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EL PASO COUNTY CLERK AND RECORDER: INDEX IN GRANTEE INDICES UNDER
MIDTOWN AT COTTONWOOD CREEK AND MIDTOWN AT COTTONWOOD CREEK
HOMEOWNERS ASSOCIATION, INC., A COLORADO NONPROFIT CORPORATION,
AND UNDER GRANTOR, ELITE PROPERTIES OF AMERICA, INC., A COLORADO
CORPORATION.

DECLARATION

of

Covenants, Conditions, Restrictions and Easements

for

MIDTOWN AT COTTONWOOD CREEK

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EXHIBITS

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<u>Exhibit B</u>	Legal Description of the Expansion Property
<u>Exhibit C</u>	Depiction of Typical Private Side Lot Easements
<u>Exhibit D</u>	Depiction of Access Streets

DECLARATION

of

Covenants, Conditions, Restrictions and Easements

for

MIDTOWN AT COTTONWOOD CREEK

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MIDTOWN AT COTTONWOOD CREEK ("Declaration") is made effective as of _____, 2018, by **Elite Properties of America, Inc.**, a Colorado corporation ("Declarant"), in order to create a common interest community pursuant to the Colorado Common Interest Ownership Act Section 38-33.3-101 et seq., Colorado Revised Statutes (the "Act"). This Declaration is in replacement of those certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cook Communities Campus recorded on November 23, 2009 at Reception No. 209134980 of the real property records of El Paso County, Colorado as amended only with respect to the Community Area (defined below) and from which the Community Area has been removed.

ARTICLE I GENERAL

Section 1.1 Common Interest Community. The name of the common interest community created by this Declaration is "Midtown at Cottonwood Creek." Midtown at Cottonwood Creek is a planned community as defined in Section 38-33.3-103 (22) of the Act. All of Midtown at Cottonwood Creek is located in El Paso County, Colorado.

Section 1.2 Property Affected. Declarant owns certain real property in the City of Colorado Springs, El Paso County, Colorado (the "City") described on **Exhibit A** attached hereto and incorporated herein. Declarant hereby subjects the property described on **Exhibit A** to this Declaration. The property described on **Exhibit A** is referred to in this Declaration as the "Community Area."

Section 1.3 Purposes of Declaration. This Declaration is executed and recorded (a) in furtherance of a common and general plan for those parcels of land that are part of the Community Area; (b) to protect and enhance the quality, desirability and attractiveness of all property within the Community Area; (c) to provide for the Association to hold, maintain and manage certain common properties and amenities in the Community Area and to perform certain functions for the benefit of owners of land within the Community Area; (d) to define the duties, powers and rights of the Association; and (e) to define certain duties, powers and rights of Owners.

Section 1.4 General Scheme and Plan of Community Area. The Community Area created pursuant to this Declaration encompasses all of the property described in **Exhibit A**. Declarant hereby specifically reserves the right to add the real property described in **Exhibit B** to

the Community Area (the "Expansion Property"). If none of the Expansion Property is added to the Community Area for any reason, the validity of this Declaration shall not be affected, and this Declaration shall remain in full force and effect as to the Community Area as initially constituted in this Declaration. Unless and until a particular portion of the Expansion Property is added to the Community Area, this Declaration shall be interpreted as not being applicable thereto. The Association (as defined in Section 2.3 below) will maintain and manage the Association Properties (as defined in Section 2.5) within the Community Area as provided in this Declaration. Each Owner acknowledges that the Lots are urban living lots with limited area between each Dwelling Unit. Each Owner further acknowledges that each Lot is subject to applicable Public Utility & Private Use Easements as reflects on the Plat, which are defined in this Declaration as the Private Side Lot Easements as further described and provided for in this Declaration.

Section 1.5 Declaration. Declarant, for itself, its successors and assigns, and as the owner of the Community Area, hereby declares that the Community Area, and each part thereof, shall, on and after the date this Declaration is recorded, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, easements, limitations, reservations, exceptions and other provisions set forth in this Declaration, all of which are declared to be a part of and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Community Area. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with Section 15.1 hereof, shall bind, be a charge upon and inure to the mutual benefit of (a) all of the property within the Community Area and each part or parcel thereof; (b) Declarant and its successors and assigns; (c) the Association and its successors and assigns; and (d) all other persons and entities having or acquiring any right, title or interest in any property which is part of the Community Area or any part or parcel thereof or any Improvement thereon, and their encumbrancers, claimants, heirs, personal representatives, successors and assigns.

ARTICLE 2 DEFINITIONS

Unless otherwise expressly provided in this Declaration, the following words and phrases, whenever used in this Declaration, shall have the meanings specified in this Article 2.

Section 2.1 Architectural Committee. "Architectural Committee" shall mean the applicable approving authority described in Section 6.1 of this Declaration.

Section 2.2 Assessment. "Assessment" shall mean a "Common Assessment," pursuant to Section 11.3, a "Special Assessment," pursuant to Section 11.8 and/or a "Site Assessment," pursuant to Section 11.9, as applicable.

Section 2.3 Association. "Association" shall mean Midtown at Cottonwood Creek Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

Section 2.4 Association Documents. "Association Documents" shall mean the various operative documents of the Association, whether recorded or adopted at this time or as the same

have been or may be amended, modified, supplemented, or otherwise changed from time to time, all of which are incorporated herein by this reference, and shall include the following:

- (a) the Articles of Incorporation of the Association;
- (b) the Bylaws of the Association;
- (c) this Declaration and all amendments to this Declaration;
- (d) the Plat and any supplemental Plat for property within the Community Area;
- (e) the Community Standards; and
- (f) the Development Plan (defined in Section 2.12) and all amendments thereto.

Section 2.5 Association Properties. "Association Properties" or "Association Property" shall mean all real and personal property, together with any and all Improvements now or hereafter located within the Community Area and appurtenances and rights thereto, hereafter owned by the Association or to which the Association does not hold title but hereafter maintains, holds or uses for the common use and enjoyment of all of the Members as provided herein, without ownership thereof, and for other purposes as may be permitted by this Declaration. The Association Properties shall include Tracts A, B and C Midtown at Cottonwood Creek Filing No. 1 and such additional Tracts of land and/or other property or Improvements within the Community Area identified on the Plats or any supplemental Plat as real property improvements that will be owned and maintained by the Association. All of the Association Properties will be "common elements" as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-103 (5).

Tracts A, B, and C Midtown at Cottonwood Creek Filing No. 1 will be owned and maintained by the Association. Tracts A, B, and C Midtown at Cottonwood Creek Filing No. 1 are for private access open space, parking, Landscaping, public utilities, public drainage, public improvements, trails, fences, walls, mailboxes and signage.

The Association may, from time to time, be granted additional Association Properties, including portions of the Expansion Property which is hereafter annexed into the Community Area pursuant to Section 10.4 below. The Association shall be obligated to maintain all aspects of any Association Properties that are granted to it, other than those aspects which are specifically identified on the Plats or in the public record as being the obligation of another party.

Section 2.6 Board of Directors. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

Section 2.7 Community Area. "Community Area" shall mean the real property described on Exhibit A, together with any and all Improvements now or hereafter on such real property and appurtenances and rights to such real property. If and when added by the Declarant,

Community Area shall also include such portions of the Expansion Property as shall have been made subject to this Declaration from time to time as provided in Section 10.4 hereof. Unless a majority of the Owners in the Community Area otherwise consent, the Community Area will only be expanded to include the Expansion Property and no other property.

Section 2.8 Declarant. "Declarant" shall mean Elite Properties of America, Inc., a Colorado corporation, its successors and assigns. A Person shall be deemed a "successor and assign" of Elite Properties of America, Inc., as Declarant, only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor and assignor of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the written instrument. Notwithstanding the foregoing, a successor to Elite Properties of America, Inc. by consolidation or merger shall automatically be deemed a successor or assign of Elite Properties of America, Inc., as Declarant, under this Declaration.

Section 2.9 Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Midtown at Cottonwood Creek, in its entirety, including all attached exhibits and all subsequent amendments.

Section 2.10 Design Guidelines. "Design Guidelines" shall mean the guidelines, if any, adopted by the Architectural Committee pursuant to Section 6.2.

Section 2.11 Dwelling Unit. "Dwelling Unit" shall mean an Improvement on a Lot which is intended or used for residential occupancy, including, with limitation, any individual single family detached home.

Section 2.12 Development Plan. "Development Plan" shall mean the Midtown at Cottonwood Creek No. 1 & 2 Small Lot PUD Development Plan, as approved by the City of Colorado Springs Planning Department and all amendments thereto.

Section 2.13 First Mortgage. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Office of the Clerk and Recorder of the County of El Paso, Colorado, pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.14 First Mortgagee. "First Mortgagee" shall mean and refer to any Person named as a mortgagee or beneficiary under any First Mortgage or any successor to the interest of any such Person under such First Mortgage.

Section 2.15 Improvements. "Improvements" shall mean all changes to the exterior of a Dwelling Unit or Lot, including without limitation all structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, concrete additions or pavers, Landscaping, swimming pools, basketball backboards and supporting structures, patio covers, awnings, patio screening of any kind, painting or other finish material of any exterior surfaces or any visible structure, additions, walkways, bicycle and/or

pedestrian trails, sprinkler pipes, garages, carports, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, play equipment, flag poles or other flag or banner holders of any type or kind, fixtures, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, and exterior air conditioning, swamp coolers and water softener fixtures. "Improvements" shall also mean an excavation or fill the volume of which exceeds two cubic yards, and any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

Section 2.16 Landscape. "Landscape" shall mean any type of Improvement consisting of the treatment of ground surface with live or artificial plant materials, pavers, concrete areas, wood chips, crushed stone, decorative rocks, mulch materials or other outdoor decorative surfacing materials. For purpose of this definition, the word "Landscape" shall include all other forms of the word Landscape, such as "Landscaped" and "Landscaping."

Section 2.17 Lot. "Lot shall mean a parcel of land within the Community Area which is shown as a lot on the Plats or any supplemental Plat upon which at least one Dwelling Unit may be constructed pursuant to the ordinances of the City of Colorado Springs. Each Lot constitutes a "unit" as defined in Section 38-33.3-103(30) of the Act. The maximum number of Lots that may be created within the Community Area shall be as provided in Section 10.8 of this Declaration.

Section 2.18 Lot Lines. Front, side and rear "Lot Lines" shall be the same as defined in the zoning regulations of the City of Colorado Springs in effect from time to time. In the absence of such a definition, a front Lot Line is each boundary line (whether one or more) between the Lot and any street, lane, or right of way. A side Lot Line is any boundary line which meets and forms an angle with a street except that for a corner Lot with two front Lot Lines, the side Lot Line is the boundary which forms an angle with the street that affords the principal access to the Lot. All other Lot Lines are rear Lot Lines.

Section 2.19 Member. "Member" shall mean a member of the Association, who must also be an Owner. Membership in the Association shall be appurtenant to, and may not be severed from, ownership of a Lot.

Section 2.20 Owner. "Owner" shall mean the record title holder, including Declarant, whether one or more Persons, of fee simple title to a Lot, including sellers under executory contracts under Colorado law.

Section 2.21 Person. "Person" shall mean a natural person, a corporation, a limited liability company, a partnership (including general, limited and limited liability partnerships) or any other public or private entity recognized as being capable of owning real property under Colorado law.

Section 2.22 Plats. "Plats" shall mean each recorded document approved by the City of Colorado Springs that creates lots and/or tracts within the Community Area, including the Midtown Collection at Cottonwood Creek Filing No. 1 plat.

Section 2.23 Related User. "Related User" shall mean: (a) any Person who resides with an Owner within the Community Area; (b) a guest or invitee of an Owner; (c) an occupant, tenant or contract purchaser or any Dwelling Unit on a Lot; and (d) any family member, guest, employee, agent, representative, licensee, contractor, invitee or cohabitant of any of the foregoing Persons.

Section 2.24 Community Standards. "Community Standards" shall mean the rules, regulations, and standards, if any, adopted by the Board of Directors as provided in Section 8.9 of this Declaration, the Design Guidelines, and all Association Documents.

Section 2.25 Expansion Property. "Expansion Property" shall mean and refer to any part of that certain real property described on Exhibit B hereto, which may be annexed to the Community Area pursuant to Section 10.4 hereof, together with all appurtenances thereto and all improvements now or hereafter located thereon.

Section 2.26 Private Side Lot Easements. "Private Side Lot Easements" shall mean the applicable 1' and 5' Public Utility and Private Use Easements reflected on the Plat for the Lots described on the respective Lot Easement Details contained on the Plat. The Private Side Lot Easements are located between two (2) Dwelling Units and are comprised of a one foot (1') ("Use Easement") and a five foot (5') ("Unit Maintenance Easement") both as typically depicted on attached Exhibit C which Exhibit is incorporated herein by this reference. The Use Easements and the Unit Maintenance Easements are subject to the rights, obligations and restriction contained in this Declaration.

ARTICLE 3 COVENANTS TO PRESERVE THE RESIDENTIAL CHARACTER OF THE COMMUNITY AREA

Section 3.1 Property Uses. Except as otherwise provided in this Article 3, all Lots in the Community Area shall be used exclusively for private family residential purposes. Human service establishments, including human service homes, human service residences, human service facilities and human service shelters, health care support facilities, hospices and youth homes (as each of such terms are defined in the City's Zoning Code) and any other similar or dissimilar group home are each prohibited on a Lot and in the Community Area. No Dwelling Unit erected or maintained within the Community Area shall be used or occupied for any purpose other than for a single family dwelling. No business, profession or other activity conducted for gain shall be carried on or within any Lot or Dwelling Unit; provided that any uses that are permitted under the Home Occupation ordinance of the City, as it may be hereafter amended, shall be permitted. The Home Occupation ordinance is in Article 4, Part 16 of the City's Zoning Code. If the Home Occupation ordinance is hereafter repealed, then for purposes of this Declaration and its enforcement, the provisions of the Home Occupation ordinance in effect at the time of the recordation of this Declaration shall be incorporated herein as a part of this Declaration. Any violation of the Home Occupation ordinance shall be a violation of this Declaration. Notwithstanding the above, no Home Occupation shall be permitted which requires employees to be present at any Dwelling Unit within the Community Area or which materially increases the amount of traffic within the Community Area as determined by the Association from time to time.

The Association shall have the right, from time to time, to establish Community Standards regarding the use of Dwelling Units for Home Occupations.

Section 3.2 Improvements. No Improvement shall be erected within the Community Area except single family Dwelling Units approved by the Architectural Committee and other Improvements which have been approved by the Architectural Committee. No Improvement, other than a Dwelling Unit, and no trailer, motor home, recreational vehicle (RV), mobile home, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other Improvement may be placed on any Lot before completion of the Dwelling Unit upon such Lot except with the permission of the Architectural Committee. The Improvements within Association Property which the Association shall maintain will include Landscaping, entry features, fences, walls, signs, retaining walls, and other amenities that may be constructed thereon by the Association or the Declarant in its sole discretion.

Section 3.3 Construction Type. All construction shall be new. No building previously used at another location nor any building or Improvement originally constructed as a mobile dwelling may be moved onto a Lot except as expressly provided in Section 3.7 for temporary construction, sales or administration buildings.

Section 3.4 Storage. Following the initial construction of a Dwelling Unit on a Lot, no building materials shall be stored on any Lot except temporarily during continuous construction of an Association approved alteration, modification or improvement of an Improvement unless such building materials are stored in the garage on the Lot or otherwise enclosed and fully screened in a manner approved by the Architectural Committee.

Section 3.5 Substantial Completion. A Dwelling Unit shall not be occupied in the course of original construction until substantially completed and, if required by law, until a certificate of occupancy has been issued by Regional Building or any other necessary governmental or quasi-governmental authority. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 3.6 Intentionally Reserved.

Section 3.7 Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the permission of the Declarant or the Architectural Committee. Model homes may be used and exhibited only by Declarant or with the permission of the Declarant or the Architectural Committee. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes.

Section 3.8 Construction Debris. During the progress of construction, the Owner of a Lot or his contractor shall use commercially reasonable efforts to ensure that the Lot is kept free of debris and trash, all of which shall be deposited in the trash container area. When construction is commenced upon a Lot, the Owner shall provide a trash container and cause it to be properly used and maintained during construction. Such trash containers must be placed within the Owner's Lot unless the Declarant or Architectural Committee, in its sole discretion, authorizes its location

within the street. The Owner shall use his best efforts to ensure that no construction materials, debris or trash shall be allowed on the property of others and any materials, trash or debris blown off the Lot shall be promptly retrieved and disposed of properly. In addition, the Owner of a Lot shall cause all excess dirt which may be generated from excavation on the Lot to be removed from the Lot or street following completion of construction.

Section 3.9 Responsibility for Stormwater Compliance. Each Owner acknowledges that the activities involved in the construction on a Lot (the "Construction Activities") are subject to federal, state, and local laws and regulations governing the management of stormwater runoff from construction sites (the "Stormwater Regulations"), including but not limited to the Colorado Discharge Permit System regulations contained in 5CCR 1002-61 (the "CDPS Regulations"). Each Owner will be required, prior to undertaking any Construction Activities on his Lot to take appropriate action to prevent the unauthorized discharge of sediment and other contaminants from any area under construction.

Section 3.10 Drilling Structures. No derrick or other Improvement designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under any Lot. The foregoing is not intended to prohibit temporary drilling to obtain samples in connection with the investigation of soils or temporary drilling necessary in the construction of Improvements.

Section 3.11 Avigation Easement. The Community Area is subject to an Avigation Easement for public avigation purposes recorded under Reception No. 217069667 in the office of the Clerk and Recorder of El Paso County, Colorado.

ARTICLE 4 DENSITY, SETBACK AND QUALITY STANDARDS

Section 4.1 Limitation on Dwellings and Subdivisions. No more than one (1) Dwelling Unit shall be erected or maintained within any Lot. No Lot shall be replatted or otherwise subdivided unless approved by the Architectural Committee. Lot Line adjustments which do not result in an increase in the number of Lots and which are made to accommodate building plans approved by the Architectural Committee may be approved by the Architectural Committee in its sole discretion. This Section 4.1 does not apply to and shall not restrict Declarant's rights under Article 10. An Owner will be solely responsible for obtaining all required governmental approvals for any such Lot line adjustments and approval by the Architectural Committee shall not remove that obligation.

Section 4.2 Setbacks, Easements and Site Visibility. The setback distances of Dwelling Units and other Improvements from Lot lines in question shall be in accordance with the Development Plan applicable to the Lot in question. All construction must also conform to the setback requirements of the building code, zoning code and subdivision regulations of the City and all other applicable governmental or quasi-governmental agencies having appropriate jurisdiction for front, rear and side Lot lines, as of the date of commencement of construction. All front Lot lines are platted with either a five foot (5') or seven foot (7') easement for public utilities, public

improvements and drainage purposes with the Owner thereof being solely responsible for maintenance thereof.

Section 4.3 Minimum Floor Area. No Dwelling Unit shall be erected which, exclusive of basements below garden level, porches, patios, covered but unenclosed areas, garages and any attached accessory building, has a gross livable floor area less than one thousand one hundred (1,100) square feet.

Section 4.4 Height Restrictions. The height of any Dwelling Unit or other Improvements constructed or to be constructed on any Lot within the Community Area is hereby restricted and shall not exceed thirty-five feet (35') in height or such lower height as may be required by the City. Height shall be measured in accordance with the City's height standards and requirements.

Section 4.5 Exterior Colors and Materials. All exterior colors and materials, including roofing materials, used on Dwelling Units and other Improvements will be predetermined by the Declarant at the time of initial construction thereof. All modifications, additions, alterations or changes must be approved by the Architectural Committee, all in accordance with the Community Standards. Acceptable materials and standards for approval of such subsequent modification, alteration, addition and change may be as established from time to time by the Architectural Committee.

Section 4.6 Antennae and Roof Projections; Satellite Dishes. Except as provided below in this Section 4.6, no aerial, antenna, or other device for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building, nor shall any such aerial, antenna or other device be mounted at any location so as to be visible from neighboring properties or adjacent streets. Plans for Improvements, other than FCC Protected Structures, as defined below, must be submitted to and approved by the Architectural Committee prior to installation. If the Architectural Committee disapproves such structure, the party requesting approval may modify its plans to eliminate the Architectural Committee's objections and resubmit them for approval. If any such aerial, antenna, satellite dish or other device is installed without the approval of the Architectural Committee, the Architectural Committee shall have the rights set forth in this Declaration. Notwithstanding the above, one (1) customer-end antenna that is (i) designed to receive direct broadcast satellite service that is one meter or less in diameter, (ii) designed to receive video programming services via multiple distribution services that is one meter or less in diameter or diagonal measurement, or (iii) designed to receive television broadcast signals, all as defined by the Federal Communications Commission or the Telecommunications Act of 1996, as may be amended from time to time (collectively, "FCC Protected Structures"), shall be permitted so long as the means, method and location of such antennae comply with the rules adopted from time to time by the Architectural Committee. No unreasonable delay or unreasonable increase in the cost or installation or maintenance of an FCC Protected Structure shall be imposed by such rules, nor shall the rules prevent reception or otherwise make reception impossible for any Owner who shall seek to install an FCC Protected Structure, other than for health and safety reasons. Notwithstanding the above, no antenna used to transmit signals to, and/or receive signals from, multiple customer locations will be permitted.

Section 4.7 Rebuilding or Restoration. If any Dwelling Unit or other Improvement is destroyed in whole or in part by fire, windstorm or from any other cause or act of God, it must be rebuilt or all debris must be removed and the Lot restored to a slightly condition. Such rebuilding or restoration must be commenced within three (3) months after the damage or destruction occurs and thereafter diligently pursued to completion within a reasonable time, not to exceed one (1) year after the date the damage occurred or such longer period of time as may be approved by the Architectural Committee due to unusual circumstances. If restoration, rebuilding or removal is not completed within the above time periods or such later time approved by the Architectural Committee, or if the restoration, rebuilding or removal shall cease for a period of sixty (60) days without permission of the Architectural Committee, the Architectural Committee will give the Owner of the Lot involved written notice of such fact, and if the restoration, rebuilding or removal of the Improvements is not diligently commenced within thirty (30) days after such notice, the damaged or destroyed Improvements shall be deemed a nuisance. The Association shall have the right thereafter to enter upon the Lot involved and remove the damaged or destroyed Improvements at the expense of the Owner. Such an entry and removal shall not be deemed a trespass and the Owner shall be liable for all costs incurred in connection with the removal.

Section 4.8 Intentionally Reserved.

Section 4.9 Underground Utilities. All utilities that will be installed within the Community Area after the date of execution of this Declaration, including, electrical, telephone and cable television service, but excluding lighting standards and customary service devices for access, control or use of utilities, shall be installed underground. The Declarant may grant approval for temporary above ground utility lines as needed during construction. This Section 4.9 shall have no applicability to overhead utilities or aboveground utilities that are or were in place prior to the date of execution of this Declaration.

Section 4.10 Garage and Driveway. The Dwelling Unit on each Lot shall include a two-car, attached, fully enclosed garage or such equivalent garage arrangements as may be approved by the Architectural Committee. All driveways shall be improved with concrete. No Lot shall contain more than one (1) driveway which directly accesses the garage from a public right of way shown as a public lane on the Development Plan. No additions, alterations, or modifications (other than repairs or equivalent replacements) shall be permitted to be made to the garage or driveway following initial construction by builder of a Dwelling Unit ("Builder").

Section 4.11 Access Restriction. All persons or entities having any interest in any of the Lots are required to and shall each arrange and maintain any drives, Dwelling Units, or other Improvements so that vehicular ingress and egress to and from their respective Lots is exclusively from a publicly dedicated right of way shown on the Plat and not through private property, Tract and/or adjoining public lands.

Section 4.12 Access. Access to the Community Area is through Midtown Court, a public street and through Tract D, a private street to be owned and maintained by the Tract D owner and not by the Association.

Section 4.13 Compliance with Building Codes. All construction must also conform to the Development Plan, building codes, zoning codes and subdivision regulations of the City and El Paso County, Colorado, which regulations may vary from the provisions of these Covenants; provided, however, if these Covenants are more restrictive than such governmental codes and regulations, then the more restrictive provisions of these Covenants shall control.

Section 4.14 General Architectural Standards. Declarant shall have the right and authority to establish and amend specific architectural standards from time to time as provided in Section 6.2 hereof.

Section 4.15 Retaining Walls. Each Owner acknowledges that various Tracts within the Community Area may require retaining walls as generally depicted on the Development Plan, the location of which may be modified at the time of construction (the "Retaining Walls"). Declarant reserves the right to construct and install, in its sole discretion, any Retaining Walls and related Landscaping within the areas depicted on the Development Plan.

The Association shall be responsible for the maintenance of all Retaining Walls, if any, that are constructed within the Association Property. Each Owner of a Lot is responsible for determining the location of all Retaining Walls near his Lot in order to determine whether or not they are located within his Lot and thereby establish whether the Lot Owner, another Owner or the Association is responsible for the maintenance thereof.

The height of the Retaining Walls may not be increased or altered by any Owner but may be modified from time to time by the Association or the Declarant. No sign of any type shall be displayed from the Retaining Walls, other than signs expressly authorized by the Declarant or the Architectural Committee. If the maintenance and repair requirements described in this Section 4.15 are not properly performed by the applicable Person, the Declarant and the Association shall each have the right (but not the obligation) to perform such maintenance at the expense of the responsible Person following notice of noncompliance with its maintenance obligation as provided in this Section 4.15. Entry on a Lot or Tract by the Declarant or the Association in order to construct or maintain the Retaining Walls shall not be deemed a trespass. Except in case of an emergency, prior notice will be given to Lot Owner before any such entry by the Declarant or the Association. Neither the Declarant nor the Association shall be liable for any loss, costs or damages to the Lot Owner or Association on account of its performance of such construction or maintenance, except for any such loss, cost or damage caused by the applicable Person's gross negligence or willful misconduct.

Section 4.16 Private Side Lot Easements. Each Owner acknowledges that the Lots are subject to the Private Side Lot Easements as depicted on Exhibit C. Each Owner hereby grants the applicable adjoining Lot Owner the applicable Private Side Lot Easements located on his Lot subject to the right, conditions and obligations set forth in this Section 4.16.

(a) Private Side Lot Easement Fences. Each Owner hereby acknowledges that (i) the Private Side Lot Easements within his Lot will be fenced as depicted on Exhibit C (the "Side Lot Fences"); (ii) the Owner of the Lot that contains the Unit Maintenance Easement (the "Host Lot") will have use of the fenced area that comprises the applicable Private Side Lot Easements, subject

to the Unit Maintenance Easement; (iii) the Host Lot Owner will be solely responsible for maintaining the Side Lot Fences and all gates located within the Side Lot Fences within the applicable Private Side Lot Easements in good and reasonable condition and repair so that the fence and gate remain functional at all times and are visually appealing and in a condition that is consistent with a quality neighborhood in the City, which maintenance shall include making all reasonable repairs and replacing the applicable Side Lot Fences and gates when reasonably needed; (iv) the Host Lot Owner will be solely responsible for maintaining and keeping the applicable Private Side Lot Easements in a good and reasonable condition, free from trash debris and unreasonable and ongoing odors; and (v) the Host Lot Owner shall not impede or alter the drainage of the Private Side Lot Easements and shall comply with the terms of Sections 5.12 and 5.22.

(b) Unit Maintenance Easements. Each five foot (5') Unit Maintenance Easement is for the use and benefit of the applicable Lot Owner depicted on Exhibit C (the "UM User") and each Unit Maintenance Easement is solely for purposes of enabling the UM User access to his Lot and Dwelling Unit for maintenance and repair purposes. The Host Lot Owner will take action and will otherwise reasonably cooperate, following reasonable advance notice, to enable the UM User to utilize the Unit Maintenance Easement, including without limitation opening and/or unlocking any gate that crosses the Private Side Lot Easement area. The UM User will use reasonable efforts to limit (i) his interference with the general use and enjoyment by the Host Lot Owner of the Private Side Lot Easement and (ii) damage to improvements that are placed within the Private Side Lot Easement area. The Host Lot Owner expressly acknowledges that his use of the Private Side Lot Easement is subject to the Unit Maintenance Easement and that improvements, including without limitation landscaping, placed in the area are subject to damage and destruction pursuant to the reasonable use by the UM User of the Unit Maintenance Easement and each Host Lot Owner is advised to make improvements to the area with this risk in mind.

(c) Use Easement. Each one foot (1') Use Easement is for the sole use and benefit of the applicable Host Lot Owner that immediately adjoins the Use Easement as depicted on Exhibit C for general outdoor use and enjoyment purposes. The Lot Owner that owns the area over which the Use Easement is located (the "Use Easement Owner") understands that the Use Easement will be fenced in as part of the Host Lot and that the Use Easement Owner's access to the area that comprises the Use Easement will be limited to use of the Unit Maintenance Easement. The Use Easement Owner hereby waives all rights to use the area that comprises the Use Easement other than in conjunction with his use of the Unit Maintenance Easement. The Host Lot Owner will be solely responsible for maintaining and keeping the Use Easement in a good and reasonable condition, consistent with a quality neighborhood in the City, free from trash, debris and unreasonable and ongoing odors. The Host Lot Owner acknowledges that the Use Easement does not authorize in any way the right to attach any items to or place any items directly against the Use Easement Owner's Dwelling Unit. The provisions contained in this subsection (c) are in addition to the other provisions contained in this Section 4.16 and not in limitation thereof.

Section 4.17 Side Lot Fences.

(a) Following construction of a Dwelling Unit, the Builder will install the Side Lot Fence(s) associated with that Dwelling Unit. The Builder, subject to approval by the

Architectural Committee, will determine the color of the respective Side Lot Fences and each Owner shall be responsible for maintaining that color. Changes in the color of a Side Lot Fence(s) after the initial installation by the Builder will require submittal to, and prior approval from, the Architectural Committee as provided for in this Declaration and the Community Standards.

(b) The height of the Side Lot Fences may not be increased or altered by any Owner, nor shall any Owner be permitted to install additional fences, walls, or screens of any kind. No additions or attachments shall be made to any of the Side Lot Fences, other than as expressly authorized by the Declarant or the Architectural Committee. No sign of any type shall be displayed from any of the Side Lot Fences, other than signs expressly authorized by the Declarant or the Architectural Committee.

(c) The Side Lot Fences shall be maintained by the Owner of the Host Lot as provided for in Section 4.16. If the maintenance and repair requirements described in Section 4.16 are not properly performed by the Owner of the Host Lot, the Declarant and the Association shall each have the right (but not the obligation) to perform such maintenance, repairs and/or replacement at the expense of the Host Lot Owner following notice of noncompliance with its maintenance obligation as provided in this Declaration. Entry on a Lot by the Declarant or the Association in order to construct or maintain a Side Lot Fence shall not be deemed a trespass. Except in case of emergency, prior notice will be given to the Host Lot Owner before any such entry by the Declarant or the Association. Neither the Declarant nor the Association shall be liable for any loss, costs or damages to a Lot Owner on account of its performance of such maintenance, repair and/or replacement, except for any loss, costs or damages caused by the applicable Person's gross negligence or willful misconduct.

Section 4.18 Sidewalk / Driveway Maintenance. Each Owner shall maintain and keep in good repair the driveway located within his Lot together with the sidewalk located within the Lot and/or adjacent to the public right of way. Sidewalks located within Association Property, including without limitation any Association maintained Tract, shall be maintained and kept in good repair by the Association. The Association shall not be liable for any loss, costs or damages to the Lot Owner on account of its sidewalk maintenance, except for any loss, costs or damages caused by the Association's gross negligence or willful misconduct.

ARTICLE 5 LIVING ENVIRONMENT STANDARDS

Section 5.1 Building and Grounds Maintenance. Each Owner shall maintain the exterior of the Dwelling Unit and all other Improvements on the Owner's Lot in good condition and shall cause the Improvements to be repaired in the same manner, style and color as the effects of damage or deterioration become apparent. Each Owner shall keep the lawn on his Lot mowed and all Landscaping properly maintained. Each Owner hereby acknowledges that the requirement to maintain each Lot in "good condition" and "properly maintained" in a timely manner shall be based upon a standard of care which is appropriate for single family residential areas in Colorado Springs, Colorado that are of a comparable quality and nature. If the Owner fails to properly perform such maintenance, Declarant or the Architectural Committee may, after

giving twenty (20) days written notice and at the Owners' expense, effect such repairs and maintenance as it deems necessary in its judgment to maintain the standards of the Community Area and assess the Owner for the cost of such repairs and maintenance as a Site Assessment. Entry to affect such repairs and maintenance shall not be deemed a trespass, and the Owner shall be liable for all costs incurred in connection with the repairs and maintenance.

Section 5.2 Garage Doors. Garage doors shall be kept closed except when being used to permit ingress and egress to or from the garage.

Section 5.3 Outside Storage. When not in use, all maintenance equipment for the maintenance of a Lot or Dwelling Unit or equipment of the Lot Owner or its Related User shall be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets.

Section 5.4 Clotheslines. No outdoor clothes poles, clotheslines or other facilities for drying or airing clothing or household goods shall be placed on any Lot, and no laundry or wash shall be dried or hung outside any Dwelling Unit or other Improvement.

Section 5.5 Swingsets and Play Areas. No swingsets, play structures, slides or other similar Improvements shall be installed on a Lot unless substantially screened in a manner approved by the Architectural Committee prior to construction or installation of such Improvements.

Section 5.6 Refuse. Following the construction of a Dwelling Unit, no unsightly objects or materials, including but not limited to ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during refuse collection days in addition to the fines and other rights contained in Section 14.2 below. After a period of two (2) weeks of continued violation of this Section 5.6 and twenty-four (24) hours written notice of violation, the Association or Declarant shall have the right to enter upon the Lot involved and remove such unsightly objects or materials at the expense of the Owner in addition to the fines and other rights contained in Section 14.2 below. Such an entry shall not be deemed a trespass, and the Owner shall be liable for all costs incurred relative thereto.

Section 5.7 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on within any Lot or in any Dwelling Unit. Expressly excluding the activities described in Articles 3 and 10 of this Declaration, no annoying lights, sounds or odors shall be permitted to emanate from any Lot or Dwelling Unit.

Section 5.8 Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for security purposes, shall be located, used or placed on any Improvement or within any Lot. With the prior approval of the Architectural Committee, an Owner may install exterior stereo speakers, provided that the sound levels from such speakers are not objectionable to neighbors.

Section 5.9 Landscaping. Each Owner hereby acknowledges that the Builder will install all initial Landscaping within an applicable Lot within a reasonable period of time following completion of the Dwelling Unit and subject to weather conditions and availability of landscape materials. Each Owner further acknowledges that the Owner will be solely responsible for maintaining, repairing and replacing as needed all Landscaping within his Lot. Each Owner further acknowledges neither the Builder nor the Association will have any obligation to maintain or replace any Landscaping within a Lot, except pursuant to the limited warranty provided pursuant to the initial homeowner's purchase contract, if any. Such maintenance shall include without limitation, repair or replacement of rock or mulch which is damaged, washed away or worn.

No Owners shall modify, add to or alter the Landscaping in any way without the express written consent of the Architectural Committee.

Section 5.10 Weeds. Following installation of the Landscaping within a Lot by the Builder as provided in Section 5.9 above, all yards and the entire area of every Lot on which no building has been constructed shall be kept free from plants and weeds infected with noxious insects or plant diseases and from weeds which, in the reasonable opinion of the Association or Declarant, constitute a nuisance or are likely to cause the spread of infection or weeds to neighboring property, and free from brush or other growth or trash which in the reasonable opinion of the Association or Declarant causes undue danger of fire.

Section 5.11 Mowing and Pruning. Following installation of the Landscaping within a Lot by the Builder as provided in Section 5.9 above, and in order to effect insect, weed and fire control and to prevent and remove nuisances, each Owner of a Lot shall mow, cut, prune, clear and remove from his Lot unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulate on the Lot.

Section 5.12 Grading Patterns. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original, approved finish grading plan for a Lot except after first obtaining the prior consent and approval of the Declarant or the Architectural Committee. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture. Each Owner acknowledges that he is responsible for maintaining the Lot's grade and drainage pattern and ensuring that drainage is not impeded and that surface waters are directed to the historic direction of flow. Special attention should be paid to the revegetation of approved grades, cuts and fills to eliminate erosion.

Section 5.13 Transmitters. No electronic or radio transmitter of any kind other than garage door openers, electronic devices and transmitters permitted by Title 47, Part 15 of the United States Code and remote control devices for televisions, stereos, video cassette recorders and similar equipment shall be operated in or on any Improvement or Lot.

Section 5.14 Animals. Each Owner acknowledges that the Community Area is an urban living setting and, as such, consideration for your neighbors is critical. No animals, except domesticated birds or fish and other small domestic animals permanently confined indoors and

those permitted pursuant to this Section 5.14, shall be permitted within any Lot. No more than two (2) domesticated dogs and two (2) domesticated cats may be kept or maintained as pets in or on any Lot within the Community Area, and the total number of which may not exceed four (4) animals. No animals shall be kept, bred or maintained within the Community Area for any commercial purposes. No dogs or other pets shall be chained or enclosed on a Lot outside of the Dwelling Unit for any extended period of time, except by means of underground electronic fences or other invisible barriers or fences. Dog runs and other similar enclosures are generally discouraged; an Owner must obtain prior Architectural Committee approval therefor, which approval will be based on the requirements set forth in the Community Standards. Notwithstanding the above, no animal of any kind shall be permitted which in the opinion of the Association makes an unreasonable amount of noise or odor or is a nuisance. No dogs, cats, or other animals may be maintained or kept within any Association Property. Owners are responsible for picking up all refuse caused by their animals within Association Properties and within all Private Side Lot Easement Areas.

Section 5.15 Parking of Vehicles. Parking within the Community Area is limited. No parking of any kind by any vehicles will be permitted within any Access Street within the Community Area. "Access Streets" consist of right of ways that are 30' or less in width. Access Streets for purposes the of Midtown at Cottonwood Creek Filing No. 1 constitute all of the rights of way depicted on **Exhibit D** attached hereto and incorporated herein by this reference. Long term parking (more than twenty-four (24) hours) will only be permitted within a completely enclosed garage or other Architectural Committee approved parking structure or a driveway, subject to the limitations set forth below. Temporary parking (less than twenty-four (24) hours) by automobiles will be permitted within a 50' right of way public drive. Long term parking is not permitted within the 50' right of way public drive.

In addition to the above restrictions, no boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor homes any towed trailer unit or truck shall be parked on any fifty foot (50') right of way public drive or within any Lot except in a completely enclosed building such as a garage.

The Association shall have the right to establish rules, enforcement procedures and fines for parking violations from time to time regarding all parking within the Community Area, including without limitation within the thirty foot (30') and fifty foot (50') right of way public drives. Such rules will be enforced as provided in Article 14 of this Declaration. No parking signage may also be posted in appropriate areas within the Community Area, but the lack of any such signage will not be a waiver of the parking limitations contained in this Section 5.15 or any rules established from time to time as provided herein.

Section 5.16 Lanes Restrictions. The thirty foot (30') right of way public lanes reflected on the Plat or the Development Plan within the Community Area are solely for the purpose of pedestrian and vehicular ingress, egress and access. Without limiting the generality of the foregoing, no parking of any vehicle(s) is permitted in any of the thirty foot (30') right of way public lanes within the Community Area. No trash may be stored or located in any one of the 30' right of way public lanes within the Community Area (other than twenty-four (24) hours prior to trash collection dates in trash receptacle acceptable to the Association).

Section 5.17 Streets and Lanes. Each Owner hereby acknowledges that the streets, lanes (alleys) and drives within the Community Area are public and will become the property of the City, who will have the responsibility for their repair and maintenance.

Section 5.18 Inoperative Vehicles. No unused, stripped down, partially wrecked or inoperative motor vehicle or part thereof shall be permitted to be parked on any thirty foot (30') right of way public lane, fifty foot (50') right of way public drive or on any Lot unless enclosed in a garage. An unused vehicle shall be any vehicle which is not properly licensed or as otherwise determined by the Association. Nothing contained in this Section shall permit or be deemed to permit any Owner to maintain more than one (1) inoperative motor vehicle or part thereof, even if screened, within any portion of a Lot.

Section 5.19 Vehicle Repairs. No maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed garage which screens the sight and sound of the activity from adjoining streets and from neighboring property.

Section 5.20 Signs. The only signs permitted on any Lot or Improvements shall be:

- (a) one sign of customary size for offering the signed property for sale or for rent;
- (b) one sign of customary size for identification of the occupant and address of any dwelling;
- (c) multiple signs for sale, administration and directional purposes installed by or with the permission of the Architectural Committee;
- (d) signs as may be necessary to advise of rule and regulations or to caution or warn of danger; and
- (e) such other and/or additional signs as may be required by law.

Except for permitted signs, there shall not be used or displayed on any Lot or Improvement any signs or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental, except by the Declarant or with the prior written permission of the Declarant. All permitted signs must be professionally painted, lettered and constructed. If a permitted sign is not in compliance with the provisions of this Section 5.20, the Association may require it to be modified or removed.

Section 5.21 Outdoor Burning. There shall be no outdoor fires on any Lot or any of the Association Properties, except fires in barbecue, braziers and outside fireplaces contained within facilities or receptacles intended for such purpose. In no event shall any such facility or receptacle be used for burning of trash. Any such facilities or receptacles shall be subject to the Community Standards, which may include limitations on the time and manner in which fires will be permitted and may permit the Association to impose total outside fire bans when deemed

appropriate by the Association. No Owner shall permit any condition on such Owner's Lot which creates a fire hazard or is in violation of fire prevention regulations adopted by the City or any governmental authority having jurisdiction and control over outside burning. If any ban on outdoor fires is at any time imposed by the City or a governmental authority having jurisdiction and control over outside burning, such ban shall be observed within the Community Area.

Section 5.22 Drainage. The soils within the state of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of the Dwelling Units or other Improvement and the Lot containing it if not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils, and the addition of moisture to low-density soils causes a realignment of soiled grains, thereby resulting in consolidation and/or collapse of the soils.

An Owner shall not permit the moisture content of the soil supporting the foundation and supporting the concrete slabs forming a part of the Dwelling Unit to increase to an extent that would adversely affect the foundation and concrete slabs, and shall not introduce excessive water into the soil surrounding the Dwelling Unit. An Owner shall maintain the grading and drainage patterns of the Lot in accordance with the terms of Section 5.12 of this Declaration.

An Owner shall not impede or hinder in any way the water flowing on his Lot from reaching the drainage courses established for the Lot and the Property or areas shown on the approved drainage plans.

The Owner of each Lot hereby acknowledges that it is solely responsible for any damage which results, directly or indirectly, from a change in the grading pattern of the Lot in violation of the provisions of this Section 5.22 or Section 5.12 of this Declaration.

Section 5.23 Hazardous Materials. No materials shall be transported to, from or within the Community Area in such a way as to create a nuisance or hazard. Storage, use or disposal of hazardous or radioactive material as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), within the Community Area is prohibited. Any continued or intensive use of pesticides or herbicides is deemed to be a use of hazardous materials.

Section 5.24 Solar Devices, Air Conditioning Units, Etc. All solar devices, exterior air conditioning units and systems, swamp coolers and other similar devices must either be architecturally and aesthetically integrated into the building they serve or be screened from the view of adjacent Lots and streets in a manner satisfactory to the Architectural Committee and approved in the manner required by this Declaration. Except as required by applicable law, no air conditioning unit which is located in a window will be allowed.

Section 5.25 Storage Sheds. No storage sheds of any kind will be permitted to be constructed or installed within any Lot prior to the specific prior written approval of the design, color, materials to be used in connection therewith and the location thereof by the Architectural Committee in accordance with the terms of this Declaration.

Section 5.26 Outside Lighting. The Architectural Committee may establish various standards for exterior lighting, including, without limitation, standards for hue and intensity. All exterior flood lights and spot lights installed or maintained on any Dwelling Unit or other Improvement must be approved by the Architectural Committee prior to installation and shall comply with the restrictions described in Section 3.10 of this Declaration.

Section 5.27 Mandatory Trash Collection. In an effort to avoid multiple trash collections within the Community Area, the Association will select, from time to time, one residential trash collection service provider and residential trash collection plan for all completed Dwelling Units within the Community Area, which service provider will collect trash on a specified date for the entire Community Area. The Owners of Lots upon which a Dwelling Unit has been completed will be obligated to pay the applicable charge for trash services imposed by the Association, regardless of whether or not the Association has commenced Common Assessments for the Community Area.

Each Owner hereby acknowledges that all Owners of Dwelling Units within the Community Area will be required to use the residential trash collection service (including any limitation in collection amounts and date of collection) selected from time to time by the Association and are hereby expressly prohibited from arranging a different or additional trash collection service for any Dwelling Unit. The Association will bill each Owner of a Dwelling Unit within the Community Area for which a certificate of occupancy has been issued, regardless of whether or not the Dwelling Unit is currently occupied. The trash collection service fee will be as established from time to time by the Association and it will be payable quarterly, unless the Board determines to bill more frequently. Each Owner further acknowledges that the Association will not be responsible for rebating any trash collection service charges which it has received in advance, even in the event of a sale of the Dwelling Unit. Each Owner also expressly acknowledges that Lots or Dwelling Units for which a certificate of occupancy has not been issued will not be charged the Site Assessment for residential trash collection since such Lots will not be receiving the benefit of that service. Trash collection service charges may be enforced in the same manner as an Assessment. Any Owner who fails to pay any trash collection service charge for his Lot shall be subject to the same fees, fines, charges, enforcement rights and liens described in the Declaration for nonpayment of an Assessment. Each Owner shall screen all trash receptacles at all times within his Lot other than on the designated trash collection day.

Section 5.28 Porches, Decks and Patios. All porches, decks and patios attached to each Dwelling Unit may not be modified, added to or altered in any way from the original design by the Declarant including by way of example and not limitation, the enclosure, sun screens, awning, or screening thereof in any manner. All items, except for patio furniture, on any porch, deck or patio must be stored in an enclosed container which has been approved by the Architectural Committee prior to installation and matches the exterior color of the Dwelling Unit.

Section 5.29 Leasing. Any Owner shall have the right to lease or allow occupancy of their Lot upon such terms and conditions as the Owner may deem advisable, subject to the restrictions of this Declaration, subject to restrictions of record and subject to the following:

(a) "Leasing" or "Renting" for the purposes of this Declaration is defined as regular, exclusive occupancy of a Dwelling Unit by any person other than the Owner; provided, however, for the purposes of this Declaration, persons who reside with the Owner, a guest or invitee of an Owner or a roommate of the Owner, where the Owner occupies the Dwelling Unit as the Owner's primary residence, are not considered tenants and their occupancy does not constitute leasing.

(b) Short term occupancies and rentals of less than ninety (90) days, of Dwelling Units, including but not limited to transient, hotel, bed-and-breakfast or vacation-type rentals, are prohibited without prior written permission from the Association. Any of the uses set forth in the preceding sentence shall be prohibited of any Dwelling Unit even if such use is determined to be a residential use. Upon the expiration of any lease of at least ninety (90) days, the Owner may thereafter extend that lease on a month-to-month basis. All leases shall be for the entire Dwelling Unit without the subdivision of Dwelling Unit for leasing purposes. Subleasing, meaning the leasing or rental of a leased Dwelling Unit from the tenant under the lease to another person, is prohibited.

(c) All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Association Documents. Owners are required to provide tenants with copies of the current Declaration and other Association Documents.

(d) Each Owner who leases his or her Dwelling Unit shall provide the Association, upon request, with a copy of the current lease and tenant information, including the names of all occupants, vehicle descriptions, including license plate numbers, number and type of pets, and any other information reasonably requested by the Association or its agents.

(e) All occupancies, leases and rental agreements of Dwelling Units shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Association Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the landlord or the Association, or by both of them.

(f) All occupancies or rentals of Dwelling Units shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Association Documents.

(g) If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within thirty (30) days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner delegates and assigns to the Association, acting through the Board of Directors, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association brings an eviction action against the lessee as attorney-in-fact for the Owner, the prevailing party shall be entitled to costs incurred, including but not limited to, reasonable attorney fees and court costs. The Association shall be entitled to assess the Owner personally with any

attorneys' fees and costs awarded, which fees and costs shall also be a lien against said Owner's Lot.

(h) All leases shall be for or of the entire Dwelling Unit.

(i) All owners who reside at a place other than the Dwelling Unit shall provide to the Association an address and phone number(s) where the Owner can be reached in case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(j) The Association shall have the authority to adopt rules and regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

Section 5.30 Prohibition of Marijuana and Illicit Drug Distribution and Growing. Except for the growth of marijuana for personal use as permitted by Colorado law, no Owner or occupant of a Lot may utilize such Lot or any other portion of the Community Area for the purpose of growing or distributing marijuana, medical marijuana, hash oil, or any other illicit drugs. This prohibition may further be clarified by the Board of Directors through rules and regulations. Owners will be responsible for any damage resulting from a violation of this restriction. Further, no Owner or occupant of a Lot may engage in any activity or practice which, in the sole discretion of the Board of Directors, is considered a threat to the health and/or safety of other Owners and residents within the Community Area, including but not limited to, boarding, creating conditions conducive to indoor fires, allowing Lots to fall into a state of disrepair to the point that rodents or other pests enter, or any other conditions which could cause damage or harm to other Lots in the Community Area.

Section 5.31 Use of Lots. All Lots and other property within the Community Area shall be used only for those uses and/or purposes as allowed by local zoning, control and regulations. Occupancies may also be subject to any rules and regulations adopted by the Association. Except as provided in this Declaration, all Lots shall be used for residential purposes only as residential dwellings. Commercial and business uses with any adverse external effect on the nature, perception, operation or ambiance of the Community Area as a first class residential Community, as reasonably determined by the Board of Directors, are prohibited unless approved in writing by the Association, are specifically allowed by this Declaration or are allowed pursuant to restrictions of record and by local zoning ordinances and regulations.

ARTICLE 6 ARCHITECTURAL CONTROL

Section 6.1 Architectural Committee. Until Declarant has sold all of the Lots in the Community Area, or until such earlier time as Declarant elects to assign the right to appoint the Architectural Committee for the Community Area to the Board, the Architectural Committee for the Community Area shall consist of one (1) to three (3) members appointed by Declarant from time to time. After the right to appoint the Architectural Committee for the Community Area has been transferred to the Board, the Architectural Committee for the Community Area shall consist of at least three (3) and not more than five (5) individuals, all of whom shall be appointed by the

Board. All references in this Declaration to the Architectural Committee shall be deemed to refer to the Architectural Committee then in effect, whether such Architectural Committee is appointed by the Declarant or the Board, as provided in this Section 6.1. The members of the Architectural Committee need not be Members of the Association. The Architectural Committee shall exercise the functions assigned to it by this Declaration and the Community Standards, including without limitation the Design Guidelines, if any, and including reviewing and approving all plans for Improvements as provided in this Declaration.

Section 6.2 Design Guidelines / Community Standards. The Architectural Committee may, at any time and from time to time, enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce, a design, rules, regulations and standards guide for the Community Area, including without limitation design or architectural guidelines, oversee Design Guidelines and a guide to interpret and/or implement any provisions of this Declaration (collectively, the "Community Standards"). The Community Standards may (without limitation): (i) contain guidelines to clarify the types of designs and materials that may be considered in design approval; (ii) state requirements for submission in order to obtain review of the Architectural Committee; (iii) state procedural requirements, or may specify acceptable Improvements that may be installed without the prior approval of the Architectural Committee. Any Community Standards so adopted by the Architectural Committee shall be consistent, and not in conflict with, this Article 6 or this Declaration. If adopted, copies of the Community Standards will be available from the Association or the Architectural Committee.

Section 6.3 Approval Required. No Improvement shall be placed, erected, installed, altered or permitted to occur or exist on any Lot, nor shall the exterior of any existing Improvements be altered, nor shall any construction be commenced on any Improvements, unless and until the plans and specifications for such Improvements shall have been submitted to and approved in writing by the Architectural Committee. Matters which require the approval of the Architectural Committee include but are not limited to:

- (a) the construction, installation, erection, modification or expansion of any building, structure, or other Improvements;
- (b) the installation, additions or modifications of Landscaping;
- (c) the demolition or destruction, by voluntary action, of any building, structure or other Improvements;
- (d) the grading, excavation, filling or similar disturbance to the surface of the land; and
- (e) any change or alteration of any previously approved Improvements, including any change of exterior appearance, finish material, color or texture.

Section 6.4 Plans Submissions. All plans, samples and other materials to be submitted to the Architectural Committee shall be submitted in duplicate, together with the fee described in Section 6.5 hereof. The minimum scale of such plans shall be 1/20th inch equals one foot. The

plot plan shall show in scale the location of all buildings, drives, walks, fences and any other Improvements. Plans shall show all exterior elevations, and shall indicate and locate on each elevation, the materials to be used and designate each exterior color to be used by means of actual color samples. Landscaping plans shall show the location of all Landscaping elements, including grass, ground cover, shrubs, trees and other Landscape materials for all the area of the Lot not covered by Improvements. The size and type of all new plant materials shall be indicated. The Declarant shall have no obligation to retain any submitted plans following action by the Architectural Committee.

In discharging its rights and obligations hereunder, the Architectural Committee makes no representations or warranties to the Owner or any other person or entity concerning the construction of the Improvements on the Lot, and the Architectural Committee shall have no liability or responsibility for defective construction or other similar matters. Each Owner of a Lot acknowledges and agrees that the Declarant, in discharging its rights and obligations hereunder, is not making any warranty or representation, expressed or implied, that any Improvement to be constructed by an Owner upon a Lot is suitable for that Lot and each Owner further acknowledges that each Owner, and such Owner's representatives or contractors, are ultimately and fully responsible for any construction techniques, measures and means utilized in the construction of an Improvement upon a Lot.

Section 6.5 Approval Process. All action required or permitted to be taken by the Architectural Committee shall be in writing, and any such written statement shall establish the action of the Architectural Committee and may protect any person relying on the statement. The procedure for submitting requests and obtaining approvals shall be as established from time to time by the Architectural Committee. **The Architectural Committee may charge reasonable fees to cover expenses incurred in review of all plans (including without limitation Landscaping plans), samples and materials submitted pursuant to this Declaration, not including reimbursement or compensation to the members of the Architectural Committee for their services.** The Architectural Committee shall be entitled to retain one (1) copy of all approved plans as part of its files and records. Approvals of all plans and specifications for an Improvement will automatically expire within one (1) year after approval if construction is not commenced within one (1) year after approval, and if approval so expires, the applicant must resubmit a request for approval of the Improvement.

Section 6.6 Approval Standards. All Improvements to be constructed or installed within the Community Area must comply with the Community Standards and this Declaration. In granting or withholding approval of matters submitted to it, the Architectural Committee shall consider the specific standards and specifications of the Community Area as initially developed by the Declarant and as set forth in this Declaration. The Architectural Committee shall have the right to disapprove any plans, specifications or details submitted to it if it determines, in its sole discretion, that the proposed Improvement is not consistent with any provision of this Declaration or the Community Area as initially developed; if the plans and specifications submitted are incomplete; or if the Architectural Committee deems the plans, specifications or details, or any part thereof, to be contrary to the interest, welfare or rights or all or any part of the Community Area, the Association or the Owners. If the Architectural Committee believes there may be questions of structural integrity, it may, as part of the approval requirements, require the Owner to

obtain certification of the final plans and specifications by a professional architect or engineer licensed in Colorado. The decisions of the Architectural Committee shall be final and binding unless they are clearly arbitrary and there is no rationale to support the Architectural Committee's decision.

Section 6.7 No Liability. Neither Declarant, the Board nor the Architectural Committee or any member thereof shall be liable in damages or otherwise to anyone submitting plans to them for approval or requesting a variance, or to any Owner by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve the plans, specifications or variance. Approval by the Architectural Committee shall not mean that plans and specifications are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, and it shall be the responsibility of the Owner or other person submitting plans to the Architectural Committee to comply with all codes, ordinances and regulations.

Section 6.8 Variations. The Architectural Committee shall have the authority to grant for a Lot a variance from the terms of this Declaration or the Community Standards, subject to terms and conditions which may be fixed by the Architectural Committee and will not be contrary to the interests of the Owners and residents of the Community Property where, owing to exceptional and extraordinary circumstances, literal enforcement of this Declaration or the Community Standards could result in unnecessary hardship. **The Architectural Committee may charge reasonable fees to cover expenses incurred in review of all variances submitted pursuant to this Declaration, not including reimbursement or compensation to the members of the Architectural Committee for their services.**

Following an application for a variance:

- (a) The Architectural Committee shall, within thirty (30) days after the request for the variance was delivered, determine whether to grant or deny the variance. If the Architectural Committee fails to act on the request for the variance within this thirty (30) day period, the variance shall be deemed not to be granted as of the expiration of such thirty (30) days.
- (b) A variance granted hereunder shall run with the Lot for which it is granted.
- (c) If a variance is denied, another application for substantially the same variance for the Lot involved may not be made for a period of at least one (1) year from the date of submittal of the original request.

ARTICLE 7 ASSOCIATION OPERATION

Section 7.1 Association Structure. The Association has been formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in the Association Documents. As more specifically set forth hereinafter, the Association shall have a Board of Directors to manage its affairs. The Board of Directors shall be elected by its Members; provided, however, that the Declarant shall have the

sole right to appoint a majority of the members of the Board of Directors for the period of time provided in Section 7.5.

Section 7.2 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The Board shall consist of a minimum of three (3) members during the Period of Declarant Control stated in Section 7.5 and thereafter shall consist of at least three (3) but not more than seven (7) members, as determined by the Board. All members of the Board shall be representatives of Declarant or Members of the Association. The terms and qualification of the members of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws of the Association. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for the management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Declaration or by Colorado law. All lawful decisions, agreements and undertakings by the Board, or its authorized representatives, shall be binding upon all Members, Owners, Related Users and other Persons.

Section 7.3 Membership in Community Association. Each Owner shall be a Member of the Association. An Owner shall automatically be the holder of the membership appurtenant to such Owner's Lot, and the membership shall automatically pass with fee simple title to the Lot. Declarant shall hold one (1) membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except that an Owner may assign, some or all of the Owner's rights as an Owner and as Member of the Association to a contract purchaser, tenant or First Mortgagee, and may arrange for such Person to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of the Owner under the Association Documents. The rights acquired by any such contract purchaser, tenant or First Mortgagee shall be extinguished automatically upon termination of the First Mortgage, sales contract or tenancy. The assignment of rights by an Owner pursuant to this section shall not be subject to any present or future statutory time limit for the duration of duly notarized proxy rights, but shall be in writing, and delivered to the Association before such Person shall be entitled to exercise any membership rights or privileges. All rights, title and privileges of membership shall be subject to the Association Documents.

Section 7.4 Voting Rights of Members. Subject to the provisions of Section 7.5 which shall control, Members shall have the right to cast votes for the election of Board of Directors and on such other matters to be voted on by the Members as provided in the Association Documents. One (1) vote is allocated to each Lot and Members shall have one vote for each Lot owned. The one (1) vote for each Lot may not be split if there is more than one (1) Owner of the Lot, and if the Owners are unable to determine how to cast the one (1) vote allocated to their Lot pursuant to the provisions of Section 38-33.3-310, Colorado Revised Statutes, then the Owners shall be deemed to have abstained. Voting rights and procedures may be further defined in the Articles and Bylaws of the Association.

Section 7.5 Declarant's Reserved Right to Appoint.

(a) Notwithstanding any contrary provision, but subject to the requirements of Section 7.2 of this Declaration and Section 38-33.3-303(6), Colorado Revised Statutes, Declarant hereby reserves the right to appoint the Board of Directors, to control the Association and to appoint and remove the officers and members of the Board at all times subsequent to the date of recordation of this Declaration and continuing for a period of ten (10) years following the date on which this Declaration is recorded (the "Period of Declarant Control"), subject to the following limitations: The Period of Declarant Control shall terminate no later than the earlier of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of all of the Lots that may be created within the Community Area to Owners other than Declarant; (ii) two (2) years after Declarant has last conveyed a Lot in the ordinary course of business; or (iii) two (2) years after any right to add new Lots was last exercised, but not to exceed ten (10) years after the first Lot in the Community Area is conveyed to a purchaser. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, Declarant may require, for the duration of the Period of Declarant 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. It is hereby expressly acknowledged that any action by Declarant to surrender its authority over the Association or its Board will in no way limit Declarant's rights and authority with respect to architectural control matters as provided in this Covenant, unless such rights are expressly terminated or waived by Declarant.

(b) Not later than sixty (60) days after conveyance to Owners, other than a Declarant, of twenty-five percent (25%) of the Lots that may be created, at least one (1) member, and not less than twenty-five percent (25%) of the members of the Board shall be elected by Owners other than a Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than a Declarant, not less than one-third (1/3) of the members of the Board must be elected by Owners other than a Declarant.

(c) Except as otherwise provided above, not later than the termination of any Period of Declarant Control, the Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board shall elect the officers. These Board members and officers shall take office upon termination of the Period of Declarant Control.

(d) Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a sixty-seven percent (67%) vote (based upon Proportionate Interest) of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present following the termination of the Period of Declarant Control may remove any member of the Board with or without cause, other than a member appointed by Declarant.

(e) Within sixty (60) days after the Owners, other than Declarant, elect a majority of the members of the Board, the Declarant shall deliver to the Association all property and items described by C.R.S. § 38-33.3-303(9).

ARTICLE 8
DUTIES AND POWERS OF ASSOCIATION

Section 8.1 General Duties and Powers of Association. The Association has been formed to further the common interests of the Members. The Association, acting through the Board or representatives to whom the Board has delegated such powers, shall have the duties and powers given non-profit corporations, including without limitation those hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve and enhance Association Properties, and to improve and enhance the attractiveness, desirability and safety of the Community Area and to use Association funds to enforce this Declaration. The Association shall have and may exercise all powers enumerated in Section 38-33.3-302, Colorado Revised Statutes, except as expressly otherwise provided in the Association Documents (including Article 14 below) or by Colorado law. Except as expressly otherwise provided in the Association Documents or by Colorado law, the Association shall act through the Board of Directors, without the vote or meeting of the Members, and the Board may exercise all rights, powers and interests of the Association, as described in this Article or elsewhere in the Association Documents.

Section 8.2 Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to any property, including without limitation any Improvements thereon, any easement or other right, and personal property transferred to the Association by Declarant or by any third party with Declarant's permission, and equipment related thereto, together with the responsibility to perform any and all Association functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and contractual rights or licenses to use property. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration. No representation, express or implied, is made that the Declarant will or will not transfer property to the Association, except as specifically provided in Section 9.2.

Section 8.3 Duty to Manage and Care for Property. To the extent owned by the Association, the Association shall manage, operate, care for, maintain and repair all Association Properties and keep the same in an attractive and desirable condition for the use and enjoyment of the Members; provided, however, maintenance responsibilities for any Association Properties shall not commence until Common Assessments commence. In addition, the Association may manage, operate, care for, maintain and repair property other than Association Properties, if some or all of the Members will benefit thereby or if such Association action is required pursuant to a Plat or the Development Plan. It is the intent that under this Declaration that the properties, Improvements and facilities the Association will be required to maintain, and if and only when such property is made a part of the Community Area, will include, but not be limited to: (i) Tracts A, B and C, and (ii) all other Improvements and areas required by a Plat, the Development Plan or Declarant to be maintained by the Association, as provided in this Declaration. The specific enumeration of the foregoing items shall not be a limitation on the power and authority of the

Association to maintain other items not specifically listed where such repair and maintenance of other items would be in the common interests of the Association and the Owners.

Section 8.4 Duty to Pay Taxes. The Association shall pay all taxes and assessments levied upon the Association Properties owned by the Association and all other taxes and assessments payable by the Association, if any. The Association shall have the right to contest any such taxes or assessments provided that the Association shall contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment, and provided that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful. The Association may maintain reserves for any taxes, interest and penalties which could be incurred as a result of an adverse ruling on any position taken by the Association.

Section 8.5 Duty to Maintain Insurance. The Association shall obtain and keep in full force and effect at all times insurance coverage in accordance with this Declaration and as required by Colorado law.

Section 8.6 Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

Section 8.7 Power to Provide Security. The Association shall have the right, but not the obligation, to provide for the security of the Owners by hiring a security patrol and performing any other functions relating to safety and security authorized by the Board or the Members.

Section 8.8 Power to Acquire and Maintain Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The Association may construct or reconstruct Improvements on property and may demolish existing Improvements. The Association shall have the power to maintain public or private rights of way and to perform maintenance on any portion of the Community Area, whether or not owned by the Association.

Section 8.9 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce such Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and matters related thereto, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community Area, including Lots (the "Rules and Regulations"). The Rules and Regulations will constitute part of the Community Standards. Any such Rules and Regulations shall be reasonable and uniformly applied as determined by the Board in its sole discretion. Rules and Regulations shall be effective upon adoption by resolution of the Board of Directors. Written notice of the adoption, amendment or repeal or any Rule or Regulation shall be provided to all Members by the Association, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the copying cost. Each Owner, Related User, Member and other Person shall comply with such Rules and Regulations, and each Owner shall be responsible for ensuring that the Related Users of such Owner comply with the Rules and Regulations. Rules and Regulations

shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 8.10 Power to Enforce Declaration and Community Standards. The Architectural Committee, the Association or Declarant, including an assignee or delegate thereof, may give notice to the Owner of the Lot where a violation of this Declaration or the Community Standards occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intent of the Architectural Committee, the Association or Declarant to invoke this Section unless within a period stated in the notice (which notice shall not be less than ten (10) calendar days unless a shorter period of time is otherwise provided for in this Declaration or the Community Standards), the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the Architectural Committee or Declarant (whichever gives the notice) may, but shall not be obligated to, cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry upon such Owner's Lot as necessary for such purpose shall not be deemed a trespass. Each Owner of a Lot hereby grants a license to the Declarant, the Association and the Architectural Committee for the purpose of entering onto a Lot to remedy violations or breaches of this Declaration and/or the Community Standards. Declarant, the Association and the Architectural Committee may delegate their entry and removal rights hereunder to agents and independent contractors. The cost so incurred by the Architectural Committee, the Association or Declarant shall be paid by the Lot Owner and the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen percent (18%) per annum and costs enforcement and of collection (including reasonable attorneys' fees), shall be a lien on the ownership interest in the Lot (including improvements thereon) and shall in all respects be the personal obligation of the Owner. Such lien shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded but shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against the lien established in this Section 8.10 and Section 11.15. The Architectural Committee, the Association or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and costs of enforcement and collection against the Owner and may bring an action to foreclose the lien against the Lot and Improvements subject to the lien and there shall be added to the amount of such obligation the costs of enforcement and collection, and the judgment in any such action shall include interest as above provided and the costs of collection, including reasonable attorney's fees. The waiver of homestead exemption set forth above shall apply to any foreclosure action for the lien imposed by this Section 8.10 and Section 11.15. The foregoing specified rights and remedies shall not limit the right of any Lot Owner to enforce this Declaration pursuant to Section 11.15 or as otherwise may be provided herein or by law or equity; provided, however, that only the Declarant, the Association and the Architectural Committee shall have the right to proceed under this Section 8.10. In the event that the Declarant, the Association or Architectural Committee, whether acting for themselves or through their agents and representatives, elect to exercise the right to enter upon a Lot to remedy a violation of this Declaration, they shall not be liable to the Owner of the Lot for any loss or damage

occasioned by the entry on the Lot unless (i) damage is caused to the Lot or Improvements thereon that is unrelated to the remediation of the breach of the Declaration and/or Community Standards and (ii) is caused by the willful and wanton acts of the Declarant or the Architectural Committee. In no event shall there be any liability for damage to an Improvement that is in violation of this Declaration.

Section 8.11 Intentionally Reserved.

Section 8.12 Power to Provide Special Services. The Association shall have the power to provide special services beyond this Declaration to a Member or group of Members and any services to any other Person. Any such service or services shall be provided pursuant to an Agreement in writing, or through one or more amendments to this Declaration, which shall provide for payment to the Association by such Member or group of Members or other Persons of the costs and expenses which the Association estimates it will incur in providing such services, including a fair share of the overhead expenses of the Association, and shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns or the Member or group of Members or other Persons, and may be collected in the same manner as a Site Assessment, or, if the written agreement so provides, in installments as part of the Common Assessments or may be collected in any manner permitted by law or statute or the Association Documents.

Section 8.13 Power to Operate and Charge for Facilities. The Association shall have the power to acquire, create, own and operate any and all such services as it deems appropriate, including, without limitation, Landscape maintenance and to establish charges for the use of services. Such charges or fees shall be as determined from time to time by the Board of Directors.

Section 8.14 Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under Association Property for any lawful purpose, including, without limitation, the provision of emergency services, utilities, telephone, television, or other uses or services to some or all of the Members or to facilitate the development of the Community Area, including any Expansion Property added thereto.

Section 8.15 Power to Employ Managers. The Association shall have the power to retain and pay for the services of a manager or managers to undertake any of the management of any functions for which the Association has responsibility under this Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers or functions to the manager. Any contract or agreement with a manager shall be terminable by the Association for cause on no more than thirty (30) days prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety (90) days prior written notice. No such contract or agreement shall be for a term of more than one (1) year. Notwithstanding any delegation to a manager of any duties, powers or functions of the Association, the Association and its Board of Directors shall remain ultimately responsible for the performance and exercise of such duties, power and functions. In addition to a manager, the Association may employ and pay a consultant, which may be Declarant, an affiliate of Declarant, or a third party, to assist in operating and managing the Association after the Declarant's reserved

rights under Section 7.5 terminate.

Section 8.16 Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents (except as otherwise provided in management contracts) and to retain and pay for such legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under the Association Documents.

Section 8.17 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act and all powers contained in Section 38-33.3-302, Colorado Revised Statutes, subject to any limitations, restrictions, or requirements expressly set forth in the Association Documents.

Section 8.18 Other Powers. The Association shall have the power to regulate the location days and hours during which trash and solid waste may be collected or put out for collection in any portion of the Community Area, and the Association may require all Owners to use a common trash collection company or entity selected by the Board. The Association shall have the power, but not any duty, to sponsor or conduct various community activities or special events of a social or recreational nature, to hire and provide a security or courtesy patrol, which shall be unarmed and shall not be a substitute for the municipal police, and to provide general informational services which may include, without limitation, community newsletter, radio broadcast, cable television services and similar services.

ARTICLE 9 ASSOCIATION PROPERTIES

Section 9.1 Right of Association to Regulate Use. To the extent that the Association hereafter owns, holds or has property, the provisions of this Article 9 shall apply. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Members to enhance further the overall rights of use and enjoyment of all Members, including without limitation, imposing limits on the times of use and numbers of guests permitted to use the Association Properties.

Section 9.2 Property to be Conveyed to Association. The Declarant shall be obligated to convey to the Association any Tract of land that is identified on the Plats as a tract for open space or trails that the Association will be required to maintain. The properties to be conveyed to the Association shall be conveyed to the Association on or before the expiration of the Period of Declarant Control under Section 7.5. Declarant is not obligated to convey any other real property to the Association. The Association is hereby obligated to accept title to each such property when conveyed by Declarant.

Section 9.3 No Partition of Association Properties. No Owner shall have the right to partition or seek partition of the Association Properties or any part thereof.

Section 9.4 Liability of Owners for Damage. Each Owner shall be liable to the Association for any damage to Association Properties or for any expense or liability incurred by

the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Owner or a Related User of such Owner of the Association Documents. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Site Assessment against a Member, Owner, Lot, Related User, or other Person to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of the Association Documents, including without limitation, the deductible on any insurance of the Association, interest, costs, expenses and attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 9.5 Damage to Association Properties. In the event of damage to or destruction of all or a portion of the Association Properties due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage or destruction, then the Association shall levy a Special Assessment in the aggregate amount of such insufficiency pursuant to this Declaration and shall proceed to make such repairs or reconstruction, unless the Owners and First Mortgagees by a majority vote agree not to repair and reconstruct such damage in accordance with the terms and provisions of this Declaration. No distributions of insurance proceeds shall be made to the Owners, unless made jointly payable to Owners and the First Mortgagees, if any. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction or replacement, the Association may use the excess for future maintenance, repair, and operation of and improvements to Association Properties.

Section 9.6 Association Powers in the Event of Condemnation.

(a) If proceedings are initiated by any government or agency thereof seeking to take the Association Properties or any interests therein or part thereof, including any Improvements, the Association shall give prompt notice thereof, including a description of the part of or interest in the Association Properties or Improvements thereon sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements and agreements with a condemning authority for acquisition of the Association Properties, any part thereof, or any interest therein, and each Owner hereby appoints the Association as the Owner's attorney-in-fact for such purposes. Any award or proceeds of settlement shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

(b) If all of the Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, any award or settlement shall be apportioned by the Association on such a fair and equitable basis as the Association determines to be appropriate in the circumstances, or as determined by judicial decree. If the allocation of the condemnation award is already established in the negotiations, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent that it is relevant and applicable.

(c) If less than all of the Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the condemnation award shall first be applied by the Association to the rebuilding and replacement of those Improvements on the Association Properties which are damaged or taken by the condemning public authority, if such rebuilding or replacement is reasonably practical, unless Members with at least sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each First Mortgage held) agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement shall be distributed by the Association on the same basis as indicated in subparagraph (b) of this section. No provision of this Declaration or any other document relating to the Association Properties shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee, pursuant to a First Mortgage, awarding distribution of insurance proceeds or condemnation awards for losses to or taking of Association Properties.

ARTICLE 10

DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS

Section 10.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Association Properties for a period of twenty (20) years after the date this Declaration is recorded in the real property records of El Paso County, Colorado, or until such earlier date when Declarant ceases to own any real property within the Community Area. The rights and reservations set forth in this Declaration shall be deemed excepted and reserved in each conveyance of property by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Community Area is conveyed by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of the Association Documents and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Association Documents. Declarant's consent to any one such amendment shall not be construed as consent to any other amendment.

Section 10.2 Declarant's Development Rights. For the period stated in Section 10.1, Declarant shall have the following development rights:

(a) subject to the limitation contained in Section 10.8, Declarant may create additional Lots within the Community Area;

(b) declarant may create additional Association Properties within the Community Area or convert any of the Declarant owned Lots within the Community Area to Association Properties; and

(c) annex all or portions of the Expansion Property into the Community Area.

All of the foregoing development rights shall be exercised by Declarant, if at all, in accordance with Section 38-33.3-210, Colorado Revised Statutes. All of the development rights set forth above may be exercised by Declarant with respect to all or any portion of the Community Area. No assurances are made by Declarant concerning which portions of the Community Area may be affected by Declarant's exercise of its development rights or the order in which portions of

the Community Area may be affected. Declarant is not obligated to exercise any of its development rights and may elect not to exercise any or all of them. If Declarant does exercise a development right in any portion of the Community Area, Declarant is not obligated to exercise that development right in all or any other portion of the remainder of real estate affected by the exercise of the development right or in all or any other portion of the remainder of the Community Area.

Section 10.3 Special Declarant Rights. For the period stated in Section 10.1, and as more particularly set forth in this Article 10 or elsewhere in this Declaration, Declarant shall have the following special Declarant rights:

- (a) to complete any Improvements shown on the Plats or any supplemental Plat;
- (b) to exercise any development rights set forth in Section 10.2;
- (c) to maintain anywhere within the Community Area, sales offices, management offices, signs advertising the Community Area and model homes;
- (d) to use easements through the Association Properties and easements granted to the Association for the purpose of making improvements within the Community Area and completing development of the Community Area; and
- (e) to appoint or remove any officer of the Association or any member of the Board of Directors appointed by Declarant.

Section 10.4 Expansion Property.

(a) Right to Expand. Until the expiration period indicated in Section 10.1, Declarant reserves the right to expand the Community Area, without the approval of the Owners or First Mortgagees, to include additional land and one or more additional buildings located upon all or any part of the Expansion Property. By accepting a deed to a Lot, each Owner hereby grants to Declarant a right to expand the Community Area.

(b) Procedure for Expansion. Such expansion may be accomplished by the filing for record by Declarant with the Clerk and Recorder of El Paso County, Colorado no later than the expiration of the period set forth in Section 10.1 an amendment or amendments to this Declaration containing a legal description of the land area to be added to the Community Area, together with any supplemental Plats which may be required. Any such amendment or amendments to this Declaration shall also contain a listing of the total number of Lots then contained within the Community Area. The expansion may be accomplished in "phases" by successive amendments.

(c) Effect of Expansion.

- (i) In the event of such expansion, the definitions used in the

Declaration shall automatically be expanded to encompass and refer to the Community Area as so expanded; e.g., "Community Area" shall mean the real property described on **Exhibit A** to the Declaration and any additional real property added by any annexation amendment to the Declaration. Similarly, "Lots" shall include those areas located within the real property described on **Exhibit A** to the Declaration as well as those so designated on any annexation amendment or supplemental plat relating to any real property which is annexed pursuant to this Section 10.4. References to the Declaration shall mean the Declaration, and any future amendments and/or annexations to the Declaration.

(ii) Upon recording of the annexation amendment or amendments to the Declaration and any supplemental plat with the Clerk and Recorder of the County, the additional Lots shall be subject to the provisions of the Declaration, as amended.

(iii) Until the expansion of the Community Area is accomplished by recording the annexation amendment(s) to the Declaration and supplemental plat(s) as provided in this Section 10.4, the Expansion Property and any improvements constructed thereon shall not be subject to the Declaration in any way whatsoever, including, but not limited to, consideration for the purpose of apportioning assessments or determining voting rights or privileges. If such expansion does not occur, nothing contained in the Declaration or any amendment shall restrict, impair, hinder, encumber or burden, in any way whatsoever, Declarant's or its successors' or assigns' sole and complete right, title and interest to the Expansion Property and any improvements constructed thereon. The Declarant alone shall be liable for all expenses of the Expansion Property unless and until annexed hereunder, and shall be entitled to any income and proceeds therefrom. The Declarant's right to annex, and other development rights, may be exercised at different times and as to different portions of the Community Area or Expansion Property, and so no assurances are made hereby regarding the boundaries of any portion of real property which may be annexed hereunder nor the order in which said portion may be annexed. If the Declarant exercises any right to annex additional portions, the Declarant is not required to exercise any development rights to any and all portions of the remaining Community Area or Expansion Property.

Section 10.5 Right to Construct Additional Improvements on Association Properties. Declarant shall have and hereby reserves the right, but shall not be obligated, to construct additional Improvements on Association Properties, at Declarant's cost, at any time and from time to time in accordance with this Declaration for the improvement and enhancement of the Association Properties and for the benefit of the Association and the Owners.

Section 10.6 Declarant's Rights to Use Association Properties in Promotion and Marketing. Declarant shall have and hereby reserves the right to use the Association Properties and to use services offered by the Association in connection with the promotion and marketing of property within the boundaries of the Community Area or nearby areas. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of the Association Properties such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development and marketing of real property within the Community Area; may use vehicles and equipment on Association Properties for

promotional purposes; and may permit prospective purchasers of property within the boundaries of the Community Area to use Association Properties.

Section 10.7 Declarant's Rights to Complete Development of Community Area. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development of property within the boundaries of the Community Area or nearby areas and to subdivide, resubdivide, or rezone any portion of such property; to grant licenses, easements, reservations and rights-of-way; to construct or alter Improvements on any property owned by Declarant within the Community Area; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Community Area; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Community Area. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant; to make changes or modifications to Article 6 of this Declaration by means of an amendment to this Declaration; to change any Landscaping, grading, drainage, vegetation, or view; or to construct, alter, demolish or replace any Improvements on any property owned by Declarant, or to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Community Area. Nothing in this section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in the Association Documents, which rights are incorporated in this section by this reference.

Section 10.8 Maximum Number of Lots. Notwithstanding any other provision of this Declaration, the maximum number of Lots that Declarant may create within the Community Area is eighty-three (83) Lots.

Section 10.9 Declarant's Approval. Until Declarant no longer has the right to appoint a majority of the Board, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of Association Properties; mortgage the Association Properties; use Association Properties other than for the benefit of Members; levy any Special Assessment; change or repeal any rules of the Architectural Committee; make any substantial reduction or change in Association services; or make any amendment of Association Documents.

ARTICLE 11 ASSESSMENTS

Section 11.1 Obligation for Assessments. Each Owner, for each Lot owned within the Community Area, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all Assessments applicable to his Lot which are provided for in the Association Documents and which shall be both a personal obligation of the Owner and a lien against his Lot as provided therein. Each Owner hereby acknowledges that no special or common Assessments will be payable by the Owner of any property which is not annexed into this Declaration. Each Owner shall be jointly and severally liable to the Association for the payment of all applicable Assessments attributable to his Lot. The personal obligation for

delinquent Assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for herein by non-use of the Association Properties or the facilities contained therein, by non-use of any service provided by the Association for all Owners, by abandonment or leasing of his Lot, or by asserting any claims against the Association, the Declarant or any other person or entity. In addition to the foregoing Assessments, charges, fees and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot. All property dedicated to and accepted by a public or governmental authority and the Association Properties shall be exempt from Assessments hereunder.

Section 11.2 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Association Properties as more specifically provided herein.

Section 11.3 Common Assessments. The Common Assessments may include, but shall not be limited to, the following common expenses:

- (a) expenses of management of the Association and its activities;
- (b) taxes and special assessments upon the Association Properties, both real and personal property;
- (c) premiums for all insurance which the Association is required or permitted to maintain;
- (d) common services to Owners as authorized in accordance with the terms of this Declaration;
- (e) landscaping and care of the Association Properties and any recreational or other Association Improvements located thereon, if any;
- (f) repairs and maintenance that are the responsibility of the Association, including, without limitation, the obligations described in Section 8.3 of this Declaration;
- (g) wages for Association employees and payments to Association contractors;
- (h) legal and accounting fees for the Association;
- (i) any deficit remaining from a previous Assessment year;
- (j) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of those elements of Association Property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by Special Assessments, subject to the provisions of Section 11.19;

(k) The creation of reasonable contingency reserves for any applicable insurance deductibles and emergencies, subject to the provisions of Section 11.19;

(l) Any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration;

Common Assessments shall be paid as provided in Section 11.5, and are in addition to trash collection service charges provided for in Section 5.27 of this Declaration.

Section 11.4 Declarant's Obligation. Until Common Assessments are first levied by the Association pursuant to this Article 11, Declarant shall pay all common expenses of the Association described in Section 11.3 (other than trash collection charges which shall be paid for in the manner set forth in Section 5.27 of this Declaration).

Section 11.5 Common Assessment Procedure.

(a) Each Owner acknowledges that benefits accorded to Owners of Lots that are occupied by residents of the Community Area ("Functional Units") are significantly greater than Lots that do not contain Functional Units. In recognition of this fact and to establish a clear, reasonable and cost effective administrative process for the commencement of Common Assessments in light of this distinction in benefits, Common Assessments will commence as follows:

The recordation of the Plat for the Community Area described on Exhibit A will be the "Start Date" for Common Assessments for the Lots within the Community Area as initially constituted.

(i) As of the Start Date, all Lots and Dwelling Units will be subject to Common Assessments in an amount that is ten percent (10%) of the applicable Common Assessment (without proration).

(ii) Following the Start Date, as of the date a Dwelling Unit is conveyed to a resident so as to constitute a Functional Unit (i.e., the sale of the Dwelling Unit to the initial resident), the Functional Unit will be assessed at one hundred percent (100%) of Common Assessments (prorated as provided for in Section 11.5(c)).

(b) Promptly after this Declaration is recorded, the Board shall set the total annual Common Assessment for 2018 based upon an estimated budget for the Association for 2018. No later than ninety (90) days before the beginning of each year after 2019, the Board of Directors shall set the total annual Common Assessment based upon an advanced budget of the Association's requirements for the following Assessment year. Within thirty (30) days after adoption of the Association's budget for each year, by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more

than sixty (60) days after mailing or other delivery of the budget summary. Unless a majority of all Owners present and voting in person or by proxy at the meeting called to discuss the budget or voting by a mailed ballot returned to the Board prior to that meeting reject the budget, the budget is ratified, whether or not a quorum is present at the meeting. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

(c) After approval of the budget by the Owners, the Board shall cause to be prepared, delivered or mailed to each Owner as of the billing date, at least thirty (30) days in advance of the date payment is due, a payment statement setting forth the annual Common Assessment. That annual Common Assessment shall be payable in advance in quarterly installments due on the first (1st) day of each successive quarter unless the Board otherwise directs. All payments of Common Assessments shall be due and payable, without any notice or demand, on the due dates declared by the Board. Common Assessments shall be applicable to all Lots as provided for in Section 11.5 including those owned by Declarant. Declarant and other Owners of Lots shall be assessed a Common Assessment as provided for in this Section 11.5. Each Owner who subsequently acquires a Lot shall become responsible for Common Assessments attributed to that Lot as of the date the Lot is transferred to such Owner. The first annual Common Assessment on a Lot shall be adjusted according to the number of months remaining in the fiscal year as established pursuant to the Bylaws of the Association. The Board may adopt Community Standards requiring the Owner, at the time when Common Assessments first commence upon that Owner's Lot as provided in this section, to prepay the Common Assessments for the balance of the quarterly period and an additional period which shall not exceed an additional twelve (12) months; such prepayment shall not relieve the Owner from any additional requirement to pay working capital pursuant to Section 11.18.

Section 11.6 Rate of Assessments. Common Assessments and Special Assessments shall be sufficient to meet the expected needs of the Association. Common Assessments and Special Assessments shall be allocated equally and uniformly among all Functional Units. The rate for Common Assessments and Special Assessments shall be determined by dividing the total Common Assessments or Special Assessments, as applicable, payable for any Assessment period, as determined by the ratified budget, by the number of Functional Units. The resulting quotient shall be the amount of the Common Assessment or Special Assessment, as applicable, payable with respect to each Functional Unit and the remaining Lots will pay the applicable amount calculated pursuant to Section 11.5, for both Common Assessments and Special Assessments.

Section 11.7 Failure to Fix Assessment. The failure by the Board of Directors to levy an Assessment for any period shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Owner to pay Assessments for that or any subsequent period.

Section 11.8 Special Assessments. The Board of Directors may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds to construct or reconstruct, repair or replace capital Improvements upon Association Properties, including personal property relating thereto; to add to the Association Properties; to provide for necessary facilities and equipment; to offer the services authorized in this Declaration; to correct any deficit

or cost overrun; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. Special Assessments shall be equally, uniformly imposed upon Lots that contain a Functional Unit as provided in Section 11.5. No Special Assessment shall be assessed until it has been approved in accordance with a procedure substantially identical to the procedure set forth in Section 11.5(a). At any time that insurance proceeds are insufficient to repair or reconstruct any damaged or destroyed Improvements on the Association Properties, or on any other property which the Association maintains, the Association may levy Special Assessments for the purpose of repair or reconstruction of such damaged or destroyed Improvements; all such Special Assessments shall be equal to the amount by which the costs of repair or reconstruction of Improvements exceeds the sum of insurance proceeds awarded for the damage or destruction, and shall be set in the same manner as other Special Assessments. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable, and the Owners shall pay any such Special Assessment in the manner so specified.

Section 11.9 Site Assessments. The Board of Directors may, subject to the provisions hereof, levy a Site Assessment against any Member, Owner, or Lot if additional services are provided to a Member, Owner, or Lot or if the willful or negligent acts or omissions of the Member, Owner or a Related User cause any violation of the Association Documents or cause any loss or damage to the Association or Association Properties or cause any expenditure of funds in connection with the enforcement powers of the Association. Except for a default consisting solely of a failure to timely pay any Assessment, including, without limitation, Special Assessments or Common Assessments, which shall not require any notice and hearing, a Site Assessment, other than charges for additional services, including, without limitation, for trash collection services described in Section 5.27 of this Declaration, shall be levied only after such notice and hearing as may be required by the Bylaws. The amount of the Site Assessment shall be due and payable to the Association upon notice by the Board that the Site Assessment is owing. Imposition or non-imposition of Site Assessments shall not preclude the Association from pursuing simultaneously or subsequently all other legal or equitable rights and remedies. In no event will the amount of any Site Assessment levied against any Lot be counted in calculating the amount allowed pursuant to C.R.S. Section 38-33.3-116(2) and (3).

Section 11.10 Costs of Enforcement, Late Charges and Interest. If any Assessment is not paid within ten (10) days after it is due, the Member, Owner or other Person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorneys' fees, court costs, witness expenses, and all related expenses ("collection expenses"), and to pay a reasonable late charge to be determined by the Board. Any Assessment which is not paid within ten (10) days after the date of any notice of default given under Section 11.12 shall bear interest from the due date at a rate determined by the Board, not to exceed the lower of eighteen percent (18%) per annum or the maximum percentage permitted by law, from the due date until paid.

Section 11.11 Attribution of Payments. If any Assessment payment is less than the amount assessed, the sums received by the Association from that Owner shall be credited in such order of priority as the Board of Directors, in its discretion, determines.

Section 11.12 Notice of Default and Acceleration of Assessments. If any Assessment is not paid within thirty (30) days after its due date, the Board of Directors may mail a notice of default to the Owner and to each First Mortgagee of the Lot who has requested a copy of such notice. The notice shall substantially set forth: (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than twenty (20) days from the date of mailing of the notice by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in the foreclosure of the lien for the Assessment against the Owner's Lot. A default shall not be considered cured unless the past due sums, collection expenses, and all sums coming due through the date of payment are paid to the Association. If the delinquent Assessment and any collection expenses, late charges or interest thereon, plus any other sums due as of the date of the payment, are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all collection expenses, charges and interest thereon in any manner authorized by law or in the Association Documents.

Section 11.13 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed. In the event of a default in payment of any Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with interest, late charges, and expenses of collection, and this covenant shall be a charge on the land and a continuing lien upon the Lot against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is filed in accordance with Section 11.15.

Section 11.14 Lawsuit to Enforce Assessments. The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charge, interest, and other costs of enforcement against the defaulting Owner, including, without limitation, court costs and reasonable attorneys' fees.

Section 11.15 Lien to Enforce Assessments. The Association shall have a lien for Assessments (the "Lien") as provided in C.R.S. Section 38-33.3-316. In addition to or in lieu of bringing suit to collect Assessments, the Association may foreclose its Lien as provided by law and in this Section. The Board may elect (but is not required to) to file a claim of lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the interest and expenses of collection which has accrued thereon and which shall continue to accrue in accordance with the terms of Section 11.10 of this Declaration, (c) the legal description and street address of the Lot against which the lien is claimed, and (d) the name of the record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The Lien shall have the priority provided by the Act and shall be prior to any declaration of homestead rights recorded after the time that the Lot becomes part of the Community Area. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver by the Owner of the homestead exemption as against said Lien. The Lien shall continue until the amounts secured

thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all collection expenses, court costs, recording costs and filing fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, if recorded, upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the cost of preparing and recording the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage, and convey the same. The lien under this Section shall be subject to the provisions and restrictions of Section 15.6 hereof.

Section 11.16 Estoppel Certificates. Upon the payment of such reasonable fee as may be determined from time to time by the Board of Directors, and upon the written request of any Member or Owner and any Person which has acquired, or intends to acquire, any right, title or interest in the Lot of such Member or Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable. Such statement shall, with respect to the Person whom it is issued, if relied thereupon in good faith and without actual knowledge to the contrary, be conclusive against the Association.

Section 11.17 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offset, abatement or reduction thereof shall be permitted for any reason whatsoever, including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration, or for inconvenience or discomfort arising from any activity of the Association Properties, or the non-use by an Owner of Association Properties or services provided by the Association or because an Owner claims that a particular function funded by the Assessment does not benefit that Owner directly, or for any other reason.

Section 11.18 Working Capital Fund. The Board may, at its option, require each Lot purchaser, expressly excluding Declarant, at the time of the first transfer of the Lot following the completion of a Dwelling Unit on the applicable Lot, regardless of whether Assessments have commenced for such Lot or at all, and at the time of each transfer of title to the Lot, to make a nonrefundable contribution to the Association of an amount established from time to time by the Board, but in no event will the amount exceed three (3) times the amount of the annual Common Assessment against the Lot in effect on the date of delivery of the deed conveying the Lot. All such contributions shall be maintained in a non-segregated account for the use and benefit of the Association for, among other purposes, meeting unforeseen expenditures, funding Association deficits or purchasing additional equipment, property or services. **The working capital contribution shall be in addition to the Assessments, and shall not relieve the Owners from paying all Assessments as they come due.** Declarant is excluded from the provisions of this Section because the Association and Owners of Lots with completed Dwelling Units will receive all of the benefits from payments made under this Section.

Section 11.19 Association Reserves. Each Owner hereby acknowledges that the Association may establish such Reserves for the Association as the Association, through its Board in consultation with its property management company, if any, determines to be reasonable in its sole discretion. Each Owner further acknowledges that the Association will not have any obligation to establish reserves at a level which will fully fund the replacement of all Association Properties, but merely a commercially reasonable offset of such anticipated expenses.

ARTICLE 12 INSURANCE

Section 12.1 Insurance on Association Properties. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements specified in this Article 12, the Association may also consider, in determining the type and amount of insurance it needs to obtain, the then-existing requirements of the applicable governmental agencies.

(a) A policy of property insurance covering all insurable Association Properties for broad form covered causes of loss, in an amount not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

(i) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(ii) such other risks as at the time are customarily covered with respect to associations having property similar in construction, location and use, including all periods normally covered by the standard "all risk" endorsement, where such is available.

(b) A comprehensive policy of commercial general liability insurance covering all of the Association Properties, insuring the Association in an amount but not less than One Million and 00/100 Dollars (\$1,000,000.00) covering bodily injury, including death, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, with limitation, legal liability of the insureds for property damage, bodily injuries and deaths in connection with the operation, maintenance or use of the Association Properties, legal liability arising out of lawsuits related to employment contracts of the Association, and protection against liability for non-owned and hired automobiles. Such coverage may also include, if applicable, comprehensive automobile insurance, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and insurance coverage of such other risks as are customarily required by private institutional mortgage investors with respect to associations having property similar in construction, location and use. This policy shall insure the Association, the Board of

Directors, the Association's managing agent (if any), and their respective employees, agents and all persons acting as agents. Declarant shall be included as an additional insured in its capacity as an Owner of Lots. The Owners shall be included as additional insureds but only for claims and liabilities arising from the ownership, existence, use of management of the Association Properties. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to the estimated maximum of funds, including reserves, held by the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months' aggregate Common Assessments on all Lots, plus the Association's reserve funds. Such fidelity coverage or bonds shall meet the following requirements:

(i) all such fidelity coverage or bonds shall name the Association as an obligee;

(ii) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression.

In the event that the Association has delegated some or all of its responsibility for handling of funds to a manager, the Association may require the manager to purchase, at the manager's expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c).

(d) In addition, the Association may obtain insurance against such other risks of similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association and the members of the Architectural Committee and other representatives.

(e) Notwithstanding any other provision of this Declaration or any other Association Documents, all insurance acquired by the Association shall satisfy the requirements of Section 38-33.3-313, Colorado Revised Statutes.

Section 12.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association, or its designee, as trustee and attorney-in-fact for all Owners, as the insured, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory First Mortgagee's clause in favor of each First Mortgagee, and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days prior written notice thereof is given to the insured and to each First Mortgagee, insurer or guarantor of a First Mortgage. The Association shall furnish a certified copy or duplicate original of such policy or

renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest including First Mortgagees, upon request and payment of a reasonable fee. Any such Owner's policy shall also contain waivers of subrogation. Additionally, all policies shall contain waivers of any defense based on invalidity arising from any act or neglect of an Owner where such Owner is not under the control of the Association. Insurance obtained by the Association, to the extent reasonably feasible, and provided that Declarant reimburses the Association for any additional premium payable as a result, shall name Declarant as an additional insured and shall contain a waiver of subrogation rights against Declarant. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Association Properties and property of Declarant.

Section 12.3 Deductibles. No policy or insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount which is greater than the lesser of Ten Thousand and 00/100 Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy. Any deductible shall be payable by the Person responsible for the repair and maintenance of the damaged or destroyed property which is the subject of an insurance claim. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the parties sharing in such joint duty, or may be partly or wholly borne by the Association, at the election of the Board of Directors.

Section 12.4 Insurance Trustee. The Association may authorize a representative to act for it, including any trustee or successor thereto, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Such insurance trustee shall act as attorney-in-fact for the purpose of purchasing and maintaining insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. Said party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgagees as their interests may appear.

Section 12.5 Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current credit or financial rating, which meets any applicable requirements of the Agencies, and is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy if: (a) the terms of the insurance company's charter, bylaws, or policy provide that contributions or assessments may be made against the mortgagor or mortgagee's designee, (b) the terms of the carrier's charter, bylaws, or policy provide that loss payments are contingent upon action by the carrier's board of directors, policyholders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which would prevent a First Mortgagee or any Owner from collecting insurance proceeds.

Section 12.6 Other Insurance to be Maintained by Owners. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Lot, and hazard insurance coverage on the Improvements owned by each Owner shall be the responsibility of the Owner of such Lot.

Section 12.7 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that coverage provided by such policies adequately covers those risks insured by the Association.

Section 12.8 Owners' Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any or all of the Association Property is caused by the willful or negligent act or omission of any Owner, or a Related User of such Owner, the cost of such repair, maintenance or reconstruction shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction may be collected as a Site Assessment as provided in this Declaration or by the Association exercising any rights or remedies under the Association Documents or otherwise as permitted by law. A determination of the negligence or willful act or omission of any Owner's liability therefor, shall be determined by the Board of Directors at a hearing after any notice required by the Bylaws to be given to the Owner, but any determination by the Board of Directors shall be subject to judicial review as appropriate.

ARTICLE 13 EASEMENTS

Section 13.1 Easement for Encroachments. If any portion of an Improvement encroaches upon the Association Property, including any future encroachments arising or resulting from erosion or subsidence, or from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, the Board may grant a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, for so long as such encroachment exists, but subject to any conditions or restrictions imposed by the Board.

Section 13.2 Association Easement. An easement to perform its maintenance or other rights or obligations pursuant to this Declaration is hereby granted to the Association, its officers, agents, employees and assigns, upon, across, over in and under the Community Area, together with the right to make such use of the Community Area as may be necessary or appropriate in carrying out such maintenance or other rights or obligations.

Section 13.3 Utilities. Declarant hereby creates and reserves to itself until Declarant has sold the last Lot in the Community Area to an Owner other than Declarant, and, thereafter, to the Association;

(a) perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the utility easements of each Lot as shown on the Plat or the Development Plan for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes; and

(b) a blanket easement across, over and under the Association Properties for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone and electricity.

If any utility or quasi-utility company furnishing a service covered by the easements created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement. The Association shall succeed to such right and authority upon conveyance by Declarant of the last Lot in the Community Area to the first Owner thereof, other than Declarant. The easement provided for in this section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Community Area.

Section 13.4 Easement for Emergency Vehicles. There is hereby granted an easement for emergency vehicles, including fire, police and ambulance, to use the streets in the Community Area for emergency and other official purposes.

Section 13.5 Easements Deemed Created. All conveyance of Lots hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Declaration, whether or not specific reference to such easements or to this Article appears in the instrument of such conveyance.

Section 13.6 Easements of Record. In addition to the easements created in this Article 13 and on the Plat and in Section 4.15, the Community Area is subject to those easements and other matters currently of record in El Paso County, Colorado.

Section 13.7 Community Mailboxes. The U.S. Postal Service will locate one or more multiple delivery pads and mailboxes a/k/a "community mailbox" structures within the Community Area, in accordance with U.S. Postal Service and City regulations. The Declarant hereby creates and reserves to the Association and the U.S. Postal Service, perpetual, alienable, divisible and releasable easements over, under, in and across the Association Property for use of portions of such areas for the "community mailbox" structure(s). The easement provided for in this section shall in no way affect, void, extinguish or modify any other easement in the Community Area. Each Owner acknowledges that the Association will issue the initial mailbox key to the initial Lot Owner following the completion of construction of the Dwelling Unit and that it will be the responsibility of the initial Lot Owner and each subsequent Lot Owner to transfer the mailbox key to his or her purchaser and failure to do so will require the purchaser to acquire a new mailbox key directly from the U.S. Postal Service and to undertake whatever requirements that may entail. Each Owner acknowledges that the Association shall not have any responsibility or obligation regarding the issuance, maintenance or transfer of mailbox keys after issuing the initial key as above provided.

Section 13.8 Private Side Lot Easements. Declarant hereby establishes, and each Owner acknowledges, the Private Side Lot Easements consisting of the applicable one foot (1') and five foot (5') Public Utility and Private Use Easements reflected on the Plat for the respective Lots described on the Lot Easement Details on the Plat which Easements are referred to in this Declaration as the Unit Maintenance Easements and the Use Easements and are depicted on **Exhibit C** and further described in Section 4.16 of this Declaration.

ARTICLE 14
ENFORCEMENT; DISPUTE RESOLUTION

The Association, Architectural Committee, Declarant, and all Owners agree to encourage the use of mediation or arbitration in the resolution of disputes pertaining to the Declaration and Association Document and the Community Area. Accordingly, each covenants and agrees to be bound by the provisions set forth in this Article.

Section 14.1 Collection of Assessments. Any action or proceeding by the Association to collect any Assessments, together with interest, late charges, and expenses of collection, shall precede according to Article 11, and shall not be included within or impacted by this Article 14.

Section 14.2 Enforcement of Declaration, Community Standards, and Association Documents by the Architectural Committee, the Association, or Declarant. The Architectural Committee, the Association, or Declarant, including an assignee or delegate thereof, may give notice to the Owner of the Lot where a violation of this Declaration occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state: the nature of the violation, the action required to cure the violation; a date not less than ten (10) days from the date of mailing of the notice by which such violation must be cured (a shorter time period may be stated in the event of emergency); and the intent of the Architectural Committee, the Association, or Declarant to invoke this Section. Further action shall be stayed if the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated, or if appropriate measures to cure and terminate are begun and are not thereafter continuously prosecuted with diligence, as required by the notice, then at any time following an Owner's failure to cure the violation, the Architectural Committee, Association, or Declarant (whichever gives the notice, and in their reasonable discretion) may, but shall not be obligated to: (i) impose fines established by the Architectural Committee from time to time and/or elect, for any matter which then presents an **emergency situation**, to cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, pursuant to Section 14.3 below, or to proceed with an action to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief), together with such other ancillary relief as a court may deem necessary in order to enforce any of the provisions of this Declaration; or (ii) proceed with the dispute resolution procedure set forth in Section 14.6 below. Any other disputes between any of the Architectural Committee, the Association, and the Declarant, whether in contract, tort or statutory, shall be resolved pursuant to the dispute resolution procedures set forth in Section 14.6 below.

Section 14.3 Entry Upon a Lot to Cure Violation.

(a) License. Each Owner of a Lot hereby grants a license to the Declarant, the Association and the Architectural Committee for the purpose of entering onto a Lot to remedy violations or breaches of this Declaration pursuant to Section 14.2(i) above. The Architectural Committee, the Association, or Declarant may delegate their entry and removal rights hereunder to agents and independent contractors.

(b) Lien. The costs incurred by the Architectural Committee, the Association,

or Declarant shall be paid by the Lot Owner and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen percent (18%) per annum and costs of enforcement and of collection (including reasonable attorneys' fees), shall be a lien on the ownership interest in the Lot (including Improvements thereon) and shall in all respects be the personal obligation of the Owner.

(c) Collection. The Architectural Committee, the Association, or Declarant may bring an action at law for recovery of fines and/or costs so incurred by it, against the Owner and may bring an action to foreclose the lien against the Lot and Improvements subject to the lien, and the judgment or foreclosure in any such action shall include interest as above provided and the costs of collection, including reasonable attorneys' fees.

(d) Foreclosure of Lien. The Architectural Committee, the Association, or Declarant may enforce the lien by suit or by filing and foreclosure of the lien as hereinafter provided. Such party may elect (but is not required to) to file a claim of lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (i) the amount of the claimed lien, (ii) the interest and expenses of collection which have accrued thereon and which shall continue to accrue in accordance with the terms hereof, (iii) the legal description and street address of the Lot against which the lien is claimed, and (iv) the name of the record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the entity. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to agree to pay all such amounts, and this covenant shall be a charge on the land and a continuing lien upon the Lot. The lien created by this Section shall exist from the date of entry upon the Lot until all sums are paid, whether or not a Notice of Lien is filed in accordance herewith. The lien created by this Section shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded but shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against the lien established in this Section. When all amounts claimed under the lien have been fully paid or satisfied, the filing entity shall execute and record a notice releasing the Notice of Lien, if recorded, upon payment by the Owner of a reasonable fee fixed to cover the cost of preparing and recording the release. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The lien under this Section shall be subject to the provisions and restrictions of Section 15.6 hereof.

(e) No Liability. In the event that the Architectural Committee, the Association, or Declarant, whether acting for themselves or through their agents, officers, members, employees, and representatives, elect to exercise the right to enter upon a Lot to remedy a violation of this Declaration, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless: damage is caused to the Lot or Improvements thereon that is unrelated to the remediation of the breach of the Declaration, and is caused by the willful and wanton acts of the Architectural Committee, the Association, or Declarant. In no event shall there be any liability for damage to an Improvement that is in violation of this Declaration.

Section 14.4 Enforcement of Declaration, Community Standards, and Association Documents by an Owner. Any action by a Lot Owner against the Association, the Declarant, the Architectural Committee, or any of the officers, directors, partners, members, employees, agents or representatives of the foregoing, or any Owner of another Lot, whether in contract, tort or statutory, shall proceed pursuant to the dispute resolution procedure set forth in Section 14.6; provided that (i) all actions against the Declarant, or any of its officers, directors, partners, members, employees, agents or representatives, by an Owner related to warranty claims or any other claims related to alleged construction defects of any kind or nature shall be governed solely by the terms of the contract between the Owner (**or their predecessor in interest subsequent to Declarant's ownership**) and the Declarant or applicable home builder, and by the terms of the limited warranty which was provided to each initial Owner following Declarant as part of such initial Owner's purchase of a home; and (ii) any suit between or among Owners that does not include Declarant or the Association as a party, and that asserts a claim independent of the Association Documents, is not governed by Section 14.6 unless mutually agreed by such Owners.

Section 14.5 Actions by Association on Behalf of Owners. Pursuant to C.R.S. Section 38-33.3-302(1)(d), the Association may institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Owners on matters affecting the common interest community. In such litigation or administrative proceedings, it shall be subject in all instances to the following provisions and conditions:

(a) Limited Warranty and Contracts Control. By an Owner's purchase of a home and by the Association's receipt of title to any Association Property, all Owners and the Association acknowledge that all actions related to warranty claims or any other claims related to alleged construction defects of any kind or nature are governed by the terms of the contract between the Owner (or their predecessor in interest subsequent to Declarant's ownership) and the Declarant or home builder, and by the terms of the limited warranty which was provided to each initial Owner following Declarant as part of such initial Owner's purchase of a home. All Owners, the Declarant (and any of its officers, directors, partners, members, employees, agents or representatives), and the Association acknowledge and agree that all matters governed by the terms of such contract(s) and the limited warranty are not matters affecting the common interest community; and are not included within the Association's authority pursuant to C.R.S. Section 38-33.3-302(1)(d);

(b) Association's Rights Coextensive with Owner's Rights. The Association's rights and limitations in any such litigation or administrative proceedings shall be coextensive with and shall not exceed the respective Owner's rights; and the Association shall be bound by any mediation or arbitration procedures to the same extent as individual Owners;

(c) Approvals Required. In the event the Association or the Board desires to institute any action on behalf of two (2) or more Owners, whether in contract, tort or statutorily, prior to commencing such action, the Board shall comply with each of the following steps: (i) obtain the approval of Owners holding not less than sixty-seven percent (67%) of all votes in the Association at a duly called Owner meeting (whether in person or by proxy) following the Association's delivery of a meeting notice and written ballot (if any), that contains a detailed statement regarding the nature of the claim, an estimate of the costs and fees reasonably

anticipated to be incurred by the Association, a statement that such costs and fees may increase the amount of Assessments; and an estimate of the projected time frame for resolution of the claim; and

(d) Construction Defect Approvals Required. In addition to Section 14.5(c) above, in the event the Association or the Board desires to institute an action asserting defects in the construction of two (2) or more homes or any Common Areas, the provisions of this Section 14.5(d) shall apply. For purposes of this section, "construction defect action" shall have the same meaning as set forth in section C.R.S. Section 38-33.3-303.5(1)(b)(I). The Board shall comply with the following steps: (i) prior to the service of the summons and complaint on any defendant with respect to an action governed by this section, the executive board shall mail or deliver written notice of the commencement or anticipated commencement of such action to each Owner at the last known address described in the Association's records, which notice shall contain the required disclosures set forth in C.R.S. Section 38-33.3-303.5(1)(c)(III) and state a description of the following: the nature of the action and the relief sought, and the expenses and fees that the Board or Association anticipates will be incurred in prosecuting the action. Nothing in this section shall be construed to: (i) require the disclosure in the notice or the disclosure to an Owner of attorney-client communications or other privileged communications; (ii) permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or (iii) limit or impair the authority of the executive board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

Section 14.6 Dispute Resolution Procedures.

(a) Notice; Negotiation. For any claim governed by this Section 14.6, whether in tort, contract, or statutory, and including any claims against the Association's or Declarant's managers, members, employees and/or agents (the "Claim") the claimant ("Claimant") shall give notice to the other Person against whom the claim is asserted ("Respondent"), setting forth: the nature of the claim; the basis or reason for the claim; any other material information regarding the claim; the specific relief and/or proposed remedy sought; and the intent to invoke this Section (the "Notice of Claim"). An Owner may not deliver such notice during any cure or enforcement period pursuant to Section 14.2. Claimant and Respondent shall use good faith efforts to resolve the Claim through negotiations following delivery of the notice, pending mediation pursuant to Section 14.6(b) below.

(b) Mediation. The Claim shall first be submitted to non-binding mediation before a mediator selected by the parties. The costs of the mediation shall be borne equally by the parties. Mediation shall be a condition precedent to arbitrating any dispute. In the event that mediation is unsuccessful, either party may demand arbitration pursuant to Section 14.6(c) within thirty (30) calendar days of the date of the mediation. If no party demands arbitration within the specified time the parties shall, to the fullest extent permitted by law, irrevocably waive any and all right to proceed to arbitration and any and all claims they may have against the other party(ies).

(c) Arbitration. Following the Mediation Period and a written demand for arbitration, the Claim shall be resolved by arbitration administered by the American Arbitration

Association in accordance with the current Construction Industry Arbitration Rules with an Arbitrator appointed by Declarant. The costs of the arbitration shall be borne equally by the parties, subject to reallocation by the Arbitrator. Any arbitration award may be enforced through entry of judgment by any court having jurisdiction thereover. Exclusive venue for any arbitration proceeding shall be in El Paso County, Colorado.

(d) Construction Defect Actions. In the event of any action asserting defects in the construction of homes or any Common Areas, the provisions of this Section 14.6(d) shall also apply. If any of Claimant's claims relate, in any way, to any work completed by any of Declarant's subcontractors or any materials and/or equipment provided by any of Declarant's suppliers, Declarant, in its sole discretion, may join such subcontractors and/or suppliers to any arbitration proceeding with Claimant. The sole manner which may be used to establish breach of any of Declarant's obligations under this Declaration, any obligations which may exist by law or reason of any statute, any applicable industry standards, and/or Claimant's damages, including, but not limited to, appropriate repair costs, shall be through the testimony of a homebuilder currently licensed by the Pikes Peak Regional Building Department who has built and sold at least fifty (50) homes with a sales price exceeding Three Hundred Fifty Thousand and 00/100 dollars (\$350,000.00) in the two (2) calendar years immediately preceding the calendar year in which the claim is brought. The Arbitrator shall completely exclude the testimony of any tendered expert who does not meet the foregoing qualifications.

Section 14.7 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 14.8 Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Area, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 14.9 Remedies Cumulative. Except as expressly stated herein, each remedy provided under the Association Documents is cumulative and not exclusive.

Section 14.10 Costs and Attorneys' Fees. In addition to any other rights provided herein and not by way of limitation thereof, any party which seeks to enforce the Association Documents and prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees. For each claim or defense, including but not limited to counterclaims, cross-claims and third-party claims, and except as otherwise provided herein, in any legal proceeding to enforce or defend the provisions of the Act or the Association Documents, the prevailing party shall be awarded on such claim the prevailing party's reasonable collection costs and attorneys' fees and costs incurred in asserting or defending the claim. For any failure to comply with the provisions of the Act or any provision of the Association Documents other than the payment of Assessments or any money or other sums due to the Association, the Association, any Owner or any class of Owners adversely affected by the failure

to comply may seek reimbursement for collection costs and reasonable attorneys' fees and costs incurred as a result of such failure to comply without the necessity of commencing a legal proceeding.

In connection with any claim in which an Owner is alleged to have violated a provision of the Act or a provision of the Association Documents and in which the Owner prevails because the Owner did not commit the alleged violation: (i) the Owner shall be awarded the Owner's reasonable attorneys' fees and costs incurred in asserting or defending the claim; (ii) the Association shall not be awarded court costs and attorneys' fees; and (iii) the Association shall be precluded from allocating to the Owner's account with the Association any of the Association's costs or attorneys' fees incurred in asserting or defending the claim. Nothing in the Association Documents shall be construed to mean that an Owner shall be deemed to have confessed judgment to attorney's fees or collection costs.

Section 14.11 Limitations. Notwithstanding any other provision of this Article, no claim or proceedings may be initiated after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitation or statute of repose.

Section 14.12 Liability for Failure of Association to Maintain an Action. No director or officer of the Association shall be liable to any person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a claim if the following criteria are satisfied: (i) the director or officer was acting within the scope of his or her duties; (ii) the director or officer was acting in good faith; and (iii) the act or omission was not willful, wanton or grossly negligent.

Section 14.13 Amendment. Notwithstanding anything to the contrary contained in this Declaration, this Article 14 shall not be amended unless such amendment is approved by Owners in accordance with the Act and is consented to by the Declarant and the Association.

Section 14.14 Severability. All provisions of this Article are severable. Invalidation of any of the provisions of this Article, by judgment, court order or otherwise, shall in no way affect or limit the effectiveness of any other provisions of this Article, all of which shall remain in full force and effect.

Section 14.15 Accrual of Claims. In the event of any amendment of any provision of this Article in violation of Section 14.13 above, or in the event Section 14.13 above is deemed unenforceable, then and in such event any amendment or modification of the terms of this Article 14 shall only apply prospectively, to claims that accrue following the date of such amendment or modification.

ARTICLE 15 MISCELLANEOUS

Section 15.1 Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for twenty (20) years after the date when this Declaration was originally recorded and,

thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by agreement of the Owners with at least sixty-seven percent (67%) of the voting power of the Association, in the manner provided in Section 38-33.3-218, Colorado Revised Statutes.

Section 15.2 Amendment of Declaration by Declarant or the Association.

(a) Until the first Lot subject to this Declaration has been conveyed by Declarant by recorded deed, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.

(b) Declarant may amend the Declaration in accordance with Article 10 as necessary to exercise any of the development rights set forth in Article 10 or elsewhere in this Declaration.

(c) Except as set forth in Article 14, subject to any limitations contained in applicable laws, the Association may amend the Declaration as permitted by the Colorado Common Interest Ownership Act.

Section 15.3 Amendment of Declaration by Members. Except as otherwise provided in this Declaration (including Article 14), and subject to provisions elsewhere contained in this Declaration requiring the consent of the Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members with at least sixty-seven percent (67%) of the voting power of the Association, in accordance with the requirements of Section 38-33.3-217, Colorado Revised Statutes. Every amendment to the Declaration must be recorded in the County and is effective only upon recordation.

Section 15.4 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot in the Community Area has been conveyed by Declarant to the first Owner other than Declarant.

Section 15.5 Special Rights of First Mortgagees. Any First Mortgagee, upon filing a written request therefor with the Association, shall be entitled to (a) receive written notice from the Association of any default by the Owner indebted to such First Mortgagee in the performance of the Owner's obligations under the Association Documents, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) upon request, receive a copy of financial statement, within ninety (90) days following the end of any fiscal year of the Association; (d) receive written notice of all meeting of Members; (e) designate a representative to attend any meeting of

Members; (f) receive written notice of abandonment or termination of the Association or of this Declaration; (g) receive notice of any amendment to this Declaration, the Articles of Incorporation or the Bylaws; (h) receive written notice of termination of any agreement for professional management of the Association of the Association Properties following a decision of the Association to assume self-management of the Association Properties; and (i) receive written notice of any damage to the Association Properties if the cost of reconstruction exceeds Ten Thousand and 00/100 (\$10,000.00), and of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

Section 15.6 Priority of First Mortgage Over Assessments. Each First Mortgagee who recorded its First Mortgage before Assessments have become delinquent and who obtains title to the Lot encumbered by the First Mortgage, whether pursuant to the remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such First Mortgagee acquires title, other than allocation of any deficiency prorated among all Members of the Association. A First Mortgagee shall be deemed to have acquired title to a Lot on the date of receipt of a deed in lieu of foreclosure, on the date of receipt of a Certificate of Purchase from the Public Trustee, or on the date of sale pursuant to a judicial foreclosure and receipt of the Sheriff's Certificate of Purchase, as the case may be.

Section 15.7 First Mortgagee Right to Pay Taxes and Insurance Premiums. Any one or more First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may become or have become a charge against any of the Association Properties, and may pay any overdue premiums on hazard insurance policies for any Association Properties, or may secure new coverage if the insurance policy on and Association Properties lapses, and the First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 15.8 Evidence of Required Approvals. Whenever the validity of any amendment to or revocation of this Declaration is conditioned upon voting by a stated percentage of Members and approval by First Mortgagees or Agencies, or both, the recorded document implementing the amendment or revocation shall contain a certification by an officer or the Association that the approvals of the required percentages of Members, First Mortgagees and Agencies were obtained. The Association shall keep on file in its offices such proxies, letters, minutes of meetings or other documentation as may be required to evidence compliance with applicable approval requirements, but the officer's certificate on the recorded instrument shall be sufficient public notice of compliance.

Section 15.9 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second (2nd) business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

Section 15.10 Persons Entitled to Enforce Declaration. The Association (acting by authority of the Board) or any Member (acting on his own behalf), shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration or the other Association Documents. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of the Association Documents, and all other rights and remedies provided in the Association Documents and at law or in equity.

Section 15.11 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 15.12 Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Area, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 15.13 Remedies Cumulative. Each remedy provided under the Association Documents is cumulative and not exclusive.

Section 15.14 Costs and Attorneys' Fees. In any action or proceeding under the Association Documents, the party which seeks to enforce the Association Documents and prevails, shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees.

Section 15.15 Limitation on Liability. The Association, the Board of Directors, the Architectural Committee, Declarant, and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and shall be indemnified by the Association to the fullest extent permissible by the laws of Colorado, including without limitation, circumstances in which indemnification is otherwise discretionary under Colorado law, in accordance with and subject to the terms and limitations contained in the Bylaws.

Section 15.16 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Community Area, or any Improvements thereon, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a writing signed by Declarant.

Section 15.17 Liberal Interpretation. The provisions of the Association Documents shall be liberally construed as a whole to effectuate the purposes of the Association Documents. The use herein of the word "including," when following any general statement, term or matter, shall

not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

Section 15.18 Governing Law. The Association Documents shall be construed and governed under the laws of the State of Colorado.

Section 15.19 Severability. Each of the provisions of the Association Documents shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 15.20 Number and Gender. Unless the context requires a contrary construction, as used in the Association Documents, the singular shall include the plural and the plural, the singular and the use of any gender shall include all genders.

Section 15.21 Captions for Convenience. The titles, headings and captions used in the Association Documents are intended solely for convenience of reference and are not intended to affect the meaning of any provision of this Declaration.

Section 15.22 Mergers and Consolidation. The Association may merge with another incorporated association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Community Area together with the covenants and restrictions established upon any other property, as one plan. Notwithstanding the foregoing, the Association shall have the right to merge into one association upon a vote of the respective boards of directors of such associations.

Section 15.23 Conflicts in Documents. In case of any conflict between this Declaration and the Articles of Incorporation or the Bylaws of the Association, this Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 15.24 Interpretive Authority Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intent or meaning of any of this Declaration, the Declarant, during the Period of Declarant Control, and thereafter, the Association (the “Interpretive Authority”), shall determine the proper construction of the provisions in question and shall set forth in a written instrument duly acknowledged by the Interpretive Authority and filed for record with the Clerk and Recorder of El Paso County, the meaning, effect, and application of the provision. This determination will thereafter be binding on all parties so long as it is neither

arbitrary nor capricious.

ARTICLE 16
DISCLOSURES

Section 16.1 Statutory Disclosure. C.R.S. Section 38-35.7-101 requires that the following disclosure be made to you:

SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

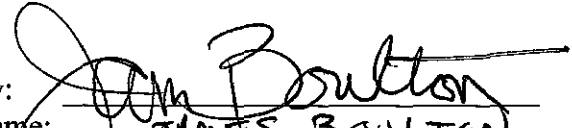
[Signature Page Follows]

*[Signature Page – Declaration of Covenants, Conditions, Restrictions and Easements for
Midtown at Cottonwood Creek]*

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective on the day and year first above written.

DECLARANT:

Elite Properties of America, Inc.,
a Colorado corporation


By: 
Name: JAMES BOULTON
Title: VICE PRESIDENT

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 5th day of June, 2018, by James Boulton as Vice President of Elite Properties of America, Inc., and a Colorado corporation.

Witness my hand and official seal.

My Commission Expires: 12-02-2021.

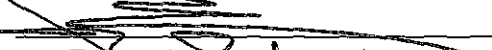

Notary Public

CHRISTINE L WISE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 19974021715
MY COMMISSION EXPIRES DECEMBER 2, 2021

CONSENT

This Declaration is hereby consented to by **Midtown at Cottonwood Creek Homeowners Association, Inc.**, a Colorado nonprofit corporation.

Midtown at Cottonwood Creek Homeowners Association, Inc.,
a Colorado nonprofit corporation

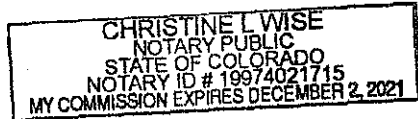
By: 
Name: Jerald Richardson
Its: President

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 5th day of June, 2018, by Jerald Richardson as President of **Midtown at Cottonwood Creek Homeowners Association, Inc.**, a Colorado nonprofit corporation.

Witness my hand and official seal.

My Commission Expires: 12-02-2021.



Christine L. Wise
Notary Public

EXHIBIT A
TO
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR MIDTOWN AT COTTONWOOD CREEK

Legal Description of Community Area

Lots 1 through 47, inclusive, and Tracts A, B, and C, all within
Midtown at Cottonwood Creek Filing No. 1, El Paso County,
Colorado.

EXHIBIT B
TO
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR MIDTOWN AT COTTONWOOD CREEK

Legal Description of the Expansion Property

EXHIBIT C
TO
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR MIDTOWN AT COTTONWOOD CREEK

Depiction of Typical Private Side Lot Easements

EXHIBIT D
TO
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR MIDTOWN AT COTTONWOOD CREEK

Depiction of Access Streets

EXHIBIT B – Expansion Area



JOB NO. 1181.10-04
FEBRUARY 13, 2018
PAGE 1 OF 2

619 N. Cascade Avenue, Suite 200 (719) 785-0790
Colorado Springs, Colorado 80903 (719) 785-0799 (Fax)

LEGAL DESCRIPTION: EXPANSION AREA

A PARCEL OF LAND BEING A PORTION OF LOT 5, AS PLATTED IN COOK COMMUNICATIONS SUBDIVISION FILING NO. 3, RECORDED UNDER RECEPTION NUMBER 216713749, RECORDS OF EL PASO COUNTY, COLORADO, BEING ALSO A PORTION OF THE NORTH HALF OF SECTION 11, TOWNSHIP 13 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF COLORADO SPRINGS, EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: A PORTION OF THE SOUTHEASTERLY BOUNDARY LINE OF LOT 5, AS PLATTED IN COOK

COMMUNICATIONS SUBDIVISION FILING NO. 3, RECORDED UNDER RECEPTION NUMBER 216713749, RECORDS OF EL PASO COUNTY, COLORADO, BEING ALSO A PORTION OF THE NORTHWESTERLY BOUNDARY LINE OF TRACT A, AS PLATTED IN NEWPORT HEIGHTS WEST SUBDIVISION FILING NO. 9A, RECORDED UNDER RECEPTION NUMBER 202038159, BEING MONUMENTED AT THE BOTH ENDS BY A 1 INCH YELLOW PLASTIC CAP STAMPED "PLS 22573" IS ASSUMED TO BEAR S18°53'42"W, A DISTANCE OF 544.55 FEET.

COMMENCING AT AN ANGLE POINT ON THE SOUTHEASTERLY BOUNDARY LINE OF LOT 5, AS PLATTED IN COOK COMMUNICATIONS SUBDIVISION FILING NO. 3, RECORDED UNDER RECEPTION NUMBER 216713749, RECORDS OF EL PASO COUNTY, COLORADO, BEING AT THE NORTHERLY END OF THE LINE LABELED "S19°04'06"W 544.55" ON SAID PLAT, SAID POINT BEING THE POINT OF BEGINNING;

THENCE ON THE SOUTHEASTERLY BOUNDARY LINE OF SAID LOT 5 AND THE NORTHWESTERLY BOUNDARY LINE OF TRACT A, AS PLATTED IN NEWPORT HEIGHTS WEST SUBDIVISION FILING NO. 9A, RECORDED UNDER RECEPTION NUMBER 202038159, THE FOLLOWING (2) TWO COURSES;

1. S18°53'42"W, A DISTANCE OF 544.55 FEET;
2. S39°02'54"W, A DISTANCE OF 150.00 FEET TO THE SOUTHEASTERLY CORNER OF BLOCK 1, COTTONWOOD SUBDIVISION, RECORDED IN PLAT BOOK F-5 AT PAGE 58;

THENCE N53°55'13"W ON THE EASTERLY BOUNDARY LINE OF SAID BLOCK 1, A DISTANCE OF 654.56 FEET;

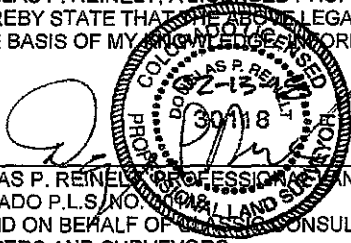
THENCE N36°05'00"E, A DISTANCE OF 149.50 FEET TO A POINT ON CURVE;
THENCE ON THE ARC OF A CURVE TO THE LEFT WHOSE CENTER BEARS S36°05'00"W, HAVING A DELTA OF 18°40'00", A RADIUS OF 80.00 FEET AND DISTANCE OF 26.06 FEET TO A POINT ON CURVE;

THENCE N17°25'00"E, A DISTANCE OF 30.00 FEET;
THENCE N36°05'00"E, A DISTANCE OF 82.68 FEET;
THENCE S53°55'00"E, A DISTANCE OF 53.94 FEET;
THENCE N50°40'00"E, A DISTANCE OF 283.60 FEET;
THENCE N77°13'00"E, A DISTANCE OF 154.23 FEET;
THENCE S56°06'00"E, A DISTANCE OF 11.71 FEET;
THENCE N33°54'00"E, A DISTANCE OF 86.00 FEET;
THENCE S56°06'00"E, A DISTANCE OF 304.06 FEET TO A POINT ON THE SOUTHEASTERLY BOUNDARY LINE OF SAID LOT 5;
THENCE S37°57'29"W ON THE SOUTHEASTERLY BOUNDARY LINE OF SAID LOT 5, A DISTANCE OF 74.96 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 8.951 ACRES.

LEGAL DESCRIPTION STATEMENT:

I, DOUGLAS P. REINELT, A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL WAS PREPARED UNDER MY RESPONSIBLE CHARGE AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, IS CORRECT.






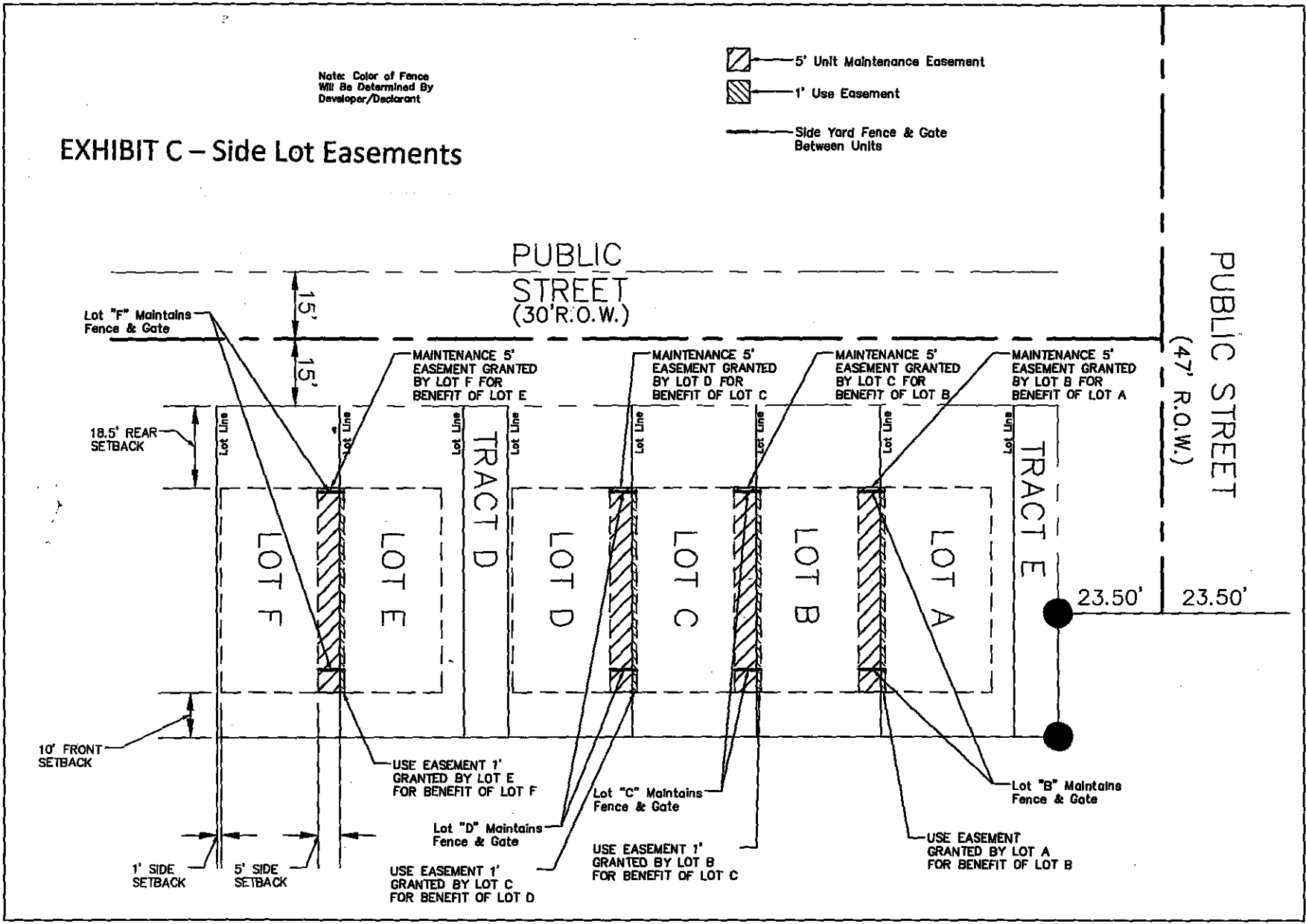
DOUGLAS P. REINELT, PROFESSIONAL LAND SURVEYOR
COLORADO P.L.S. NO. 30118
FOR AND ON BEHALF OF CLASSIC CONSULTING
ENGINEERS AND SURVEYORS

FEB 13, 2018
DATE

EXHIBIT C – Side Lot Easements

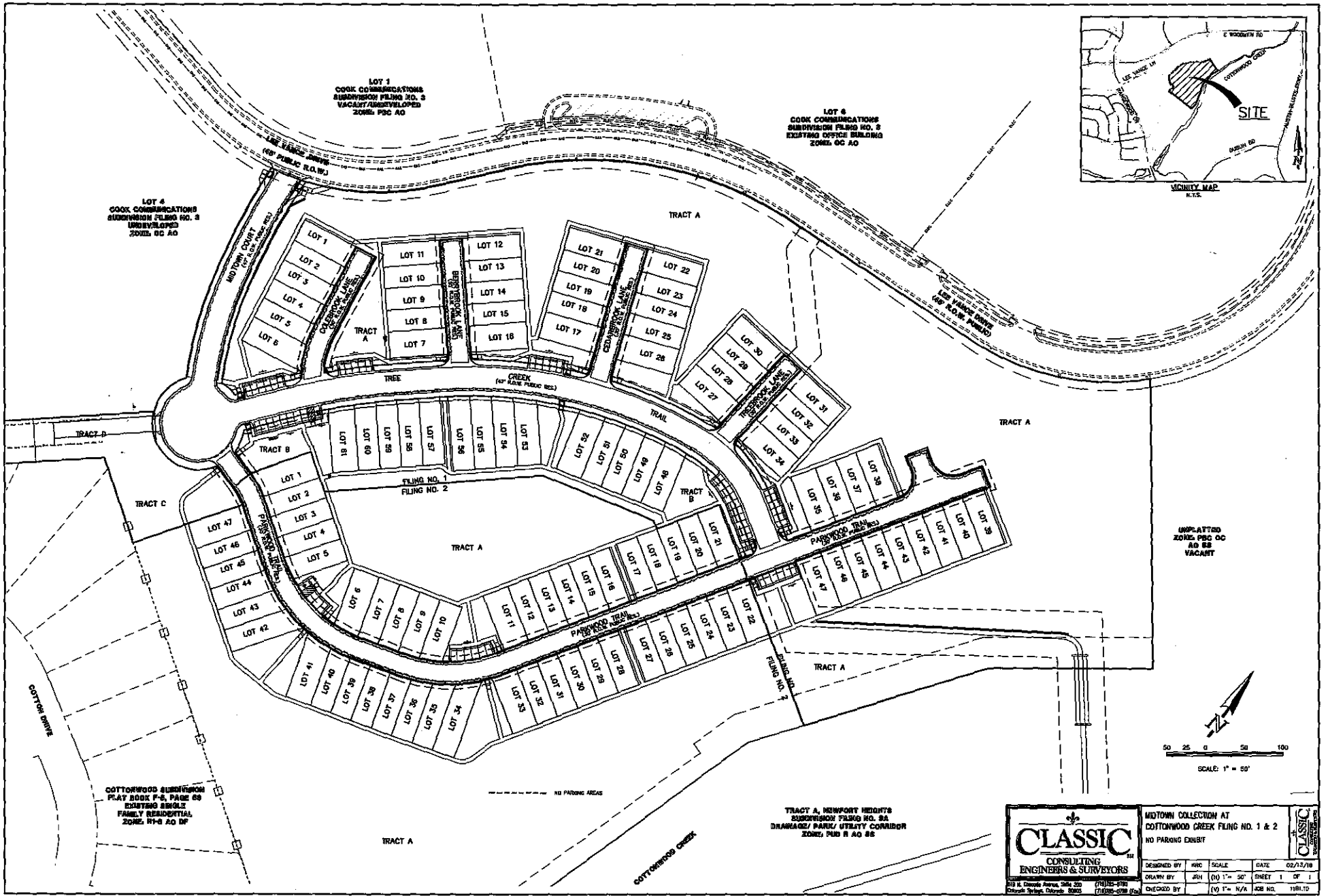
Note: Color of Fence Will Be Determined By Developer/Declarant

-  5' Unit Maintenance Easement
-  1' Use Easement
-  Side Yard Fence & Gate Between Units



TYPICAL USE AND MAINTENANCE EASEMENTS EXHIBIT

EXHIBIT D – Depiction of Access Streets



<p>319 N. Lincoln Avenue, Suite 200 Chicago, Illinois, Chicago, IL 60610 (773) 328-7700 FAX: (773) 328-7701</p>	MIDTOWN COLLECTION AT COTTONWOOD CREEK FILING NO. 1 & 2 NO PARKING DENIED				
	DESIGNED BY	KRC	SCALE		DATE
	DRAWN BY	JRH	(1) 1" = 50'		SHEET 1 OF 1
	CHECKED BY		(1) 1" = N/A		JOB NO. 11817D