used for storage purposes or for accumulation of garbage. Alarm devices used exclusively to protect the security of a Lot and its Contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms. No Clothing or household fabrics shall be hung, dried, or aired in a manner that is visible from any street.

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

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

Section 8.11 Pets. Animals, livestock, and poultry shall not be raised, bred or kept on any Lot, except domestic household pets (*e.g.*, cats and dogs) not exceeding a total of

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

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

Section 8.13 Residential Use Only. Other than the Declarant's exceptions per Section 8.2, no part of the Project shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purposes. The provisions of this Section shall not preclude a home occupation as authorized by the ordinances of the City of Grand Junction.

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

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

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

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

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

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

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

Section 8.21 Limited Common Elements, if any.

- (a) The right to use a Limited Common Element, if any, shall be used only by the Owner(s) of the Lot appurtenant thereto and/or said Owner's tenants and licensee(s) and shall be terminated upon conveyance. No Limited Common Element or any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from conveyance of the Lot to which it is appurtenant. Each Limited Common Element shall be deemed to be Common Element for all those purposes set forth in this Declaration that are not inconsistent with this Section 8.21.
- (b) Subject to the review of the Architectural Review Committee, where applicable, each Owner that is entitled to use a Limited Common Element shall have the following rights with regard to such Limited Common Element, which the Owner has the exclusive right to use:
 - i) to place furniture and plants upon said area;

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

ARTICLE 9 RIGHTS OF ELIGIBLE SECURITY INTEREST

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

Section 9.2 Notice to Eligible Security Interest

- (a) **Notice of Action.** Upon written request to the Association, identifying the name and address of the Eligible Security Holder, Eligible Insurer or Guarantor, and the Lot number or address, any such Eligible Security Holder or Eligible Insurer, or Guarantor will be entitled to timely notice of:
 - i) Any delinquency in the payments of assessments or charges owned by an Owner of a Lot subject to an eligible mortgage held, insured, or guaranteed by such Eligible Security Holder, Eligible Insurer, or Guarantor, which remains uncured for a period of sixty (60) days;
 - ii) Condemnation or casualty loss that effects a material portion of the Project.

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

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

distribution to such Lot of the proceeds of any award or settlement.

ARTICLE 10 MORTGAGEE PROTECTIONS

Section 10.1 Benefit of Mortgagees. This Article establishes certain standards and covenants which are for the benefit of Mortgagees. This Article is supplemental to, and not in substitution of, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

Section 10.2 Notice of Actions. If requested in writing by a First Mortgagee, the Association shall give prompt written notice (or copies) of the following to each such First Mortgagee making a request:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Lot in which an interest is held by the First Mortgagee;
- (b) any delinquency in the payment of Assessments which remains uncured for sixty (60) days by an Owner whose Lot is encumbered by a First Mortgage held by such First Mortgagee;
- (c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which would require the consent of First Mortgagees as set forth in this Article;
- (e) any judgment rendered against the Association; or
- (f) any violation of the terms, covenants, conditions and restrictions of the Declaration by an Owner whose Lot is encumbered by a First Mortgage held by such First Mortgagee.

Section 10.3 Consent Required. Notwithstanding anything to the contrary contained in this Declaration, the Association may not take any of the following actions without the written consent of sixty-seven percent (67%) of the First Mortgagees (based on one vote for each Lot encumbered by a First Mortgage):

- (a) by act or omission seek to abandon or terminate the Project, except after condemnation or substantial casualty;
- (b) except as provided herein for condemnation, casualty and the exercise of Declarant rights, change any Lot's interest in Common Elements, share of Common Expenses or votes in the Association;
- (c) subdivide, partition or relocate the boundaries of any Lot, except as permitted with respect to Declarant rights;

- (d) abandon, subdivide, partition, encumber, sell or transfer the Common Elements (the granting of easements for public utilities or for other purposes provided for in this Declaration shall not be deemed transfers);
- (e) use hazard insurance proceeds for losses to any portion of the Common Elements for other than repair, replacement, or reconstruction of such Common Elements, except as provided by the Act; or
- (f) merge the Project with any other common interest community, except as permitted with respect to Special Declarant Rights.

Section 10.4 Notice of Objection. Unless a First Mortgagee provides the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within thirty (30) days following the receipt of notice of such proposed amendment or action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

Section 10.5 First Mortgagee's Rights.

- (a) First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, for the Common Elements. First Mortgagees making such payment shall be owed immediate reimbursement from the Association.
- (b) A First Mortgagee shall be entitled to cure any delinquency by an Owner of a Lot encumbered by its First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 10.6 Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this Article shall operate to:

- (a) Deny or delegate control over the general administrative affairs of the Association by the Owners or the Board
- (b) Prevent the Association or the Board from commencing, intervening or settling any legal proceeding; or
- (c) Prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with this Declaration.

ARTICLE 11 DISPUTES

Section 11.1 Legal Proceedings. The Board shall not institute any civil action or administrative proceeding against any person, including the Declarant, without complying

with the requirements of Section 11.2 and 11.4. The provisions of this Section do not apply to a civil action that is commenced:

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

Section 11.2 Arbitration/Mediation. The Declarant, the Association (including its officers, Directors and committee members), all Owners and other persons subject to this Declaration, and any other person not otherwise subject to this Declaration who agrees to submit to this Section ("Bound Party" or collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances, or disputes described in Section 11.3 below ("Claims") shall be resolved by arbitration using the procedures set forth in Section 11.4 in lieu of filing suit in any court.

Section 11.3 Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Associations governing documents (i.e., Articles, Bylaws, Declaration, etc.) or the rights, obligations, and duties of any Bound Party under the Association's governing documents or relating to the design or construction of the Improvements on the Property shall be subject to the provisions of this Section 11.4. However, matters of aesthetic judgment shall be governed by Article 9, and shall not constitute a Claim.

Notwithstanding the foregoing, unless all parties thereto otherwise agree, the following shall not constitute Claims and shall not be subject to the provisions of Section 11.4:

- (a) any suit by the Association against a Bound party to enforce the provisions of Article 4;
- (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Articles 8 and 9;
- (c) any suit between Owners, which does not include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (d) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 11.4(a), unless a party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article 11.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 11.4.

Section 10.4 Mandatory Procedures.

- (a) **Notice.** Any Bound party having a Claim ("Claimant") against any other Bound party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:
- i) the nature of the Claim, including the persons/parties involved and Respondent's role in the Claim
 - ii) the legal basis of the Claim (i.e., the specific legal authority out of which the Claim arises);
 - iii) Claimant's proposed remedy; and
 - iv) that Claimant will meet with Respondent to discuss good faith ways to resolve the Claim.
- (b) **Negotiation and Mediation.** The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

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

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

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

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

- (c) Bound Parties agree to the following arbitration process to resolve all Claims, after Mediation efforts have failed. Bound Parties agree that no court shall have jurisdiction in the absence of compliance with the provisions in this Section 11.
- i) Within ten (10) business days of delivery of the Termination of

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

- ii) The parties and the arbitrator shall schedule arbitration as soon as possible; if the parties cannot agree, the arbitrator shall set the time and place for the arbitration which in any event shall be scheduled within ten business days of the appointment/selection of an arbitrator, or such other time as the arbitrator decides.
- iii) At the arbitration hearing, each party shall have two hours to present their case; the arbitrator may ask such questions and review such documents as the arbitrator deems appropriate, but shall endeavor to do so within one additional hour; the arbitrator shall issue his written decision within ten business days.
- iv) The arbitrator may allocate the costs of the arbitration, including accounting legal fees and experts, to the parties equally or otherwise as the arbitrator deems fair and reasonable;
- v) During the fifteen days prior to the arbitration, the arbitrator may make such rulings and requirements regarding access to records, allocation of the costs of documents, and similar matters, including allocating the costs there of as the arbitrator deems reasonable and/or fair. If either party is not given suitable access to said information, the arbitrator may delay the date of the arbitration and the costs associated with such a delay shall be allocated as the arbitrator deems reasonable and/or fair.
- vi) If either party fails to timely designate an arbitrator or designee or fails to timely submit a name to the Court, that party shall be deemed to have: accepted the arbitrator designated; accepted the name submitted to the Court by the other party; or, accepted the choice of the designee named by the other party.
- vii) All decisions of the arbitrator shall be final.

Section 11.5 Allocation of Costs of Resolving Claims, Subject to Section 11.4(b), each Party shall bear its own costs including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) ("Post Mediation Costs").

Section 11.6 Enforcement of Resolution. After resolution or any Claim, if any Party fails to abide by the terms of any agreement, then any other Party may file suit or initiate

administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 11.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

Section 11.7 Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in the Association's governing documents, the Party prevailing in such action shall be entitled to recover from the other Party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a single Lot assessment with respect to the Lot(s) involved in the action.

ARTICLE 12 GENERAL PROVISIONS

Section 12.1 Non-Waiver. Failure by the Association, the Declarant, or any Owner to enforce any covenant, condition, restriction or reservation contained in this Declaration shall not be deemed a waiver of the right to do so thereafter.

Section 12.2 Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity, by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

Section 12.3 Amendments. Except for provisions of this Declaration regarding the rights and obligations of Declarant or an affiliate of Declarant, which may not be amended without Declarant's prior written consent, this Declaration may be amended by an instrument approved by sixty-seven percent (67%) of the Members of the Association. Subject to applicable law, this Declaration may be amended by Declarant as permitted by applicable law (including without limitation the right to 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 Department of Veteran's Affairs, the Federal Home Loan Mortgage Corporation, the government National Mortgage Association or the Federal National Mortgage Association). The amendment shall become effective upon its recording in the Office of the County Recorder of Mesa County, Colorado. This Declaration may not be terminated during the Declarant's Control Period without the written consent of the Declarant, which may be withheld in its sole and absolute discretion.

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

- (a) Except as provided elsewhere, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by the affirmative vote or agreement of Owners to which more than sixty-seven percent (67 %) of the vote in the HOA are allocated. The consent of first mortgagees is not required to amend this Declaration. Such amendment shall be effective when duly recorded with the County Clerk and Recorder. The HOA may, acting through the Board, petition the district court for Mesa County, Colorado, for an order amending the Declaration, as provided for and pursuant to the provisions of §38-33.3-217(7), C.R.S.
- (b) In addition, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any agency, Declarant shall have and is hereby specifically granted the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to termination of the Declarant's control of the Association.
- (c) Further, Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, Articles of Incorporation or Bylaws of the Association at any time prior to the termination of Declarant's control of the Association, for the purposes of correcting spelling, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of any such document.

Section 12.4 Extension of Declaration. Each and all of these covenants, conditions and restrictions shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which date they shall automatically be extended for successive periods of ten (10) years unless they are canceled in writing by Owners of at least fifty-one percent (51%) of the Voting Power of the Association. All amendments must be recorded in the Office of the County Recorder of Mesa County, Colorado.

ARTICLE 13 SPECIAL DECLARANT'S RIGHTS

Section 13.1 Special Declarant's Rights. Any provisions herein notwithstanding.

Declarant reserves the following Special Declarant's Rights, on the terms and conditions and subject to the expiration deadlines, if any set forth below:

- (a) **Right to Complete Improvement and Construction Easement.** Declarant hereby reserves the right (but not the obligation), for a period terminating on the seventh (7th) anniversary of the Recordation of this Declaration, to complete the construction of improvements on the Properties, and an easement over the Properties for the purpose of doing so; provided, however, that if Declarant still owns any property in the Properties on such seventh (7th) anniversary date, such rights and reservations shall continue for one additional successive period of seven (7) years. Any damage caused to a Lot or the Common Area by Declarant or its agents in the use or exercise of such right and/or easement shall be repaired by and at the expense of Declarant.
- (b) **Offices, Model Homes and Promotional Sign.** Declarant reserves the right to maintain offices for sales and management, models, signs, flags and/or flagpoles on the Common Area and in any Lot owned or leased by Declarant, for so long as Declarant owns or leases any Lot. Declarant shall have access to all Common Area (and sufficient parking for Declarant's guests and business invitees) for Declarant's sales activities. Declarant's rights under this Section 13.1 shall terminate not later than the end of the Declarant Control Period.
- (c) **Appointment and Removal of Directors.** Declarant reserves the right to appoint and remove a majority of the Board, as set forth in Article 3 above, for the time period set forth herein.

Section 13.2 Exemption of Declarant. Notwithstanding anything to the contrary in this Declaration, the following shall apply;

- (a) Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Properties, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Properties for so long as any Lot owned by Declarant remains unsold.
- (b) this Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utilities companies), or to others, as from time to time may be reasonably necessary to the proper development and disposal of Lots.
- (c) Prospective purchasers and Declarant shall have the right to use all and any portion of the Common Area for access to the sales facilities of Declarant and for placement of Declarant's signs.
- (d) Declarant may use any structures owned or leased by Declarant, as model home complexes or real estate sales or management offices, subject to the time limitations set forth herein, after which time, Declarant shall restore the improvements to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity.
- (e) Declarant shall maintain the right (but not the obligation) to enforce the

- Association's maintenance and repair obligations under this Declaration,
- (f) All or any portion of the rights of Declarant in this Declaration may be assigned by Declarant to any successor in interest by an express and written Recorded assignment which specifies the rights of Declarant so assigned.
 - (g) The prior written approval of Declarant (which shall not be unreasonably withheld), as developer of the Property, will be required before any amendment to the Declaration affecting Declarant's rights or interests (including, without limitation this Article 12) can be effective.
 - (h) The rights and reservations of Declarant referred to herein, if not earlier terminated by Declarant or pursuant to the Declaration, shall terminate on the date set forth in Section 12.1(a) above.

In Witness whereof, the undersigned, being Declarant herein, has executed this instrument the day and year first above written.

DECLARANT:
Wexford3, LLC, a Colorado
limited liability company

By: *Douglas B May*
MANAGING MEMBER

STATE OF COLORADO)
)ss.
COUNTY OF MESA)

On the 14th day of October, 2015, before me personally appeared Douglas B. May as managing member of Wexford3, LLC, a Colorado limited liability company, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its states purpose.

RENEE C. PERRY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20014000954
My Commission Expires March 26, 2019

Renee Perry
NOTARY PUBLIC

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
WEXFORD ESTATES SUBDIVISION**

(Legal description of the Property)

Lots 1 and 2 of Wexford Subdivision
COUNTY OF MESA,
STATE OF COLORADO

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
WEXFORD ESTATES SUBDIVISION**

(Recorded Licenses and Easements)

- 1) Reservations and exceptions in Patents, or Acts authorizing the issuance thereof, including the reservation of the right of proprietor of vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in United States Patent recorded February 20, 1892, in Book 11 at Page 159.
- 2) Reservations and exceptions in Patents, or Acts authorizing the issuance thereof, including the reservation of the right of proprietor of vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in United States Patent recorded August 27, 1895, in Book 11 at Page 403.
- 3) Utility Easement recorded February 3, 1997 in Book 1093 at Page 582 as Reception No. 1125014.
- 4) Access Easement shown on instrument recorded December 26, 1980, in Book 1291 at Page 3 as Reception No. 1244080.
- 5) Easement described in Agreement recorded April 24, 1980, in Book 1254 at Page 238 as Reception No. 1222282.
- 6) Agreement to Relocate Easement, recorded December 23, 1981, in Book 1349 at Page 380 as Reception No. 1278322.
- 7) Matters disclosed in Quitclaim D recorded October 19, 2006, in Book 4274 at Page 947 as Reception No. 2344492.
- 8) City of Grand Junction Ordinance No. 4042, recorded March 28, 2007, in Book 4385 at Page 530 as Reception No. 2371597.
- 9) Matters disclosed on the Wexford Subdivision Plat recorded June 7, 2001, as Reception No. 2384382.
- 10) Right of way for D 1/2 Road.
- 11) Right of way for Grand-Valley Canal.
- 12) Right of way for an ditches and creeks crossing subject property.
- 13) Inter-Creditor and Subordination Agreement recorded February 1, 2010, in Book 4973 at Page 987 as Reception No. 2521938.
- 14) A Deed of Trust dated December 28, 2009, executed by Wexford Borrower, LLC, to the Public Trustee, to secure an indebtedness of \$386,000.00 in favor of Wexford Lender, LLC recorded June 29, 2010, in Book 5026 at Page 749 as Reception No. 2537641.
- 15) A Deed of Trust dated June 25, 2010, executed by Wexford Borrower, LLC a Colorado limited liability company, to the Public Trustee, to secure an indebtedness of \$4,039,473.00 in favor of Colorado Capital Bank recorded June 29, 2010 as Reception No. 2537642.

Modification of Deed of Trust recorded September 8, 2010, in Book 5055 at Page 66 as
Reception No. 2545232.

16) UCC Financing Statement from Wexford Borrower, LLC debtor to Colorado
Capital Bank secured party recorded July 28, 2010, in Book 5036 at Page 535 as
Reception No. 2540441.

17) Assignment of Rents recorded June 29, 2010, in Book 5026 at Page 760 as
Reception No. 2537643.

18) Disburser's Notice recorded June 29, 2010, in Book 5026 at Page 764 as
Reception No. 2537644.