

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
GOVERNOR'S CROSSING
(A COMMON INTEREST COMMUNITY)**

Declarant: Legacy Development, LLC, a Colorado limited liability company

Association: Governor's Crossing Owners Association, a Colorado nonprofit corporation

Type of Common
Interest Community: Planned Community

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Carly Koppes, Clerk and Recorder, Weld County, CO





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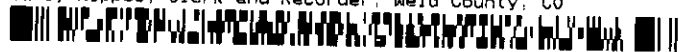
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GOVERNOR'S CROSSING

This Declaration of Covenants, Conditions and Restrictions for Governor's Crossing (a common interest community) ("Declaration") is made by Legacy Development, LLC, a Colorado limited liability company ("Declarant").

RECITALS

- A. Declarant owns that real property ("Property") described on **Exhibit A**, attached and incorporated by reference.
- B. Declarant desires to create a Common Interest Community on the Property, pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as it may be amended from time to time ("Act"), in which portions of the real estate will be designated for separate ownership by the Owners (defined below) and the remainder of which will be owned by the Governor's Crossing Owners Association, a Colorado nonprofit corporation ("Association"). This Declaration is intended to supplement the Act. In the event of any conflict between the provisions of this Declaration and mandatory provisions of the Act, the Act, including all amendments to the Act, shall prevail.
- C. Declarant has caused or will cause the Association to be organized as a nonprofit corporation under the laws of Colorado for the purpose of performing the functions set forth in this Declaration and provided for in the Act.

ARTICLE 1 DEFINITIONS

- 1.1 General. The following sections define words and phrases which, as used in this Declaration, have the meaning set forth below. In addition, applicable definitions contained in the Act when used herein, have the meaning set forth in the Act except to the extent the Act allows a Declaration to define the same in a different way and this Declaration does so. Other terms in this Declaration may be defined in specific provisions of the Declaration and shall have the meaning assigned by such definition. Defined words and phrases, including both those defined in this Declaration and those defined in the Act, are indicated in this Declaration by capitalizing the first letter of a defined word or of each word in a defined phrase.
- 1.2 Act. "Act" means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as the same may be amended from time to time.
- 1.3 Assessments. "Assessments" means all Common Expense Assessments, Special Assessments, and any other assessments of the Association provided for in this Declaration.
- 1.4 Association. "Association" means the Governor's Crossing Owners Association, a Colorado nonprofit corporation.
- 1.5 Board. "Board" means the Association's Board of Directors, which is also the Association's Executive Board.



1.6 Bylaws. “Bylaws” means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.

1.7 Common Elements. “Common Elements” means any Property within the Common Interest Community now or hereafter owned or leased by the Association, other than a Lot, together with all landscaping improvements, roads, driveways, parking facilities, sidewalks, walkways, trails, irrigation systems, fencing, parking facilities, other fixtures and improvements now or hereafter located on or in such Property.

1.8 Common Expense Assessment. “Common Expense Assessment” means all assessments made for Common Expenses under this Declaration.

1.9 Common Expenses. “Common Expenses” means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

1.10 Common Interest Community. “Common Interest Community” means all real property now or hereafter subject to this Declaration.

1.11 Declarant. “Declarant” means Legacy Development, LLC, a Colorado limited liability company, its successor and assigns, or any Person or group of Persons acting in concert with Legacy Development, LLC who:

1.11.1 As a part of a common promotional plan, offers to dispose of to a Purchaser such Declarant’s interest in a Lot not previously disposed of to a Purchaser; or

1.11.2 Reserves or succeeds to any Special Declarant Right.

1.12 Declaration. “Declaration” means this Declaration of Covenants, Conditions, and Restrictions for Governor’s Crossing, and any recorded instruments however denominated that create this Common Interest Community and also including, without limitation, the Plats of the Property recorded with the Clerk and Recorder of Weld County, Colorado, together with any amendments, supplements, and replats to such documents.

1.13 Development Property. “Development Property” means the real property described on **Exhibit B**, attached and incorporated by reference.

1.14 Fines. “Fines” means any monetary penalty imposed by the Board against a Lot Owner because of a violation of this Declaration, the Articles of Incorporation of the Association, its Bylaws or the Rules and Regulations by such Lot Owner, a member of the Lot Owner’s family or a tenant or guest of the Lot Owner or a member of a family of a tenant of a Lot Owner.

1.15 Improvements. “Improvements” means all of the following located or occurring on any Lot: Residences, buildings, structures, fences, walls, hedges, plantings, landscaping, gardens, lighting, poles, driveways, sidewalks, walkways, patios, signs, changes in any exterior color or shape, excavation and site work, removal of trees or plantings, and any new exterior construction or exterior improvement on a Lot which may not be included in the foregoing. “Improvements” includes both original improvements



and all later changes and improvements on a Lot.

1.16 Limited Common Elements. “Limited Common Elements” means a portion of the Common Elements allocated by the Declaration for the exclusive use of one or more Lots but fewer than all of the Lots.

1.17 Lot or Lots. “Lot” or “Lots” means a physical portion of the Property which is designated for separate ownership or occupancy, including the “Building Envelopes” designated as “BE”, and the boundaries and identifying number of which are described in or determined from a declaration and a plat. “Lot” or “Lots” have the same meaning as the words “Unit” and “Units” used in the Act. If the BE’s individual Residences are converted to condominiums, each condominium unit will be a “Lot” for the purpose of this Declaration.

1.18 Member. “Member” means the Person, or if more than one, all Persons collectively, who constitute the Owner of a Lot.

1.19 Mortgagee. “Mortgagee” means any Person who has a Security Interest in a Lot and who has provided written notice of such interest to the Association within which such Lot is located. “First Mortgagee” shall mean a Mortgagee who has a First Security Interest in a Lot.

1.20 Neighborhood Standard. “Neighborhood Standard” means the standard of conduct, maintenance, or other activity generally prevailing in the Common Interest Community, or the minimum standards established under the governing documents applicable to the Common Interest Community, whichever is the higher standard. The Neighborhood Standard may contain both objective and subjective elements and may evolve as the needs and desires within the Common Interest Community change.

1.21 Owner or Lot Owner. “Owner” or “Lot Owner” means any Person who owns a Lot but does not include a Person having an interest in a Lot solely as security for an obligation. The Declarant shall not be considered an Owner of any individual Lot created in any declaration or plat.

1.22 Person. “Person” means any natural person, corporation, partnership, limited liability company, governmental entity, association, trust, or any other entity or combination thereof.

1.23 Plat. “Plat” or “Plats” mean collectively the plats of the Property recorded with the Clerk and Recorder of Weld County, Colorado, and all recorded amendments, corrections and replats.

1.24 Property. “Property” means the real property described on **Exhibit A**, and such other real property as is made subject to this Declaration under **Article 9** below.

1.25 Purchaser. “Purchaser” means a Person, other than the Declarant, who, by means of a transfer, acquires a legal or equitable interest in a Lot, other than:

1.25.1 A leasehold interest in a Lot of less than 40 years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or

1.25.2 A Security Interest.



1.26 Residence. “Residence” means an attached single-family residential dwelling constructed on a Lot or a living unit such as an apartment or condominium which is part of a multi-family building constructed on the Property.

1.27 Rules and Regulations. “Rules and Regulations” means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Property, including any amendment to those instruments.

1.28 Security Interest. “Security Interest” means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation. “First Security Interest” shall mean and refer to a Security Interest in a Lot prior to all other Security Interests except the Security Interest for real property taxes and assessments made by Weld County, Colorado, or other governmental authority having jurisdiction over the Common Interest Community.

1.29 Special Assessments. “Special Assessments” means the assessments for capital improvements described in **Article 6.2** of this Declaration.

1.30 Special Declarant Rights. “Special Declarant Rights” means rights which Declarant has the right to exercise pursuant to the Act even though not required to be enumerated in the Declaration.

1.31 Sub-Association. “Sub-Association” shall mean those associations that are formed for the purpose of governing and regulating Lots, platted parcels, tracts, areas and open space in Governor’s Crossing that in the Declarant’s opinion, can be best served by a separate association to address the needs of Lot Owners served by such Lots, parcels, tracts, areas and open spaces and by a Sub-Declaration. All Sub-Associations shall include “Governor’s Crossing” in their name unless that requirement is waived by the Board.

1.32 Sub-Declaration. “Sub-Declaration” shall mean declaration of covenants, conditions and restrictions filed to regulate and govern the use of Lots, platted Parcels, tracts, areas and open spaces, in addition to and subject to this Declaration. This Declaration shall be paramount to any Sub-Declarations.

ARTICLE 2 SUBMISSION OF PROPERTY

2.1 Declaration. The Declarant declares that the Property shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the easements, covenants, conditions, and restrictions in this Declaration which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Property or any portion thereof, their heirs, personal representatives, successors, and assigns. Additionally, Declarant submits the Property to the provisions of the Act. To the extent this Declaration is silent on a matter covered by the Act, it is intended that the provisions of the Act apply. In the event the Act is repealed, the Act as it was in effect on the effective date of such repeal shall remain applicable.



2.2 Plat and Plans. In addition, the Property shall be subject to the restrictions appearing on the Plat and any recorded development agreement and contained in any plans for the Common Interest Community on file with the Town of Eaton, Colorado ("Town").

2.3 Supplemental Declaration. Additions to the project may be made by Declarant by the recordation of one or more supplemental declarations or other written instruments signed by Declarant. Such supplemental declaration or other instruments shall contain legal descriptions of the additional real property which shall become part of the project and shall declare that such property shall be subject to this Declaration.

Upon the recording of a supplemental declaration, the property described therein shall be subject to the restrictions contained in this Declaration. The property described in a supplemental declaration may be made subject to additional and different restrictions which are set forth in the supplemental declaration provided such restrictions are no less restrictive than those contained in this Declaration and, if required, are approved in writing by the FHA and the VA.

ARTICLE 3 COMMON INTEREST COMMUNITY

3.1 Name. The name of this Common Interest Community is Governor's Crossing.

3.2 Association. The name of the Association is Governor's Crossing Owners Association, a Colorado nonprofit corporation.

3.3 Planned Community. The Common Interest Community is a planned community.

3.4 County. The name of every county in which any part of the Common Interest Community is situated is Weld County, Colorado.

3.5 Legal Description. The legal description of the Property initially included in the Common Interest Community is set forth in attached **Exhibit A**.

3.6 Maximum Number of Lots. The maximum number of Lots that the Declarant reserves the right to create within this Common Interest Community is 110. However, such number of Lots is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in the Common Interest Community.

3.7 Boundaries of Lots. The boundaries and the identifying number of each existing Lot are set forth on the Plat of the Property.

3.8 Recording Data. All easements and licenses to which the Common Interest Community is presently subject are listed on **Exhibit C**, attached and incorporated by reference. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to the terms of this Declaration.

3.9 Common Elements. The Common Elements are those Tracts identified on the Plat which are



owned by the Association, together with all improvements now or hereafter located in, or under such Common Elements. All Common Elements are general common elements for the benefit of all Owners within the Common Interest Community. Declarant dedicates the Common Elements to the use and enjoyment of the Owners, subject to the provisions of this Declaration. The Association's Board may adopt Rules and Regulations governing the use of the Common Elements.

ARTICLE 4 ASSOCIATION

4.1 Powers and Authority. The Association shall manage the business and affairs of the Common Interest Community. To manage the Common Interest Community business and affairs, the Association shall have and may exercise with regard to the Common Interest Community all powers and authority of a Lot Owner's association under the Act (specifically including (i) the power to adopt and amend budgets for revenues, expenditures, and reserves and collect Assessments from the Owners of Lots within the Common Interest Community; (ii) invest and manage revenues and reserves in checking and savings accounts with federally insured banks and federally insured money market accounts; and (iii) the power to assign its right to future income, including the right to receive Assessments, provided the Association determines that such assignment will not impair the ability of the Association to perform its duties under this Declaration). The Association may adopt Rules and Regulations. Additionally, the Association, acting through its Board, shall have the power, after notice and an opportunity to be heard, to levy reasonable Fines and penalties for violations of any provision of this Declaration, the Bylaws, and Rules and Regulations. The remedies for collection of any such Fines and penalties shall be as provided in **Article 6** below.

4.2 Membership and Allocation of Votes. All Lot Owners shall be members of the Association. The Association shall have one class of membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. Each Lot shall also be allocated one vote in the Association. When more than one Person holds a membership interest in any Lot, all such Persons shall be members. The votes for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. For the purposes of this paragraph 4.2, each BE, so long as it remains separately owned and not part of a condominium association, shall be allocated four votes.

4.3 Relationship of Association to a Condominium Common Interest Community. Nothing contained in this Declaration shall preclude the creation of a condominium common interest community in and among the BE's. The following provisions set forth the relationship between the Governor's Crossing Owners Association, Inc. (the "Association") and one or more condominium common interest communities created within the Property.

4.3.1 The condominium association and not the individual Owners shall be a member of the Association. The Executive Board of the condominium association shall appoint one individual to represent the condominium association as a member of the Association. The Executive Board of the condominium association shall provide the Association with written notification of the person appointed.

4.3.2 The Association may enforce the Declaration and other Association Documents against the condominium association and/or each of the Owners of individual condominium units.



4.3.3 The condominium association shall pay the Assessments to the Association. The condominium association shall pay the amount of each Lot Owner Assessment levied by the Association multiplied by four for each building in the condominium association. Each individual condominium owner shall be jointly and severally liable for their proportional share of Assessments and shall not be relieved of liability by payment of the Owner's pro rata share of the Assessment. The lien for Assessments shall be a lien against the entire condominium community and each individual condominium unit. The Association may foreclose the Assessment lien against the entire condominium community and/or one or more individual condominium units.

4.4 Declarant Control. Subject to the limitations of §38-33.3-303 of the Act, the Declarant, or Persons designated by it, may appoint and remove the officers of the Association, and members of the Board for a period of ten years after the recordation of this Declaration.

ARTICLE 5 MAINTENANCE

5.1 Common Elements. Except as provided in this **Article 5.1** and in **Article 5.3** below, the Association shall be responsible for the maintenance, repair and replacement of the Common Elements. The Association's maintenance responsibilities specifically include, without limitation, snow removal from any roadways, sidewalks, walkways, and driveways located on the Common Elements. The Association's maintenance responsibilities are subject to the provisions of **Article 5.8** below. The Association's cost to maintain, repair, and replace the Common Elements shall be a Common Expense assessed against the Owners as part of the Assessments.

5.2 Lots. Unless otherwise provided in this Declaration, the Owners shall be responsible for maintaining, repairing, and replacing their Lots and all Improvements located on, in, and under the Lots which are not otherwise the specific responsibility of the Association, in a manner that meets the Neighborhood Standard. The Association has the following maintenance, repair, and replacement obligations for the Lots:

5.2.1 *Exterior of Residences*. The Association shall maintain, repair, and replace the exterior siding, trim, roofs, gutters, downspouts, and any window wells (but not windows, doors, doorbells or lighting attached to the exterior, which are the responsibility of the Owners) for each Residence in a manner that meets the Neighborhood Standard.

5.2.2 *Fencing*. The Association shall maintain, repair, and replace all fencing on the Property in a manner that meets the Neighborhood Standard.

5.2.3 *Landscaping*. The Association shall maintain, repair, and replace in a manner that meets the Neighborhood Standard all exterior landscaping and irrigation systems on the Property. Owners shall not impair or impede the Association's ability to perform its maintenance, repair, and replacement obligations.

5.2.4 *Roads, Driveways, Sidewalks, and Walkways*. The Association shall maintain, repair,



and replace the driveways located on the Lots and the Common Elements sidewalks and walkways in a manner that meets the Neighborhood Standard. The Association's maintenance responsibilities include snow removal from the roads, driveways, sidewalks, and walkways located on the Property. The Board shall determine the minimum snow depth level which will require snow removal to be performed by the Association. The Owners' maintenance responsibility includes snow removal from the sidewalks and walkways on their Lots.

5.2.5 Limited Common Elements. The Association shall have no obligation to maintain, repair or replace Limited Common Elements such as, but not limited to doorbells, garage doors, exterior and interior doors, windows, lights attached to the Residence or Lot, front porch stoops, decks, patios, railings or anything else installed or planted by an Owner. However, exterior doors and windows must be uniform throughout the Common Interest Community and comply with the standards as set by the Association.

5.2.6 Building Envelopes. Notwithstanding the foregoing, if the BE's are converted to condominium units and a condominium common interest community, the Owner(s) and the condominium association shall be responsible for the maintenance and repair of the exterior of each Building Envelope. The Association shall be responsible for those elements as described in 5.2.2, 5.2.3 and 5.2.4 above

5.3 Offsite Maintenance. The Association, acting through its Board, has the authority to enter into such agreements as it deems advisable with the Town and the governing association for any community located adjacent to the Common Interest Community for the maintenance, repair and replacement of the landscaping located immediately adjacent to the Common Interest Community.

5.4 Additional Maintenance. Notwithstanding any other provision herein, the Board may, at any time, and from time to time, determine that the Association shall provide additional maintenance, repair, or replacement services for the exterior of the Residences or for any other Improvements on the Lots. The Board's determination to provide additional maintenance services shall specify which Residences or Lots will receive the additional services. To the extent such additional services are not provided to all Lots or Residences within the Common Interest Community, the cost of such services shall be equitably allocated only against those Lots or Residences so served. Any such additional services may be terminated at any time as determined by the Board.

5.5 Association's Right to Perform Work. In the event any Owner shall fail to satisfactorily perform any maintenance, repair, or replacement obligations of such Owner, the Association may give written notice to the Owner of the work required to be performed, and, if such failure to perform the work continues for a period of thirty (30) days after such notice has been given, the Association may enter upon the Lot and perform the necessary maintenance, repairs, or replacements. The cost of any such maintenance, repair, or replacement shall be the obligation of the Owner and shall be added to and become a part of the Assessment to which the Lot is subject, and the Association shall have a lien to secure such Assessment as provided by the Act and this Declaration.

5.6 Association's Easement to Perform Work. The Association shall have an easement across and upon each Lot permitting the Association, its agents, employees, and independent contractors to enter upon the Lot as reasonably necessary in order to perform any work required of the Association under this Declaration. All persons performing such work shall use reasonable efforts to minimize interference with the Lot Owner's use and enjoyment of the Lot when performing such work.



5.7 Utilities. The Owners shall pay all utility charges (including, without limitation, water, sewer, gas, electricity, telephone and other telecommunications) for their individual Lots.

5.8 Damage by Owner. Notwithstanding anything to the contrary contained in this Declaration, in the event any Association maintenance, repair, or replacement referenced above is caused by any act or omission of an Owner or a member of such Owner's family, or a guest, invitee or tenant of an Owner, or a member of such tenant's family, the cost of such maintenance, repair or replacement, to the extent not covered by Association insurance, shall be the personal obligation of such Owner, and any costs, expenses, and fees incurred by the Association for the same shall be assessed to such Owner as part of the Assessment in **Article 6.3** below.

ARTICLE 6 ASSESSMENTS

6.1 Common Expense Assessments. The Association, through its Board, shall levy Common Expense Assessments against Lots within the Common Interest Community for (a) the purposes of promoting the recreation, health, safety, and welfare of the Lot Owners, (b) the management, improvement, maintenance, repair, and replacement of the Common Elements, including all improvements located in, on, or under the Common Elements, and also including any improvements referenced in **Article 5.3** above, (c) the maintenance, repair, and replacement of those portions of the Lots and Residences for which the Association is responsible under this Declaration, (d) any other maintenance obligations or common services which may be deemed necessary by the Association for the common benefit of the Owners or the maintenance of property values, (e) insurance with respect to the Common Elements and the Residences, (f) providing an adequate reserve fund for improvement, maintenance, repair, and replacement of the Common Elements, and any portions of the Lots and Residences for which the Association is responsible under this Declaration, (g) such reasonable administrative costs and overhead charges incurred by the Association, as well as enforcement and collection costs, and any management fee paid by the Association, related to the performance of the obligations and provisions of services referenced in this Declaration; (h) such other purposes as may be described in this Declaration, and (i) the payment of any other expenses incurred by the Association in performing its duties under this Declaration and the Act. The assessment year shall be January 1 to December 31, unless a different fiscal year is chosen by the Association's Board. The Common Expense Assessments shall be made annually against all Lots based upon the Association's advance budget cash requirements needed by it to provide for administration and performance of its duties. The Common Expense Assessments shall be collected in periodic installments as determined by the Board. Within ninety (90) days after adoption of any proposed budget for the Association, the Board shall mail, by ordinary first-class mail or otherwise deliver in the manner provided in **Article 19** below, a summary of the budget to all Lot Owners and shall set a date for a meeting of the Lot Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners will be continued until a subsequent budget proposed by the Board is not vetoed by the Owners. If the Board, in its reasonable discretion, deems it necessary at any time following adoption of an annual budget to amend or modify that budget because of unexpected changes in the Association's costs, the need to repair or replace any Common



Elements or other unforeseen circumstances, the Board may do so and copies of the revised budget (including the revised Common Expense Assessments) shall be sent to the Owners in the same manner as the original budget. The omission or failure of the Association to fix the annual Common Expense Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.

6.2 Special Assessments. In addition to the annual Common Expense Assessments authorized above, the Association may levy, in any fiscal year, one or more Special Assessments, payable over such period of time as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvements comprising part of the Common Elements for which the Association is responsible or part of the Lots for which the Association is responsible, provided that any such Special Assessment shall have the assent of at least 67% of the votes of those Members who constitute a quorum at a meeting duly called for this purpose.

6.3 Individual Assessments. The maintenance costs referenced in **Articles 5.5** and **5.8** above shall be added to and become part of the Common Expense Assessment against the subject Owner's Lot. Similarly, Fines levied pursuant to this Declaration or the Rules and Regulations of the Association shall be added to the Common Expense Assessment against the Lot of the Owner subject to the same.

6.4 Allocation of Assessments. Assessments shall be allocated to the Lots in the Common Interest Community as follows: Each Lot's share of the liability for Assessments shall be a fraction of the total Assessments, the numerator of which shall be one and the denominator of which shall be the total number of Lots within the Common Interest Community. Notwithstanding the foregoing, the amount of Assessment against Lots on which a certificate of occupancy has not been issued may be set at a lower rate than the rate of Assessment against those Lots on which a certificate of occupancy has been issued pursuant to C.R.S. §38.33.3-315(3)(b), as amended, since such Lots do not receive certain benefits including the same services as other Lots. In addition, if less than all of the Lots are receiving additional maintenance services under **Article 5.4** above, Assessments for those services shall be allocated equally only among the Lots receiving those services. Further, each BE, once occupied by at least one tenant, shall pay an Assessment equal to four Lots. If the BE's are converted to condominiums, the condominium association shall be allocated on the basis of four Lots for each BE in the condominium association.

6.5 Commencement of Assessments. The obligation to pay Common Expense Assessments shall commence on the first day of the month immediately following the month in which the conveyance of the first Lot to a Purchaser occurs. The first installment of Common Expense Assessments for each Lot shall be prorated according to the number of days remaining in the period of that first installment and shall be prepaid to the end of such installment period at time of the initial conveyance.

6.6 Statement of Assessments. The Association shall, during business hours and for a reasonable fee as determined by the Board, furnish a statement setting forth the amount of unpaid Assessments against a Lot upon the request of the Lot Owner, the Mortgagee, or the designee of either. The request and the Association's response shall be hand delivered, sent by facsimile or other electronic transmission, or mailed by first class mail; postage prepaid. The Association's failure to furnish such statement of Assessments within fourteen (14) days of receipt of a request shall cause the forfeiture of the Association's right to assert a lien of the priority provided by the Act upon the Lot for unpaid



Assessments due as of the date of the request.

6.7 Exempt Property. The Common Elements and all properties dedicated to and accepted by the Town or any other public authority are exempt from the Assessments in this Declaration.

6.8 Personal Obligation. Each Lot Owner, by acceptance of the deed for any Lot from Declarant or any successor in interest, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay all Assessments. Such Assessments, including fees, charges, late charges, attorney fees, court costs, Fines, and interest charged by the Association, shall be the personal, joint and several obligation of the Lot Owner at the time when the Assessment or other charges became due. The personal obligation to pay any sums due the Association shall not pass to a successor in title unless expressly assumed by the successor.

6.9 Default. Any Assessment, Fine, charge, fee, or penalty provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 10 days after the date due shall bear interest at 18% per annum or at such other lawful rate as may be set from time to time by the Board. In addition, there will be a late charge of \$25.00/month for every month an amount due remains unpaid Board may assess a late charge thereon. Any Owner who fails to pay any Assessment, Fine, charge, interest, late charge, fee, or penalty of the Association shall also be obligated to pay to the Association all costs and expenses incurred by the Association, including reasonable attorneys' fees, in collecting the delinquent amount, whether or not suit is filed. The total amount due to the Association, including unpaid Assessments, Fines, fees, charges, penalties, interest, late payment charges, costs, and attorneys' fees shall constitute a continuing lien on the defaulting Owner's Lot, which lien shall have such priority, rights and characteristics as provided in the Act. The Association may bring an action, at law or in equity, or both, against any Owner personally obligated to pay any amount due to the Association and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against a delinquent Owner to recover a money judgment for unpaid amounts due to the Association may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien. Foreclosure or attempted foreclosure of the Association's lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent amount due to the Association. Additionally, if any Owner does not timely pay Assessments, the Association in its discretion may suspend the voting rights of the Owner during the period of default and may also suspend the rights of the Owner (and the Owner's family, guests, lessees and invitees) to use the Common Elements (together with any facilities located on the Common Elements) during the period of default.

6.10 Homestead. The lien of the Assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or federal law. The acceptance of a deed to any Lot subject to this Declaration constitutes a waiver of the homestead exemption as against the Assessment lien.

6.11 No Offsets. All Assessments shall be payable as specified by the Association, and no offset or reduction shall be permitted for any reason including, without limitation, any claim that the Association or its Board is not properly performing its duties or exercising its powers under this Declaration.

6.12 Capitalization of Association. Each time a Lot is sold, the Purchaser, at closing, shall make a contribution to the working capital of the Association in an amount equal to 3/12ths of the annual



Common Expense Assessment for the year in which the closing occurs. This amount shall be in addition to, not in lieu of, the annual Common Expense Assessment and shall not be considered an advance payment of such Assessment. This amount shall be disbursed to the Association for payment of Common Expenses.

ARTICLE 7 USE AND OTHER RESTRICTIONS

All Property within the Common Interest Community shall be held, used, and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written Rules and Regulations. The following use restrictions are also subject to the Development Rights and Special Declarant Rights reserved by the Declarant.

7.1 Use/Occupancy. No Lot within the Common Interest Community shall be used for any purpose other than as allowed by the local zoning codes. Lots shall not be used for any purpose other than a residential dwelling. Commercial and business uses of a Lot having any adverse external effect on the nature, perception, operation, or ambiance of the Common Interest Community as a first-class residential community, as reasonably determined by the Board, are prohibited, unless approved by the Declarant or the Association, and allowed pursuant to restrictions of record and by local zoning ordinances and regulations.

7.2 Leasing and Occupancy. Any Lot Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Lot Owner may deem advisable, subject to restrictions of record and the terms of this Declaration. Any lease or rental agreement shall be for no less than a seven (7) month term, shall be in writing, and shall provide that the lease or rental agreement is subject to the terms of this Declaration and other Association governing documents. All leases and rental agreements of Lots shall state that the failure of the tenant, renter, or guest to comply with the terms of the Declaration and other Association governing documents shall constitute default under the lease or rental agreement and under this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them. All occupants of a Lot shall be subject to the right of the Association to remove and/or evict the occupant for failure of the occupant to comply with the terms of this Declaration and other Association governing documents. Upon execution of any lease agreement, the Lot Owner shall provide a copy of the executed lease to the Association.

7.3 Restrictions on Animals and Pets. No animal, livestock, birds, poultry, reptiles, or insects of any kind, shall be raised, bred, kept or boarded in or on any portion of the Common Interest Community, provided however, that each Owner may keep no more than two domestic, bona fide household pets on such Owner's Lot. Such pets may not be bred or kept for any commercial purpose and may not be kept in such a manner as to create a nuisance or inconvenience to any resident of the Common Interest Community. Any Owner who owns a pet shall obtain and maintain liability insurance specifically providing personal liability coverage for the pet's vicious acts and shall maintain the pet's health and vaccination records in accordance with all county and/or municipal laws. Any Owner who owns a pet also fully indemnifies the Association from and against any and all claims relating to the actions of such pet.

The Board shall have the right and authority to determine, in its sole discretion, that dogs, cats and other household pets are being kept for commercial purposes or are being kept in such a manner as to be unreasonable, or creating a nuisance, or the Owner is otherwise in violation of this Article. The Board may take such action as it deems reasonably appropriate to correct the violation, which may include directing permanent removal of the pet or pets from the Common Interest Community. Reimbursement for damages caused by such pet and costs incurred by the Association, to include attorneys' fees and costs, in the removal of a pet or pets from the Common Interest Community or incurred by the Association in cleanup after such pets may be levied against such pet's Owner as an Assessment in accordance with this Declaration.

Household pets shall not be allowed to run at large within the Common Interest Community but shall at all times be under the Owner's control, and Owners shall clean up pet litter. No pets shall be allowed outside of a Lot, except for dogs, which must be kept upon a leash at all times. Cats shall not be permitted outside of a Lot, except when being transported in a pet carrier to a location outside of the Common Interest Community.

7.4 Permitted Antennas. Subject to federal statutes and regulations governing common interest communities, only Permitted Antennas shall be allowed within the Common Interest Community. "Permitted Antennas" are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes and regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes and regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed on a Lot in the least conspicuous location available which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt Rules and Regulations regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulations, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station, or similar device of any type shall be erected, installed, or maintained on a Lot.

7.5 Nuisances. No nuisance shall be permitted within the Common Interest Community, nor any use, excessive noise, activity, or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Lot Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Lot or Common Elements, or any other portion of the Common Interest Community by Lot Owners. Further, no offensive or unlawful use shall be permitted within the Common Interest Community or any portion thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Common Interest Community or a portion thereof shall be observed. As used herein, the term nuisance shall not include any activities of Declarant or its assignees which are reasonably necessary to the development and construction of the Common Interest Community; provided, however, that such activities shall not



reasonably interfere with any Owner's use and enjoyment of his or her Lot, or any Owner's ingress and egress to or from his or her Lot and a public way.

7.6 Vehicular Parking, Storage, and Repairs.

7.6.1 Vehicular parking upon the Common Elements shall be regulated by the Board and is subject to Board-adopted Rules and Regulations.

7.6.2 Parking designated as visitor or guest parking shall not be used by Owners or the occupants of any Lots. Owners shall park their vehicles in the garages attached to their Units and not use outdoor parking. While any buildings under construction or completed are owned by Declarant, use of the parking spaces adjacent to that building may be restricted to Declarant's use for construction and sales purposes.

7.6.3 The following vehicles may not be parked or stored within the Common Interest Community, unless such parking or storage is within a garage on a Lot, or unless authorized in writing by the Board: oversized vehicles, trailers, camping trailers, board trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by Rules and Regulations. Any such oversized vehicle may be parked as a temporary expedience (for up to four hours) for loading, delivery of goods or services, or emergency. Overnight parking of these vehicles is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Common Interest Community which are necessary for construction or for the maintenance of the Common Elements, Lots, or any Improvement located thereon.

7.6.4 No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Common Interest Community unless parked or stored within a garage on a Lot. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by Rules and Regulations adopted by the Board. In the event that the Association determines that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner of the Lot where located or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within 72 hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges.

7.6.5 No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer, or boat, may be performed or conducted outside of the garages.

7.6.6 Garages and designated parking spaces within the Common Interest Community are restricted to use for access or as a parking space for vehicles.

7.6.7 The conversion or alteration of garages into living areas, storage areas, workshop areas, or any other modification or alteration of the garages, which would hinder, preclude or prevent the parking of the number of vehicles for which the garage was originally designed is prohibited.



7.6.8 Each Owner shall keep any garage door at their Lot closed as frequently as possible, such that the visual effect of open garage doors is avoided, and the contents therein are concealed from view from other Lots and the streets, all for the purpose of preserving the value and appearance of the Common Interest Community.

7.6.9 Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted. Any automobile, vehicle, trailer, etc. of any kind parked in fire lanes or other non-permitted areas shall be subject to immediate towing at the owner's expense.

7.7 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association.

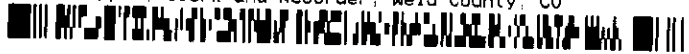
7.8 No Annoying Lights, Sounds, or Odors. No light shall be emitted from any portion of the Common Interest Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Common Interest Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spotlights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Common Interest Community except with the prior written approval of the Board.

7.9 Restrictions on Clotheslines and Storage. Except for retractable clotheslines, no clotheslines, drying racks, service yards, shops, equipment, storage sheds or storage areas shall be installed, allowed, kept, maintained or permitted in the Common Interest Community unless the same, in each instance, is expressly permitted in writing by the Board or is permitted by the Act as an energy efficiency measure. Where such written permission is granted, such permission is revocable if the item or condition becomes obnoxious to other Owners, in which event the Lot Owner or person having the item or condition complained of shall be given a written notice by the Association to correct the problem or, if not corrected, the Lot Owner upon written notice will be required to remove the item/condition from their Lot and from the Common Interest Community. Owners shall indemnify and hold the Association harmless from any claim resulting from any clotheslines, drying racks or yards, service yards, shops, equipment, storage sheds or storage areas maintained on their Lot.

7.10 No Hazardous Activities. No activity shall be conducted on any portion of the Common Interest Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no fireworks or firearms shall be discharged upon any portion of the Common Interest Community.

7.11 Compliance with Insurance Requirements. Except as may be approved in writing by the Board, nothing shall be done or kept on the Common Interest Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

7.12 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and



conditions shall be enclosed within an approved structure.

7.13 Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Common Interest Community except such sign or signs as may be approved in writing by the Board or allowed by the Act.

7.14 Restrictions on Structural Alterations and Exterior Improvements. No structural alterations to any Residence, Lot, or any Common Elements shall be done by any Owner, without the prior written approval of the Board. No improvement to the exterior of a Residence, or to the Common Elements or to any landscaping shall be constructed, erected, placed or installed within the Common Interest Community unless complete plans and specifications have been first submitted to and approved by the Board, which approval may be withheld in the Board's discretion.

7.15 Rules and Regulations. In furtherance of the provisions of this Declaration and the general plan of development for the Common Interest Community, Rules and Regulations concerning and governing the Common Interest Community or any portion thereof may be adopted, amended, or repealed from time to time by the Board, or its successors and assigns. The Board may establish and enforce penalties for the infraction thereof.

7.16 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its assigns, employees and agents, to perform such reasonable activities, and to maintain upon portions of the Common Interest Community such facilities as deemed reasonably necessary or incidental to the construction and sale of Lots in the development of the Common Interest Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model Residences, temporary sales offices, parking areas and lighting facilities.

ARTICLE 8 SPECIAL DECLARANT RIGHTS

8.1 Special Declarant Rights. Subject to the limitations of the Act, Declarant reserves the right for the maximum time limit allowed by law (or, to the extent no such time limit is fixed by law, for a period of ten (10) years after recordation of this Declaration unless a different period is specified below) to perform the acts and exercise the rights specified below ("Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

8.1.1 *Completion of Improvements.* The right to construct and complete improvements within the Common Interest Community.

8.1.2 *Exercise of Development Rights.* The right to exercise any right reserved in **Article 9** below.

8.1.3 *Sales, Management, and Marketing.* The right within the Common Interest Community to maintain sales offices, construction offices, management offices, model Residences, and signs, flags, and other on-site marketing and sales promotion materials advertising the Common Interest Community. The Declarant shall have the right to determine the number of model Residences and the size and location of any sales offices, management office, and model



Residences. The Declarant shall also have the right to relocate any sales offices, management offices, and model Residences from time to time at its discretion. After the Declarant ceases to be the Owner of a Lot, the Declarant shall have the right to remove any sales offices and management offices.

8.1.4 *Construction and Access Easements.* The right to use easements through the Common Interest Community for the purpose of making improvements and to provide access within the Common Interest Community.

8.1.5 *Master Association; Sub-Associations.* The right to make the Common Interest Community subject to a master association, or to form Sub-Associations and record Sub-Declarations

8.1.6 *Merger.* The right to merge or consolidate the Common Interest Community with another common interest community of the same form of ownership.

8.1.7 *Control of Association and Board.* The right to appoint or remove any officer of the Association or any Board member for the period of Declarant Control referenced in **Article 4.3** above.

8.2 Additional Reserved Rights. In addition to the Special Declarant Rights set forth above, Declarant reserves the following additional rights ("Additional Reserved Rights") for the time specified in **Article 8.1**:

8.2.1 *Amendment of Declaration.* Provisions in this Declaration reserving or creating Declarant Rights may not be amended without the consent of the Declarant. Declarant also reserves the right to amend the Declaration in connection with the qualification or continued qualification for loan guarantees, and for compliance with any lending or financing requirements or programs. Declarant shall also have the right to amend this Declaration to comply with the requirements of the Act in the event any provision contained in this Declaration does not comply with the Act.

8.2.2 *Amendment of Plat.* The right to supplement or amend the Plat.

8.2.3 *Dedications.* The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Common Elements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, utilities, and to create other reservations, exceptions, and exclusions over, across, and upon the Common Elements for the benefit of the Lot Owners.

8.2.4 *Use Agreements.* The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of Common Elements, for the benefit of the Lot Owners, as well as contracts and agreements for offsite facilities.

8.2.5 *Architectural Control.* The right to approve the plans, specifications, and materials for construction of any Residence not constructed by Declarant or an affiliate of Declarant, which



approval shall be in the sole and absolute discretion of Declarant.

8.2.6 *Other Rights.* The right to exercise any additional reserved right created by any other provision of this Declaration.

8.3 Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person by recording an instrument describing the rights transferred. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 9 RESERVATION OF DEVELOPMENT RIGHTS

9.1 Development Rights. Declarant reserves the following rights ("Development Rights"):

9.1.1 *Expansion Rights.* Declarant reserves the right (but is not required) to subject all or any portion of the Development Property to the provisions of this Declaration. Furthermore, the Declarant reserves the right to subject all or any portion of the Development Property to such other and different covenants, conditions and restrictions as Declarant deems appropriate. If such other covenants, conditions and restrictions conflict or are inconsistent with this Declaration, those other covenants, conditions and restrictions shall control with regard to the subject Development Property. The consent of the existing Lot Owners or Mortgagees shall not be required for the exercise of these rights, and Declarant may proceed to exercise such rights without limitation, at its sole option.

9.1.2 *Withdrawal Rights.* Declarant reserves the right to withdraw all or any portion of the Development Property that is reserved for future development from the Common Interest Community by recording a document evidencing such withdrawal. The property withdrawn from the Common Interest Community shall be subject to whatever easements, if any, are reasonably necessary for access to or operation of the Common Interest Community. Declarant shall prepare and record whatever documents are necessary to evidence such easements.

9.1.3 *Other Development Rights.* Declarant reserves the right to create additional Lots, and to subdivide the Lots.

9.1.4 *Exercise of Rights.* Declarant may exercise any Development Right with respect to all or a portion of different parcels of real property at different times in whatever order the Declarant, in its sole discretion, may determine.

9.2 Supplements to the Declaration. If Declarant elects to submit the Development Property, or any part thereof, to this Declaration, such additions shall be expressed in and by a duly recorded supplement to this Declaration. The recording of any such supplement and the resulting expansion of the Common Interest Community shall not require the consent or ratification of any Lot Owner other than the Declarant. The reference to the Plat and Declaration in any instrument shall be deemed to include any supplements to the Plat and Declaration without specific reference thereto. The liability for Common Expense Assessments shall be reallocated as provided in **Article 6.4** above to specifically include the Development Property added to the Common Interest Community under this Article. Furthermore, any



supplement shall reallocate votes in the Association in accordance with **Article 4.2** above so that each Lot in the Common Interest Community, as expanded is allocated one vote in the Association.

9.3 **Interpretation.** Recording of supplements to the Declaration in the office of the Clerk and Recorder of Weld County, Colorado, shall automatically (i) vest in each existing Lot Owner the reallocated allocated interests (liability for Common Expense Assessments and votes in the Association) appurtenant to such Owner's Lot; and (ii) vest to each existing Mortgagee a perfected security interest in the reallocated allocated interests (liability for Common Expense Assessments and votes in the Association) appurtenant to the encumbered Lot. Upon the recording of a supplement to the Declaration the Development Property, or any part thereof covered thereby, automatically shall be added to and become a part of the Common Interest Community for all purposes, and the definitions in this Declaration automatically shall be extended to encompass and refer to all Property then comprising the Common Interest Community. Reference to the Declaration in any instrument shall be deemed to include all supplements to the Declaration without specific reference thereto.

9.4 **Maximum Number of Lots.** The maximum number of Lots in the Common Interest Community, as expanded, shall not exceed 110. Declarant shall not be obligated to expand the Common Interest Community beyond the number of Lots initially submitted to this Declaration.

9.5 **Reciprocal Easements.** If all or part of the Development Property is not submitted to this Declaration, or if property is withdrawn from the Common Interest Community ("**Withdrawn Property**"), then: (i) the Owner(s) of the Development Property and/or Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance, and emergencies over and across the Common Interest Community; and (ii) the Lot Owner(s) in the Common Interest Community shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance, and emergencies over and across the Development Property and Withdrawn Property. Declarant shall prepare and record in the office of the Clerk and Recorder of Weld County, Colorado, whatever documents are necessary to evidence such easements. Such recorded easement(s) shall specify that the Owners of the Development Property and the Withdrawn Property and the Lot Owners in the Common Interest Community shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Article shall conclusively determine the existence, location, and extent of the reciprocal easements that are necessary or desirable as contemplated by this Article.

9.6 **Termination of Development Rights.** The Development Rights reserved to Declarant shall terminate upon the expiration of the time period provided in **Article 8.1** above, unless extended as provided by the Act.

9.7 **Transfer of Development Rights.** Any expansion, development, or withdrawal right created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 10 INSURANCE

10.1 General. To the extent reasonably available, and practicable, the Association shall obtain and maintain the insurance described in this Article. If such insurance is not reasonably available, or practicable, and the Board determines that any insurance described herein will not be provided by the Association, the Board shall cause notice of that fact to be delivered to all Lot Owners. To the extent possible, the liability and property insurance policies required by this Article shall provide that:

10.1.1 Each Lot Owner is an insured person under the policy with respect to liability arising out of such Lot Owner's membership in the Association.

10.1.2 The insurer waives its rights to subrogation under the policy against any Lot Owner or member of such Owner's household.

10.1.3 No act or omission by any Lot Owner, unless acting within the scope of such Lot Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

10.1.4 If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

An insurance policy issued to the Association does not obviate the need for Lot Owners to obtain insurance for their own benefit.

10.2 Association Public Liability Insurance. Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Association shall obtain and maintain, to the extent reasonably available, a comprehensive policy of public liability insurance covering all of the Common Elements, insuring the Association in an amount not less than one million dollars (\$1,000,000) covering bodily injury, including death of persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the ownership, management, operation, maintenance or use of the Common Elements. Such coverage may also include, if applicable, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to similar projects. The public liability insurance policy shall insure the Association, the Board, the managing agent, and their respective employees, agents, and all persons acting as agents. In addition, the Declarant shall be included as an additional insured in the Declarant's capacity as a Lot Owner and Board member. The Lot Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

10.3 Association Casualty Insurance for Common Elements. The Association shall obtain and maintain a policy of casualty and property insurance with extended coverage or equivalent in an amount as near as possible to full replacement value of all insurable improvements constituting Common Elements within the Common Interest Community.



10.4 Association Fidelity Coverage. The Association shall obtain and maintain a policy providing adequate 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. Such fidelity coverage or bonds shall meet the following requirements:

10.4.1 All such fidelity coverage or bonds shall name the Association as an obligee.

10.4.2 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.

10.4.3 Coverage shall not be less in aggregate than two months’ current Common Expense Assessments, plus reserves, as calculated from the current budget of the Association.

10.5 Directors’ and Officers’ Liability Insurance. The Association may obtain and maintain a policy providing directors’ and officers’ liability insurance, covering all directors and officers of the Association, in such amounts and containing such provisions as may from time to time be deemed necessary or desirable by the Board.

10.6 Other Insurance. In addition, the Association may obtain insurance for all insurable improvements (if any) located on the Common Elements and insurance against such other risks as it may deem appropriate, or as required by the Act, to the extent that such coverage is reasonably available.

10.7 Owner Insurance. Each Owner shall be responsible, at the Owner’s sole cost, for obtaining and maintaining in effect the following insurance coverage:

10.7.1 Casualty and property insurance covering all portions of the Owner’s Residence and Lot, including, without limitation, (a) all items on the interior side of the drywall such as wall coverings, interior paint, floor coverings, window coverings, cabinets, appliances and fixtures within each Residence, (b) all furnishings (such as furniture and household goods) and other personal property owned by the Owner within such Owner’s Residence or otherwise located on the Owner’s Lot, and (c) all other property and improvements located on the Owner’s Lot including, without limitation, outdoor furniture and landscaping improvements.

10.7.2 Liability insurance regarding the Owner’s Lot, including the Residence and any other improvements located on the Lot.

10.8 Deductibles. The Association, acting through its Board, shall determine reasonable deductibles for any insurance policy carried by the Association under this Article. The Association shall have the right to assess the cost of any deductible paid by the Association against a negligent or otherwise responsible Owner who causes the loss. Such deductible shall be assessed against the responsible Owner as part of the Common Expense Assessment for that Owner.

ARTICLE 11 DAMAGE OR DESTRUCTION OF COMMON ELEMENTS

In the event of damage or destruction of all or a portion of the Common Elements due to fire or other casualty, the Association shall repair or replace the same using available insurance proceeds. If the insurance proceeds are insufficient to cover the cost of repair or replacement of the damaged or destroyed Common Elements, the Association may levy a Special Assessment to cover the additional cost of repair or replacement not covered by the insurance proceeds in accordance with **Article 6.2** above.

ARTICLE 12 CONDEMNATION OF COMMON ELEMENTS

In the event that all or any part of the Common Elements are taken or condemned by any governmental authority, or sold or otherwise disposed of in lieu of condemnation, the proceeds from such condemnation attributable to the Common Elements shall be distributed first to the Association for repair and replacement of the remaining Common Elements resulting from the condemnation (if applicable) and, second any remaining proceeds shall be distributed equally among the Owners and payable first to the Mortgagees holding Security Interests in the Lots and then to the Owners of the Lots, as their interests appear.

ARTICLE 13 PARTY WALLS

13.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Residences and placed between the Lots shall constitute a "Party Wall," and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply.

13.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Lot Owners who make use of the Party Wall in proportion to such use.

13.3 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Lot Owner who has used the Party Wall may restore it, and any other Lot Owner using the Party Wall shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of the restoring Lot Owner to call for a larger contribution from the other Lot Owner under any rule of law regarding liability for negligent or willful acts or omissions.

13.4 Damage and Repair. Notwithstanding any other provision of this Article, an Owner who by his or her negligence or willful acts causes the Party Wall to be damaged shall bear the entire cost of repairing such damage. The Owner causing such damage shall, within 48 hours, commence to repair or reconstruct the damaged Party Wall to its original condition and shall diligently complete all such repairs and reconstruction. If such Owner shall fail to do so, then the Owner of the other Lot abutting such Party Wall may do so at the sole cost and expense of the Owner causing such damage.

13.5 Right to Contribution Runs with Lot. The right of any Lot Owner to contribution from any other Owner under this Article shall be appurtenant to the Lot and shall pass to such Owner's successors in title.

13.6 Arbitration. In the event of a dispute arising concerning the provisions of this Article, each



Owner shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all arbitrators. Costs of the arbitration shall be equally divided among the Owners. The decision and judgment of the arbitrators shall be enforceable according to the Colorado rules pertaining to arbitration.

ARTICLE 14 EASEMENTS

14.1 Declarant's Easement. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Special Declarant Rights. In particular, Declarant reserves the right to perform construction work and store materials on Lots and Common Elements, the future right to control such work, and the right of access until its completion. All work may be performed by Declarant without the consent or approval of any Lot Owner or Mortgagee. Declarant's easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, storm drainage improvements, and other facilities on the Property for the purpose of furnishing utility and other services to the Common Interest Community. Declarant's easement also includes the right to grant easements to public utility companies and to convey improvements within those easements.

14.2 Owners' Easement Rights. Subject to the other provisions of this Declaration and the Act, each Owner has a non-exclusive right and easement of enjoyment in the Common Elements for all purposes consistent with this Declaration.

14.3 Easements Appurtenant. The easements and rights herein granted to an Owner shall be appurtenant to the Lot of that Owner. All conveyances of the other instruments affecting title to such Lot shall be deemed to grant and reserve the easements and rights provided for herein as though set forth in said document in full even though no specific reference to such easement or right appears in any such conveyance or instrument.

14.4 Limitation on Owners' Rights. The Owners' rights and easements of use and enjoyment of the Common Elements created by this Declaration shall be subject to the rights of those other easement holders referenced in this Article, as well as subject to the following:

14.4.1 The right of the Association to reasonably restrict access and use, such as for closure due to repairs and maintenance.

14.4.2 The right of the Association to convey and encumber the Common Elements as more fully described in the Act.

14.4.3 The right of the Association to consent to or otherwise cause the construction of additional improvements on the Common Elements or the alteration or removal of any existing improvements on the Common Elements for the benefit of the Owners.

14.4.4 The right of the Association to promulgate reasonable Rules and Regulations governing the use of the Common Elements, provided such Rules and Regulations are enforced in a uniform manner.



14.5 Delegation of Use. Any Owner entitled to the right and easement of use and enjoyment of Common Elements may delegate to such Owner's family members, guests, invitees and tenants the right to use and enjoyment of the Common Elements, subject to any Rules and Regulations adopted by the Board.

14.6 Association Easement. The Association shall have the easement referenced in **Article 5.6** above.

14.7 Association Grant of Easement. The Association, acting through its Board, shall have the power to grant easements to public agencies, providers of utility service and others across the Common Elements in order to provide services to the individual Lots or for such other purpose as the Board may deem to be in the best interest of the Common Interest Community and the Lot Owners. The Association shall also have the power to designate where utility lines shall be installed within the access, utility and drainage easements as designated on any Plat.

14.8 Easement for Encroachments. In the event any portion of the Common Elements encroaches upon any Lot or any Lot, Residence or other Improvement encroaches upon the Common Elements or another Lot as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Improvements, a valid easement for such encroachment and for the repair and maintenance of the same shall exist in favor of the Lot Owner whose Improvements are encroaching or the Association so long as the encroachment exists. Such encroachments and easements shall not be considered to impair or otherwise adversely affect the marketability of title to either the Common Elements or the Lots.

14.9 Utility Easements. There is hereby created a blanket utility easement upon, across, over, and under all of the Common Interest Community for ingress, egress, installation, replacement, repair and maintenance of all utilities including, without limitation, water, sewer, gas, telecommunications, data transmission, cable television and electricity. By virtue of this easement it shall be expressly permissible for a utility service provider to install meters, boxes, lines, and other related improvements on the exterior walls of the Residences.

ARTICLE 15 MORTGAGEE PROTECTION

15.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Declaration, but in the case of conflict, this Article shall control.

15.2 Notice. Each First Mortgagee, upon written request to the Association, shall be entitled to receive the following and otherwise examine at reasonable times the books and records of the Association for a period of one year following the date of such request:

15.2.1 Budgets, notices of Assessments or any other notice or statement provided under this Declaration by the Association to the Owner of the Lot subject to the First Mortgagee's First Security Interest.

15.2.2 Any financial statement of the Association, which is prepared for distribution to the Owners, within ninety (90) days following the end of any fiscal year.

15.2.3 Notices of meetings of the Owners.

15.2.4 Notice of all material amendments ("Material Amendments") to this Declaration, the Bylaws or the Articles of Incorporation of the Association. Material Amendments to this Declaration include adding, deleting, or modifying any provision regarding the following:

- 15.2.4.1 assessment basis or assessment liens;
- 15.2.4.2 any method of imposing or determining any charges to be levied against Lot Owners;
- 15.2.4.3 reserves for maintenance, repair or replacement of Common Elements;
- 15.2.4.4 maintenance obligations;
- 15.2.4.5 allocation of rights to use Common Elements;
- 15.2.4.6 any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of Lots;
- 15.2.4.7 reduction of insurance requirements;
- 15.2.4.8 restoration or repair of Common Elements;
- 15.2.4.9 the addition, annexation or withdrawal of land or from the Common Interest Community;
- 15.2.4.10 voting rights;
- 15.2.4.11 restrictions affecting leasing or sale of a Lot; or
- 15.2.4.12 any provision which is for the express benefit of First Mortgagees.

15.2.5 Notice of any extraordinary actions ("Extraordinary Actions") of the Association. Extraordinary Actions include the following:

- 15.2.5.1 merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to the Association);
- 15.2.5.2 determining not to require professional management if that management has been required by the Common Interest Community's governing documents, a majority of First Mortgagees, or a vote of Owners holding a majority of votes in the Association;
- 15.2.5.3 expanding the Association to include land not within the Development Property which increases the overall Common Interest Community or number of Lots by more than 10%;
- 15.2.5.4 abandoning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of Common Elements (except for (a) granting easements which are not inconsistent with or which do not interfere with the intended use of the Common Elements; (b) dedicating Common Elements as required by a public authority; (c) limited boundary-line adjustments made in accordance with the provisions of this Declaration or (d) transferring Common Elements pursuant to merger or consolidation with an non-profit entity formed for purposes similar to the Association);
- 15.2.5.5 using insurance proceeds for purposes other than construction or repair of the insured improvements; or
- 15.2.5.6 making capital expenditures (other than for repair or replacement of existing improvements) during any period of 12 consecutive months costing more than



20% of the annual operating budget.

15.2.6 Notice of any condemnation loss or any casualty loss which affects a material portion of the Common Elements or which affects any Lot on which the First Mortgagee holds a First Security Interest.

15.2.7 Notice of any delinquency of at least 60 days in the payment of Assessments and any other default under this Declaration of the Owner of a Lot in which the First Mortgagee holds a First Security Interest.

15.2.8 Notice of any proposed termination of the Common Interest Community.

15.2.9 Notice of any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to this Declaration.

15.2.10 Notice of any proposed action that requires the consent of a specified percentage of First Mortgagees.

15.2.11 Any other notice or copy provided for elsewhere in this Declaration.

15.3 Form of Request. The request of a First Mortgagee shall specify which of the above it desires to receive or examine and shall indicate the address to which any such notice or document shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee, and in the event of multiple requests from purported holders of the same interest, the Association shall honor the most recent request received.

15.4 Rights of First Mortgagees. Notwithstanding any other provisions of this Declaration, unless at least 67% of the First Mortgagees (based upon one vote for each mortgage owned) have given their prior written approval, the Association shall not be entitled to:

15.4.1 Terminate the Common Interest Community for reasons other than substantial destruction or condemnation of the Common Elements.

15.4.2 Use hazard insurance proceeds for losses to any Common Elements other than to repair, replace, or reconstruct the damaged Common Elements.

15.5 Failure to Respond. Any First Mortgagee who fails to deliver to the Association a written negative response within thirty (30) days after the First Mortgagee receives a request for approval of any matter set forth in this Article or **Article 19.5.2** sent to the First Mortgagee via certified mail, return receipt requested, and provided the Association has otherwise complied with any additional notice requirements under Colorado law, shall be deemed to approve of such matter.

ARTICLE 16 CONSTRUCTION DEFECT CLAIMS

16.1 Construction Defect and Claim. For purposes of this Article:



16.1.1 “Construction Defect” means any alleged defect in the design or construction of an Improvement on any Lot or any other improvement made to the Common Elements within the Common Interest Community.

16.1.2 “Claim” means any claim, grievance or dispute arising out of or relating to a Construction Defect.

16.2 Notice of Construction Defect and Right to Repair. Upon discovery of any alleged Construction Defect, and prior to pursuing any other remedies relating to the Construction Defect, the claiming party or parties (being the Association or one or more Owners, and either separately or collectively referred to as the “Claimant”) must provide the allegedly responsible party or parties (either separately or collectively referred to as the “Respondent”) with written notice of the claimed Construction Defect which specifically identifies the nature and location of the Construction Defect. Notwithstanding the notice requirements of **Article 19.6** below, all notices referenced in this **Article 16.2** shall be given via certified mail, return receipt requested to the current record mailing address of the recipient and shall be considered given three days after being deposited in the United States mail. Respondent then has 15 days after the effective date of Claimant’s notice to inspect and conduct any necessary testing with regard to the Construction Defect at Respondent’s cost. The Claimant shall provide Respondent with reasonable access to conduct such inspection and testing within the 15-day time period. Within 30 days after the initial inspection or testing, Respondent may elect to repair the Construction Defect by giving the Claimant written notice of its election to repair (“Notice of Election to Repair”). If Respondent elects to repair the Construction Defect, it has the right to do so and the Claimant may not, directly or indirectly, impair, impede or prohibit Respondent from making repairs. Any Respondent Notice of Election to Repair shall (a) offer to compensate the Claimant for applicable damages, if any during the time frame set for repair, (b) include an explanation of the Construction Defect being repaired, and (c) set forth a reasonable completion date for the repair work. Claimant then shall promptly cooperate with Respondent to schedule Respondent’s repair work. If Respondent fails to send a Notice of Election to Repair or otherwise comply with the provisions of this Article, if Respondent does not complete the repairs within the time set forth in the notice to repair, or if the repairs do not resolve the Construction Defect, the Claimant may pursue such other remedies as may be provided by this **Article 16**.

16.3 Effect on Statute of Limitations/Repose. If a Claimant sends a notice of Construction Defect to a Respondent in accordance with **Article 16.2** above within the time limit prescribed for filing an action under any applicable statute of limitations or repose, then the statute of limitations or repose is tolled until 60 days after the later of (a) the effective date of the Claimant’s notice of Construction Defect, (b) the effective date of Respondent’s Notice of Election to Repair, or (c) Respondent’s completion of the repairs if Respondent elects to repair the Construction Defect.

16.4 Mandatory Arbitration of Claims.

16.4.1 Subject to the requirements of **Article 16.5** below regarding any Claim brought by the Association, if any Claimant wishes to pursue a Claim against a Respondent that has not otherwise been resolved under **Article 16.2** above or through any additional negotiations between Claimant and Respondent, then Claimant is entitled to initiate, and the Claim shall be resolved by, final, binding arbitration under the auspices of the American Arbitration Association (“AAA”) (or any other organization agreed to in writing by Claimant and Respondent). By way of clarification, any unresolved Claim may only be resolved by mandatory arbitration as



provided in this Article and not through a Court proceeding. The arbitration will be conducted in accordance with the AAA's Construction Industry Arbitration Rules then in effect. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any Court having jurisdiction over such Claim. Unless otherwise agreed to by Claimant and Respondent, there shall be one arbitrator who, to the extent feasible, shall have expertise in the area(s) of dispute.

16.4.2 Claimant and Respondent shall each bear its own costs and expenses including attorneys' fees and an equal share of the arbitrator's fees and any administrative fees associated with the arbitration. Notwithstanding the foregoing, if either party to the arbitration unsuccessfully contests the validity or scope of arbitration in Court, the arbitrator or the Court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred at trial and on appeal, to the non- contesting party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

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

16.5 Informed Consent of Owners to Association Action. If the Association, acting through its Board, wishes to pursue arbitration of a Claim against a Respondent under **Article 16.4** above, the Board shall provide written notice to all Owners and obtain the Owners' consent as described below at least 60 days before initiating any such arbitration. The notice must contain the following information:

16.5.1 The nature of the Claim and the relief sought.

16.5.2 The estimated expenses and fees the Board anticipates will be incurred, directly or indirectly, in the arbitration process, attorney's fees, consultant fees, expert witness fees and arbitrator's fees, whether incurred by the Association directly or for which it may be liable if it does not proceed with the arbitration.

16.5.3 The estimated cost of repairing the Construction Defect, or if the Construction Defect is not repaired, the estimated reduction in value of the Lots.

16.5.4 The estimated impact on the marketability of Lots that are not the subject of the arbitration, including any impact on the ability of the Owners to refinance their Lots during and after the arbitration.

16.5.5 The manner in which the Association proposes to fund the cost of the arbitration, including any proposed Assessments or the use of any reserves.

16.5.6 The anticipated duration of the arbitration and the likelihood of success.

16.5.7 Whether Respondent has offered to make any repairs and, if so, whether Respondent has made repairs.



16.5.8 The steps taken by Respondent in accordance with this Article to address the alleged Construction Defect, including any acknowledgement, inspection, election to repair or repairs.

The Association may not initiate arbitration against a Respondent for any Claim unless the Board obtains the written consent of the Owners of Lots to which at least a majority of the votes in the Association are allocated after giving the above required notice. Owners may vote or otherwise provide their consent in any manner allowed by the Bylaws. Such consent must be obtained within 60 days after such notice is provided.

ARTICLE 17 DRAINAGE AND SOILS CONDITIONS

17.1 Acknowledgment. The soils within Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of a Residence or other structure if the Residence, the other structures and the Lot on which they are constructed are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils.

17.2 Disclaimer. The Declarant, as well as its members and its managers, shall not be liable for any loss or damage to any Residence or other structure or to any Person, caused by, resulting from, or in any way connected with soil conditions on any Lot, including, by example and not limitation, expansive soils.

17.3 Moisture. Each Owner of a Lot shall use such Owner's best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the Residence constructed thereon remain stable and shall not introduce excessive water into the soils surrounding the Residence or other Residences.

17.4 Grading. Each Owner of a Lot shall maintain the elevation, grading, and drainage patterns of the Lot as indicated in the subdivision plans on file with the Town.

17.5 Water Flow. The Owner of a Lot shall not impede or hinder in any way the water falling on or passing through the Lot from reaching the drainage courses established for the Lot and the Common Interest Community.

17.6 Actions by Owners. By accepting title to a Lot, each Owner covenants and agrees:

17.6.1 Not to install Improvements, including, but not limited to, landscaping, items related to landscaping, earth berms, walls, walks, driveways, parking pads, patios, fences, Residences, additions to a Residence, outbuildings, or any other item or Improvement which will change the grading and drainage patterns of the Lot or any other area of the Common Interest Community.

17.6.2 Not to water the lawn or other landscaping on the Lot excessively.

17.6.3 Not to plant turf grass, flower beds (especially annuals) or vegetable gardens



17.6.4 To maintain all gutters and downspouts which discharge water into extensions or splash blocks by assuring that (a) the gutters and downspouts remain in the down position and are free and clear of all obstructions and debris; (b) the water flow from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (c) that splash blocks are maintained under sill cocks.

17.6.5 Not to alter, obstruct, or obliterate, in any manner, any drainage swales, pans, easements, or channels located or installed, or required to be located or installed, upon the Property pursuant to established drainage plans.

17.7 **Radon Gas.** Elevated levels of naturally occurring radon gas may be present in some residential structures in Colorado. Governmental authorities have voiced concerns about the possible adverse effects on human health from long term exposure to high levels of radon gas. Each Owner is responsible to conduct such Owner's own investigation and consult with such experts as such Owner deems appropriate with respect to the presence or absence of radon gas in the soil on that Owner's Lot. Furthermore, each Owner shall be solely responsible for the mitigation of radon gas on such Owner's Lot. The Declarant, its members and managers, and the builder of the initial Residence on a Lot shall not be liable for the existence of radon gas in any Residence, for any loss or damage to any Residence or other structure, or for any injury to any Person caused by, or resulting from, or in any way connected with the existence of radon gas on any Lot.

ARTICLE 18 NON-POTABLE WATER

Non-potable water will be used for irrigation of landscaping improvements on the Common Elements and on the Lots. Non-potable water is not fit for human consumption. Owners should take appropriate precautions to prevent any person from drinking non-potable irrigation water or otherwise making use of such water which may be damaging to a person's health. To the extent such water may be harmful to animals kept on any Lot, Owners should also take appropriate precautions to prevent any animal from drinking the non-potable irrigation water or otherwise exposing the animal to such water in a manner which would be damaging to the animal's health. Neither Declarant nor the Association shall be liable for any claims resulting from the use of the non-potable irrigation water within the Common Interest Community, and by accepting a deed to the Lot, the Lot Owner knowingly and voluntarily waives any such claims against the Declarant, its assignees and the Association.

ARTICLE 19 MISCELLANEOUS PROVISIONS

19.1 **Enforcement/Attorneys' Fees.** Enforcement of any provision of this Declaration, the Act, the Bylaws, and any Rules and Regulations shall be by appropriate proceedings at law or in equity against those Persons violating or attempting to violate any such provision. Such proceedings may be for the purpose of removing a violation, restraining or enjoining a future violation, recovering damages or other amounts due for any violation, foreclosing a lien, obtaining such other and further relief as may be available, or any combination thereof. Such proceedings may be instituted by an Owner or by the Association. In the event any such proceedings are commenced, the prevailing party shall recover the costs and reasonable attorneys' fees incurred in connection with the proceedings. If an Owner violates



any provision of this Declaration, the Act, the Bylaws or any Rules and Regulations, and proceedings at law or in equity are not commenced, the violating Owner nevertheless shall pay all costs and reasonable attorneys' fees incurred by the Association or any other Owner adversely affected by the violation. In addition, the Association may levy Fines. The failure to enforce any provision of this Declaration, the Act, the Bylaws and the Rules and Regulations shall not preclude or prevent the enforcement thereof for a further or continued violation, whether such violation shall be of the same or of a different provision. The Association shall not be liable to reimburse any Lot Owner for attorneys' fees or costs incurred in any suit brought by a Lot Owner to enforce or attempt to enforce this Declaration.

19.2 Severability. If any provision or term of this Declaration is invalidated, such invalidity shall not affect the validity of the remainder of this Declaration.

19.3 Conflict. If there is any conflict between the Declaration and the provisions of the Act, the provisions of the Act shall control. In the event of a conflict between this Declaration and the Bylaws, the Declaration shall control. In the event of a conflict between this Declaration and the Association's Articles of Incorporation, the Declaration shall control.

19.4 Duration. The covenants, conditions and restrictions of this Declaration shall run with the Property, shall be binding on all Lot Owners, their legal representatives, heirs, successors and assigns, and shall be in effect in perpetuity unless amended or terminated as provided in this Declaration or the Act.

19.5 Amendment and Extraordinary Actions.

19.5.1 *General Amendments*. Except as otherwise provided in this Declaration or the Act, this Declaration may be amended (by either modifying or deleting any existing provisions, or by adding new provisions) or terminated at any time by a written and recorded amendment which has been approved by a vote of the Owners of Lots to which at least 67% of the votes in the Association are allocated including the approval by Owners of Lots other than Declarant to which at least a majority of the votes in the Association are allocated; provided that any amendment to **Article 16** made during the period from the date this Declaration is recorded through the date that is eight years after substantial completion of the last Residence constructed in the Common Interest Community also requires the written consent of the Declarant.

19.5.2 *Amendments Adverse to First Mortgagees*. In addition to the amendment requirements of **Article 19.5.1**, as currently required by Fannie Mae and for so long as such Fannie Mae requirement remains in place, any amendments of a material adverse nature to First Mortgagees must be approved in writing by 51% of the First Mortgagees (based on one vote for each mortgage owned) with such approval governed by **Article 15.5** above.

19.5.3 *Extraordinary Actions*. Any Extraordinary Actions (as defined in **Article 15.2.5** above) must be approved by vote of the Owners of Lots to which at least 67% of the votes in the Association are allocated including the approval by Owners of Lots other than Declarant to which at least a majority of the votes in the Association are allocated.

19.5.4 *Special Procedural Requirements for Material Amendments and Extraordinary Actions*. Any Material Amendments or Extraordinary Actions (as defined in **Articles 15.2.4** and **15.2.5**



respectively) may be approved by written mail-in ballot as provided in the Bylaws and by Colorado law, or by a vote taken at a meeting of the Owners. In the event approval is sought at a meeting of the Owners, and notwithstanding any provisions in the Bylaws or in Colorado law to the contrary, (a) at least 25 days advance notice of the meeting must be given to all Owners, (b) the meeting notice must state the purpose of the meeting and contain a summary of any Material Amendments or Extraordinary Actions proposed, (c) the meeting notice must include (or be accompanied by) a proxy that can be cast in lieu of attendance at the meeting, and (d) the required quorum at such meeting is at least 20% of the total number of votes in the Association.

19.5.5 *VA Approval of Material Amendments and Extraordinary Actions.* During any period of Declarant Control, all Material Amendments and Extraordinary Actions must have the approval of VA if VA has guaranteed any loan secured by a Lot. Additionally, during any period of Declarant Control, Declarant shall provide a copy of all Declaration amendments to VA if VA has guaranteed any loan secured by a Lot.

19.6 Notice. Unless otherwise required by this Declaration or the Act, notice of matters affecting the Common Interest Community may be given to Lot Owners by the Association, or by other Lot Owners, in the following manner: Notice shall be hand delivered or sent by United States mail, first class with postage prepaid, to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner. Such notice shall be deemed given when hand delivered or, if mailed, three days after being deposited in the United States mail.

19.7 Waiver. No provision in this Declaration is waived by reason of any failure to enforce the provision, regardless of the number of violations or breaches which may occur.

19.8 Limited Liability. Neither Declarant, the Association, the Board nor any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter in which the action taken or failure to act was in good faith and without malice. Such parties shall be reimbursed by the Association for any costs and expenses, including reasonable attorneys' fees, incurred by them with the prior approval of the Association, (which approval shall not unreasonably be withheld) as a result of the threatened or pending litigation in which they are or may be named as parties.

19.9 Disclaimer Regarding Security. **Neither the Association nor Declarant shall be considered in any way insurers or guarantors of security within the Common Interest Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of any security measures undertaken. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Residence that the Association, its Board and the Declarant are not insurers of safety within the Common Interest Community and that each Person using the Common Interest Community assumes all risk of personal injury and loss or damage to property, including Residences and the contents of Residences, resulting from acts of third parties.**

19.10 Incorporation of Recitals. The Recitals are incorporated into this Declaration as substantive provisions.

[Signature pages follow]

**EXHIBIT A TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
GOVERNOR'S CROSSING
(A Common Interest Community)**

Legal Description of the Property

Lots 1-44, Building Envelopes 1-4 and Outlots A, B, C and D of a Replat of Tract 1, Governor's Ranch Subdivision Third Filing, and a Portion of Open Space "A", First Replat of Governor's Ranch Subdivision Third Filing, according to the Plat filed April 4, 2019 at Reception No. 4478942, Weld County, Situate in the Northwest Quarter of Section 1, Township 6 North, Range 66 West of the 6th P.M., Town of Eaton, County of Weld, State of Colorado

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Carly Koppes, Clerk and Recorder, Weld County, CO



**EXHIBIT B TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
GOVERNOR'S CROSSING
(A Common Interest Community)**

Legal Description of the Development Property

Building Envelopes 1-4 located on Outlots B and C of a Replat of Tract 1, Governor's Ranch Subdivision Third Filing, and a Portion of Open Space "A", First Replat of Governor's Ranch Subdivision Third Filing, according to the Plat filed April 4, 2019 at Reception No. 4478942, Weld County, Situate in the Northwest Quarter of Section 1, Township 6 North, Range 66 West of the 6th P.M., Town of Eaton, County of Weld, State of Colorado

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EXHIBIT C
TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
GOVERNOR'S CROSSING
(A Common Interest Community)

Easements and Licenses

Easements, or claims of easements not shown by the public records.

Easements and licenses appearing on the Plat, together with any amendments, supplements or replats.

All easements and licenses created by, or referenced in, the Declaration.

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Carly Koppes, Clerk and Recorder, Weld County, CO



Weld County
Carly Koppes, Clerk and Recorder
1402 N 17th Ave
Greeley, CO
80632

Receipt: 19-32025

Product	Name	Extended
DCLRESTCOVDECLARATION		\$218.00
	RESTRICTIVE COVENANTS	
	Document #	4503712
	Document Info	LEGACYDEVELOPMENT
	Total #Pages	42
	#Oversize Pages	0
Total		\$218.00
Tender (Cash)		\$220.00
Paid By LEGACYDEVELOPMENT		
Change (Cash)		(\$2.00)

Thank You!

7/8/19 3:10 PM rkunisch
Greeley