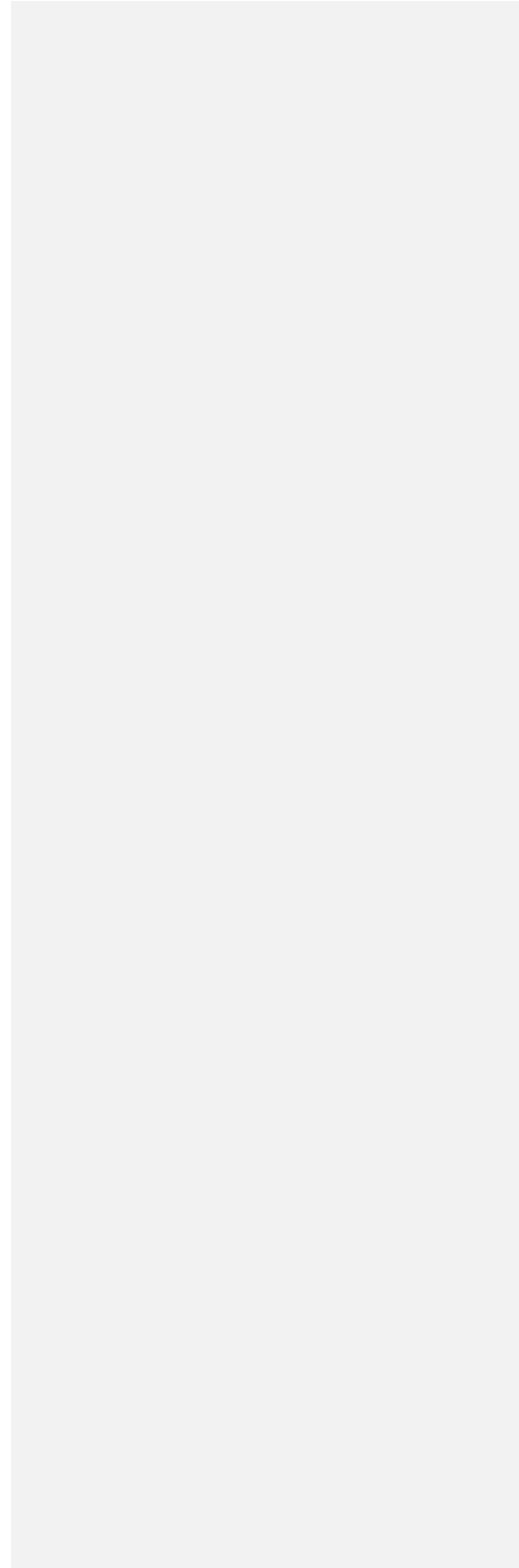


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**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR THE HOMEOWNERS ASSOCIATION OF  
WELLINGTON SOUTH**

Final Draft



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**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS FOR THE HOMEOWNERS ASSOCIATION OF WELLINGTON  
SOUTH**

**THIS AMENDED AND RESTATED DECLARATION** is made on the date hereinafter set forth by The Homeowners Association of Wellington South, a Colorado nonprofit corporation.

**RECITALS:**

A. Declarant, ZWZ LLC, a Colorado limited liability company, recorded the “Declaration of Covenants, Conditions, and Restrictions for Wellington South” on January 7, 2003 at Reception number 2003002097, as recorded in the real property records of the office of the Clerk and Recorder for Larimer County (“Original Declaration”); and as amended, supplemented, and recorded thereto, (collectively “Original Declaration”);

B. The Owners and the Association desire to amend and restate all provisions of the Original Declaration, as amended and supplemented, by virtue of this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Homeowners Association of Wellington South (“Declaration”), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments, and instruments creating covenants, conditions, restrictions, and reservations on the Property shall be superseded and replaced by this Declaration; and

C. Pursuant to C.R.S. Section 38-33.3-217 of the Act and Articles XVI(2)(a) and XXI(4) of the Original Declaration, Owners representing an aggregate ownership interest of sixty-seven percent (67%) or more in the Common Elements, and fifty one percent (51%) of the Registered First Mortgagees have approved this Declaration.

**NOW, THEREFORE**, the Original Declaration is replaced and amended and restated as follows:

**ARTICLE 1 - DEFINITIONS**

- 1.1 Act.** “Act” shall mean and refer to the Colorado Common Interest Ownership Act, *C.R.S. §38-33.3-101 et. seq.*, as it may be amended, ~~and as applicable to condominium communities created prior to July 1, 1992.~~ from time to time.
- 1.2 Agencies.** “Agencies” shall mean and collectively refer to, the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), the Veteran’s Administration (VA), or any other public, quasi-public, or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities.
- 1.3 Allocated Interests.** “Allocated Interests” shall mean and refer to the Common Expense Liability and votes in the Association allocated to each Lot. The Allocated Interest

for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Community from time to time. The Allocated Interest for each Lot is subject to decrease with the annexation of additional property to this Community.

- 1.4 Architectural Control Committee. Committee.** “Architectural Control Committee” or “Committee” shall mean and refer to the committee(s) established to review and approve plans for the construction of Improvements on Lots as set forth more fully in this Declaration.
- 1.5 Architectural Guidelines.** “Architectural Guidelines” shall mean and refer to any and all guidelines adopted by the Architectural Control Committee as set forth more fully in this Declaration.
- 1.6 Articles.** “Articles” shall mean and refer to the Articles of Incorporation of the Association filed on February 26, 2003 with the State of Colorado, Department of State.
- 1.7 Assessment.** “Assessment” shall include all Common Expenses, insurance assessments, utility assessments, and any other expenses levied to a Lot pursuant to this Declaration or the Act, including interest, late fees, attorney’s fees, fines, and costs.
- 1.8 Association.** “Association” shall mean and refer to The Homeowners Association of Wellington South, a Colorado non-profit corporation, its successors and assigns. The Association shall act by and through its Board of Directors and Officers.
- 1.9 Board. Board of Directors.** “Board” or “Board of Directors” or “Board of Managers” shall mean and refer to the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.
- 1.10 Common Elements.** “Common Elements” shall mean and refer to any real property (which may include, without limitation, ~~platted lots and platted tracts~~ Improvements thereto) owned or leased by the Association, other than a Lot (as defined below) and any easements for access to, ingress and egress to and from, and the installation of utilities within the Community which are held by or assigned to the Association.
- 1.11 Common Expense Liability.** “Common Expense Liability” shall mean and refer to the liability for Common Expenses allocated to each Lot. The Common Expense Liability for each Lot shall be equal to the Allocated Interest of such Lot.
- 1.12 Common Expenses.** “Common Expenses” shall mean and refer to all expenditures made and liabilities incurred by or on behalf of the Association, together with any allocation by the Association to reserves.
- 1.13 Common Interest Community.** “Common Interest Community” shall mean and refer to the Real Estate.

- 1.14 Community.** “Community” shall mean and refer to real property described in or which becomes subject to this Declaration as described in Exhibit A, as well as any other Declaration amendment recorded in Larimer County describing Association property, as supplemented and amended from time to time, with respect to which a Person, by virtue of such Person’s ownership of a Lot, is obligated to pay for real property taxes, insurance premiums, maintenance or improvement of other real property described in this Declaration. The name of the Community is “The Homeowners Association of Wellington South”. The Community is a planned community under the Act.
- 1.15 County.** “County” shall mean and refer to Larimer County, Colorado.
- 1.16 Declaration.** “Declaration” shall mean and refer to this Declaration and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including, but not limited to, plats and maps.
- 1.17 Detached Dwelling Unit.** “Detached Dwelling Unit” or “Unit” shall mean and refer to a freestanding Single Family Residential dwelling constructed on a Lot which is not joined or attached to any other Dwelling.
- 1.18 Dwelling.** “Dwelling” shall mean and refer to each Detached Dwelling Unit ~~and each Townhome Unit.~~
- 1.19 First Security Interest.** “First Security Interest” shall mean and refer to a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).
- 1.20 Governing Documents.** “Governing Documents” shall mean and refer to this Declaration, the Map, the Articles of Incorporation, the Bylaws, and any Rules, Regulations, Policies and Resolutions of the Association, as all of the foregoing may be amended from time to time.
- 1.21 Governmental Authority.** “Governmental Authority” shall mean and refer to the Town, the County, and any governmental entity, agency, authority, or district having jurisdiction over the Common Interest Community, any metropolitan district, special district, or special improvement district within which the Common Interest Community is located, any cooperative or governmentally regulated, supervised, or licensed public or private entity that provides utility or quasi-utility services to the Common Interest Community.
- 1.22 Improvements.** “Improvement(s)” shall mean and refer to structures installed within or upon a ~~Unit~~Lot, and any exterior alterations to any Lot, Unit, or any Common Elements, including but not limited to landscaping.
- 1.23 Landscaping.** “Landscaping” shall mean and refer to trees, shrubs, grasses, flowers, and other plants and plant material, rocks, stones, gravel, wood chips, concrete, bricks,

and other hard surfacing, fences, walls and other barriers, and all other structures and material covering the ground.

- 1.24 Lot.** “Lot” shall mean and refer to each platted lot shown upon any recorded Plat or other subdivision map of the real property described on the attached Exhibit A, as well as any other Declaration amendments recorded in Larimer County describing Association property, as the same may be amended from time to time, as well as each platted lot shown upon any recorded Plat or map of any other real property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Elements and any publicly dedicated real property. Without limiting the generality of the foregoing, if any platted Lot(s) is designated as Common Elements in this Declaration, or in any Annexation of Additional Land, or any amendment thereto, then such Lot(s) shall constitute Common Elements, as defined above, rather than a Lot (as defined herein). Each Lot shall constitute a “Unit” under the Act, however it shall not be necessary to use the term “Unit” as part of a legally sufficient description of a Lot.
- 1.25 Maintain. Maintenance.** “Maintain” or “Maintenance” shall mean and refer to the upkeep or preservation of the existing condition of the property.
- 1.26 Map.** “Map” shall mean and include the engineering survey or surveys (and any supplements and amendments thereto) of the Community depicting and locating thereon the location of the buildings, the Lots, the Common Elements, the floors and elevations, and all of the land and Improvements, which Map is incorporated and made a part of this Declaration by reference and by the Act.
- 1.27 Member.** “Member” shall mean and refer to any Owner. The terms “Member” and “Owner” may be used interchangeably. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot
- 1.28 Mortgagee.** “Mortgagee” shall mean and refer to any Person who has a Security Interest in a Lot and who has provided actual written notice of such Security Interest to the Association. Recording of a mortgage, deed of trust, or other Security Interest in the County Clerk and Recorder’s office shall not be considered actual written notice to the Association of a Security Interest.
- 1.29 Non-Potable Water System.** “Non-Potable Water System” shall mean and refer to the raw-water irrigation system constructed and installed by the Declarant within the Common Interest Community to water all Landscaping within the Common Interest Community using non-potable well water together with the wells from which the water is obtained and all water and water rights and well and well rights appurtenant thereto.
- 1.30 Owner.** “Owner” shall mean and refer to any record owner, whether one or more persons, of a fee simple title interest to any Lot; but excluding, however, any such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).

- 1.31 Person.** “Person” shall mean and refer to a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture, or any other entity recognized under the laws of the State of Colorado or any combination thereof.
- 1.32 Plat.** “Plat” shall mean and refer to the Plat of the Real Estate recorded prior to, contemporaneously with, or subsequent to the recording of this Declaration in the County Clerk and Recorder’s office, and all recorded amendments and supplements thereto.
- 1.33 Property.** “Property” shall mean and refer to the real property depicted on the Map, together with all easements, rights, and appurtenances thereto, and the buildings and Improvements erected thereon.
- 1.34 Repair.** “Repair” shall mean and refer to restoration to good condition after decay, damage, or dilapidation.
- 1.35 Replace. Replacement.** “Replace” and “Replacement” shall mean and refer to the entire removal—except in some instances, as with a roof where an overlay is appropriate—of an Improvement and an equivalent Improvement installed in its place.
- 1.36 Residential Use.** “Residential Use” shall mean and refer to use of a Dwelling by a Single Family for cooking, eating, sleeping and other usual and customary personal, private, family, domestic, household, and housekeeping purposes.
- 1.37 Rules and Regulations.** “Rules and Regulations” shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Community, including any amendment to those instruments.
- 1.38 Single Family.** “Single Family” shall mean and refer to either (a) a single family as defined by any Law or (b) a group of people consisting of: (i) an individual; or (ii) a married couple and the issue by blood or adoption of each Member of the couple; or (iii) any two individuals who would be considered a couple but for the absence of a ceremony and the issue by blood or adoption of each individual; and (iv) any individual related by blood, adoption, or marriage to an individual described in clauses (i), (ii), or (iii) above; or (v) any group of not more than three (3) unrelated individuals; whichever definition (a) or (b) is most restrictive.
- 1.39 Streets.** “Streets” shall mean and refer to all public streets within the Common Interest Community, including curbs, gutters, and sidewalks.
- 1.40 Town.** “Town” shall mean and refer to the Town of Wellington.
- ~~**1.41 Townhome.** “Townhome” shall mean and refer to a Single Family Residential Dwelling Unit constructed on a Lot which is joined or attached to the Townhome on the~~

adjacent Lot by a common wall and for which a final certificate of occupancy has been issued by the Town or would be issued by the Town upon request.

~~**Townhome Building.** “Townhome Building” shall mean and refer to a Building consisting of two or more Townhomes.~~

~~**1.42 Townhome Expense.** “Townhome Expense” shall mean and refer to all costs and expenses incurred by the Association in the maintenance, repair, replacement, or improvement of any and all Townhome Buildings, Townhome Utilities, and Townhome Landscaping.~~

~~**1.42 Townhome Landscaping.** “Townhome Landscaping” shall mean and refer to all Landscaping installed within the Front Yard of all Townhome Lots upon which Townhomes have been constructed.~~

~~**1.42 Townhome Lot.** “Townhome Lot” shall mean and refer to a Lot upon which a Townhome is or may be constructed pursuant to the Final Development Plan.~~

~~**1.42 Townhome Owner.** “Townhome Owner” shall mean and refer to the Owner of a Townhome.~~

~~**1.42 Townhome Utilities.** “Townhome Utilities” shall mean and refer to all pipes, wires, conduits, systems, and other fixtures and equipment running through a Townhome to provide heating, cooling, ventilation, water, sewer, gas, electric, telephone, television, radio, computer, or other utilities to one or more other Townhomes. Townhome Utilities may be located in the attic of each Townhome.~~

Unless the context clearly indicates otherwise, other terms defined in the Act shall have the meanings attributable to such terms in the Act.

Other terms in this Declaration may be defined in specified provisions contained herein and shall have the meaning assigned by such definition.

## **ARTICLE 2 - NAME AND DESCRIPTION OF REAL ESTATE & EASEMENTS**

- 2.1 Name and Type.** The Common Interest Community is a planned community. The name of the Community is “Wellington South”. The name of the Association is “The Homeowners Association of Wellington South”.
- 2.2 Division into Lots.** The Community is divided into separate Lots, each consisting of a separate fee simple estate in a particular Lot, and an appurtenant undivided fee simple interest in the Common Elements. The Lots are identified on the Map.
- 2.3 Inseparability.** Each Lot, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Lot. Every conveyance, transfer, devise, lease, encumbrance or other disposition of a Lot shall be deemed to be



a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Lot, together with all appurtenant rights, interests, duties and obligations, created by law or by this Declaration.

2.4 Subject Property. The Community is located in Larimer County, Colorado. The Property subject to this Declaration is depicted on the attached Exhibit A, as well as any other Declaration amendments recorded in Larimer County describing Association property, and on the Map. The Community may be subject to other easements or licenses granted pursuant to this Declaration, or granted by authority reserved in any recorded document or established in the Act.

2.5 Allocated Interests. The Common Expense Liability and votes in the Association shall be allocated among the Owners as follows:

- a) Allocation of Common Expenses. Each Owner's share of all Common Expenses shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Lots within the Common Interest Community.
- b) Votes. Each Owner shall be entitled to one (1) vote in the Association for each Lot owned.

~~3.0 Utility Easements. A valid easement shall exist for all utilities, including, but not limited to, an airspace easement in the attic of each Lot's unit as necessary for utilities installed therein. Utilities shall mean and refer to all pipes, wires, conduits, systems, and other fixtures and equipment running through a Lot unit to provide heating, cooling, ventilation, water, sewer, gas, electric, telephone, television, radio, computer, or other utilities to one or more other Lot units. Utilities may be located in the attic of each Lot unit.~~

~~4.0 Easements for the Board of Directors and Lot Owners. Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) and to each Owner to allow for their performance of obligations in this Declaration, including, but not limited to, maintenance and repair. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages. Non-emergency repairs shall be made only during regular business hours on business days after notice of at least twenty-four (24) hours to the occupants of a Lot wherein repairs are to be made.~~

~~5.0 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.~~

~~6.0 Easement for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Lot, an easement for the existence of such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Elements, or upon another Lot, the Owner~~

of that Lot shall and does have an easement for the existence of such encroachment and for the maintenance of same. The easement shall extend for whatever period of time the encroachment exists.

Such easements for encroachments shall not be considered to be encumbrances either on the Common Elements or on a Lot. The actual location of a Lot shall be deemed conclusively to be the property intended to be conveyed, reserved, or encumbered notwithstanding any minor deviations, either horizontally, vertically, or laterally from the location of such Lot indicated on the Map.

~~8.0 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and enjoyment in, to, and over the Common Elements and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:~~

- ~~m) the right of the Association to limit the number of guests of Owners using Common Element amenities;~~
- ~~n) the right of the Association to adopt Rules and Regulations governing the use of the Common Elements;~~
- ~~o) the right, power, and authority of the Association to grant any easement, right of way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, provided that any transfer or conveyance of the Common Elements shall be subject to the prior approval of two thirds (2/3) of the Owners;~~
- ~~p) The right of the Association to dedicate or transfer any part of the Common Elements to any Governmental Authority;~~
- ~~q) the right of the Association to suspend the Owner's voting rights and right to use of the recreational facilities, if any, for any period during which any Assessment against a Lot remains unpaid, and, after notice and the opportunity for a hearing, for any infraction of the Governing Documents; and~~
- ~~r) the right of the Association to close or limit access to the Common Elements for maintenance, repair, replacement, and improvement.~~

~~19.0 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Elements and facilities to Owner's family, tenants, invitees, lessees, and guests, subject to Rules and Regulations.~~

~~20.0 Easements Deemed Created. All conveyances of Lots made shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easement or to this Article appears in the instrument of such conveyance.~~

**ARTICLE 21 - ~~ARTICLE 3 - RESERVATION FOR ACCESS, MAINTENANCE, REPAIR, AND EMERGENCIES~~**

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3.1 Access Easements for the Board of Directors and Lot Owners. Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) and to each Owner to allow for their performance of obligations in this Declaration, including, but not limited to, maintenance and repair. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages. Non-emergency repairs shall be made only during regular business hours on business days after notice of at least twenty-four (24) hours to the occupants of a Lot wherein repairs are to be made.

3.2 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

3.3 Easement for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Lot, an easement for the existence of such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Elements, or upon another Lot, the Owner of that Lot shall and does have an easement for the existence of such encroachment and for the maintenance of same. The easement shall extend for whatever period of time the encroachment exists.

Such easements for encroachments shall not be considered to be encumbrances either on the Common Elements or on a Lot. The actual location of a Lot shall be deemed conclusively to be the property intended to be conveyed, reserved, or encumbered notwithstanding any minor deviations, either horizontally, vertically, or laterally from the location of such Lot indicated on the Map.

3.4 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and enjoyment in, to, and over the Common Elements and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a) The right of the Association to limit the number of guests of Owners using Common Element amenities;
- b) The right of the Association to adopt Rules and Regulations governing the use of the Common Elements;
- c) The right, power, and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, provided that any transfer or conveyance of the Common Elements shall be subject to the prior approval of two-thirds (2/3) of the Owners;

- d) The right of the Association to dedicate or transfer any part of the Common Elements to any Governmental Authority;
- e) The right of the Association to suspend the Owner's voting rights and right to use of the recreational facilities, if any, for any period during which any Assessment against a Lot remains unpaid, and, after notice and the opportunity for a hearing, for any infraction of the Governing Documents; and
- f) The right of the Association to close or limit access to the Common Elements for maintenance, repair, replacement, and improvement.

~~21.13.5~~ Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Elements and facilities to Owner's family, tenants, invitees, lessees, and guests, subject to Rules and Regulations.

3.6 Easements Deemed Created. All conveyances of Lots made shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easement or to this Article appears in the instrument of such conveyance.

~~22.0~~ Access to Lots. The Association shall have the irrevocable right, to be exercised by the Association's Board, its agents, employees, contractors or subcontractors, to have access to each Lot from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the Townhome Buildings, Townhome Landscaping, or Dwelling, or at any hour for making emergency repairs, maintenance, or inspection necessary to prevent damage or injury to Persons or Property.

~~23.0~~ Damage to Townhome. Damage to the interior of any Townhome or Dwelling resulting from the maintenance, repair, emergency repair, or replacement of any Townhome Building or Dwelling at the insistence of the Association shall be a Common Expense; provide, however, that if the damage needed to be repaired is caused by negligent or tortuous acts of an Owner, his or her agents, employees, invitees, guests or tenants, then such Owner shall be responsible and liable for all of such damage, and the cost thereof shall become said Owner's obligation. All damaged improvements shall be restored substantially to the extent reasonably practical to the same condition in which they existed prior to the damage. All maintenance, repairs, and replacement of any Townhome Building, Townhome Landscaping, and Dwelling shall be a Common Expense assessed equally against all Lots (unless necessitated by the negligence, misuse, or tortuous act of an Owner, his or her agents, employees, invitees, guests, or tenants in which case such expense shall be charged to such Owner). The Association shall not be obligated to seek redress for damages caused by a negligent Owner, and this covenant shall not abrogate the insurance provisions of this Declaration.

#### **ARTICLE 24 - ~~ARTICLE 4~~ - MEMBERSHIP AND VOTING RIGHTS; THE ASSOCIATION**

**24.14.1 Membership.** Every Owner of a Lot which is subject to assessment hereunder shall be a Member of the Association and shall remain a Member for the period of its ownership of a Lot; provided, however, that in no event shall the total number of Association votes which are cast with respect to such Lot exceed one (1). Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Owner is obligated to comply with the Articles, Declaration, By-Laws, and the Rules and Regulations adopted by the Board of Directors of the Association. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale of the Lot to which it is appurtenant, and then only to the purchaser of such Lot. Any attempt to make a prohibited transfer is void. If the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of his Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void. Ownership of a Lot shall be the sole qualification for membership.

**24.24.2 Classes of Voting Membership.** The Association shall have one class of voting membership. All Owners shall be members of the Association, and shall be entitled to one vote for each Lot owned. When more than one owner holds an interest in the same Lot, all such Owners shall be members and the vote for such Lot shall be cast as the Owners thereof agree, but in no event shall more than one vote per question be cast with respect to such Lot. If the Owners of such Lot do not agree as to the manner in which their vote should be cast when called upon to vote, then they shall be treated as having abstained. Fractional and cumulative voting shall be prohibited.

**24.34.3 General Purposes and Powers of the Association.** The Association, through its Board of Directors, shall perform functions and manage the Community as provided in this Declaration so as to protect the value and desirability of the Community and the Lots and to further the interests of the residents, occupants, tenants, and guests of the Community and Members of the Association. Any purchaser of a Lot shall be deemed to have assented to, ratified, and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

**24.44.4 Authority of the Association.** The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility.

**24.54.5 Specific Powers.** The Association shall have the power, authority, and duty as necessary and proper to manage the business and affairs of the Community. The Association shall have all of the powers, authority, and duties permitted or set forth in the Act. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Lot Owners present at a meeting called for that purpose and at which a quorum is present.

24.64.6 Owner's Compliance with Governing Documents; Prohibition of Certain Activities.

- a) Each Owner by acceptance of his deed or other instrument of conveyance or assignment, any member of an Owner's family, any guest, invitee or contract purchaser of Owner, by entry upon this Common Interest Community, agrees to comply strictly with the provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Further, nothing shall be done or kept on any Lot or in or on the Common Elements, or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the same. No damage to the Common Elements, or any part thereof, shall be committed by any Owner, or by any member of an Owner's family, or by a guest, invitee or contract purchaser of any Owner. The Association, or in a proper case, an aggrieved Owner, shall have the power to enforce the provisions of this Declaration and the Articles, Bylaws, Rules and Regulations and the decisions and resolutions of the Association pursuant thereto. The Association shall take such action as the Board deems necessary or desirable to ensure such compliance by each Owner and his guests. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and the Articles, Bylaws, Rules and Regulations, and the decisions and resolutions of the Association pursuant thereto, by any one or more of the following means:
- i. By commencing and maintaining actions to restrain and enjoin any breach or threatened breach of the provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, or decisions and resolutions of the Association, by permanent injunction or otherwise;
  - ii. By commencing and maintaining actions to recover damages for breach of any of the provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, or decisions and resolutions of the Association;
  - iii. By exclusion, after notice and hearing as provided in the Bylaws, of any Owner or his guest from use of any Common Elements during and for up to sixty (60) days following any breach of this Declaration, the Articles, Bylaws, Rules and Regulations or decisions and resolutions of the Association, by such Owner or his guest, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach constitutes;
  - iv. By levying and collecting from any Owner or his guest, after Notice and Hearing as provided in the Bylaws, reasonable and uniformly applied nondiscriminatory fines and penalties established in advance in the Bylaws and in the Rules and Regulations of the Association for breach of this Declaration, the Articles, Bylaws, Rules and Regulations, or decisions and resolutions of the Association and its Board by such Owner or his guest. Owner shall have the power to enforce the provisions of this Declaration, the Articles, Bylaws, and Rules and Regulations against the Association.

- b) Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by it, the members of its family, its guests, invitees or contract purchasers, which is in violation of this Section.
- c) All attorneys' fees and other costs of enforcing this Declaration, the Articles, Bylaws, Rules and Regulations, decisions and resolutions of the Association, and the foregoing indemnification incurred by the Association, or in a proper case by an aggrieved Owner, shall be assessed against the Owner found to be in violation and such assessment shall become a lien against such Owner's Lot and shall be enforced and collected in the same manner as all other assessments as provided herein.
- d) The conveyance or encumbrance of a Lot shall be deemed to be made subject to all of the provisions of this Declaration, the Articles, Bylaws, and Rules and Regulations, and shall be binding upon each grantee or mortgagee without the necessity or inclusion of such express provision in the instrument of conveyance or encumbrance.
- e) A Lot may not be conveyed pursuant to a time-sharing arrangement described in Sections §§ 38-33-110 to 113, Colorado Revised Statutes.
- f) The Association may rent to, lease to, or authorize use by one or more ~~Unit~~ Owners as it deems appropriate, part or all of any storage area which has not been conveyed to an Owner, as identified on the Map as Common Elements.

24.74.7 Management Agreements and Other Contracts.

- a) Any agreement for professional management of the Association's business shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon thirty (30) days prior written notice.
- b) Any contracts or leases entered into by the Association (except contracts or agreements governed by Section 4.7(a) and any other contracts, licenses, and agreements governed by Section 4.11 hereof) shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon sixty (60) days prior written notice.
- c) Notwithstanding anything to the contrary contained in this Section 4.7, the Association may enter into contracts and leases in violation of this Section 4.7 upon a waiver by HUD, VA, FHA, FNMA, and/or FHLMC of any provisions of any of such agencies' legal requirements which are violated by any such contracts and leases.

24.84.8 Acquiring and Disposing of Personal Property. The Association may acquire, own, and hold for the use and benefit of all Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interest in the Common Elements. Such beneficial interest of an Owner shall not be transferable except with the transfer of that

Owner's Lot. Transfer of a Lot, including transfer pursuant to foreclosure, shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property without any reference thereto. Each Owner may use such personal property in accordance with the purposes for which is intended, provided that such use shall not hinder or encroach upon the lawful rights of other Owners.

**24.94.9** **Promulgation of Rules and Regulations.** The Board of Directors of the Association may promulgate and enforce reasonable Rules and Regulations governing the use of the Lots and the Common Elements, including, without limitation, enforcement of the same by levying and collecting fines for the violation thereof, which Rules and Regulations shall be consistent with the rights and duties established in this Declaration. A list of the Rules and Regulations governing use of the Lots and the Common Elements shall be prepared by the Board of Directors of the Association and made available to each Owner. These Rules and Regulations may be revised from time to time by the Board of Directors and shall be effective upon mailing to all ~~Unit~~ Owners.

**24.104.10** **New Additions to Common Elements.** Subject to the other provisions of this Declaration, the Association shall have the right to construct, purchase or otherwise acquire new property or Improvements to the Property which will constitute new additions to the Common Elements. Ownership of, and the Common Expenses of any such additions to the Common Elements, shall be apportioned among all Lots in proportion to the respective undivided interest in the Common Elements appurtenant thereto. The construction, purchase or other acquisition of new additions to the Common Elements shall not affect an Owner by way of modification of its voting power in the Association.

**24.114.11** **Contracts, Licenses, and Agreements.** The Association, through its Board of Directors, shall have the right to enter into, make, perform or enforce contracts, leases, licenses, agreements, easements, and/or rights-of-way, for the use by Owners, either persons, their family members, guests and invitees, of real property for pedestrian access, ingress and egress to and from the Community, or any portion thereof, for vehicular parking if any should become available, for on-site residential management, or for recreational use, including but not limited to, contracts, licenses, leases, or other agreements for the provision of cable or satellite television service to the Property, or any portion thereof, so long as such contracts, licenses, or agreements do not exceed three (3) years in duration from the commencement of such satellite or cable television service. Any of such contracts, leases, licenses, agreements, rights-of-way, or easements shall be upon such terms and conditions as agreed to by the Board of Directors of the Association, which may include provisions by which the Association covenants and agrees that it shall pay part or all of the costs and expenses of: maintaining such real property and the Improvements thereto and thereon, providing such cable or satellite television service, or other amounts which the Board determines are necessary to secure such contracts, licenses, and agreements, and any such costs and expenses, licenses and agreements, and any such costs and expenses shall be treated by the Association as Common Expenses pursuant to Article 7 hereof.



24.124.12 **Indemnification.** To the full extent permitted by law, each officer and director of the Association shall be and hereby are indemnified by the Unit Owners and the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not they are an officer or director of the Association at the time such expenses are incurred, pursuant to the indemnification provisions set forth in the Bylaws; except in such cases where such officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association.

24.134.13 **Use of the words Wellington South or The Homeowners Association of Wellington South.** No resident or Owner shall use the words "Wellington South" or "The Homeowners Association of Wellington South" or the logo of the Community or Association, if any, or any derivative thereof, in connection with any website, publication, goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such website, publication, goods, materials or services, without the prior written consent of the Association.

24.144.14 **Security Disclaimer.** The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that nonresidents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that residents of the Community will not commit criminal acts in the Community. It shall be the responsibility of each Owner and resident to protect his or her person and property, and all responsibility to provide such security shall lie solely with each Owner and resident. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of any security measures or actions taken.

## **ARTICLE 25 - ARTICLE 5 - MAINTENANCE RESPONSIBILITY**

### **25.15.1 Owner General.**

- a) Maintenance, repair, and replacement of all Common Elements, Improvements located thereon, and of any drainage structure or facilities, or other public Improvements or publically dedicated property required by the local governmental entity or any part thereof shall be the responsibility of the Association unless such Improvements or property have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair, and replacement or unless such maintenance, repair,

and replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. Further, the Association may provide such other maintenance, repair, and replacement as the Board of Directors deems appropriate from time to time, including without limitation publicly-dedicated property and the Improvements located thereon. The costs, expenses, fees, and other amounts to be expended for the maintenance and repair provided for in this subsection (a) shall, subject to Section 5.3 of this Article, be collected by the Association as assessments pursuant to Article 7. For maintenance and repair purposes, a Townhome Owner shall be responsible for the windows and doors; the interior non-supporting walls, floors, and ceilings of the Townhome; the materials such as, but not limited to, plaster, gypsum drywall, paneling, wallpaper, paint, wall and floor tile and flooring, and other materials which make up the finished surfaces of the perimeter walls, ceiling, and floors within his or her Townhome. A Townhome Owner, however, shall not be deemed to own the Townhome Utilities running through his or her Townhome. Townhome Utilities shall not be disturbed or relocated by a Townhome Owner without the prior written Consent and Approval of the Board, and any such alteration, relocation, enlargement, addition, or modification of Townhome Utilities made by a Townhome Owner with the Consent and Approval of the Board shall be at the Townhome Owner's expense, which expense shall include all expenses incurred by the Association in connection therewith.

- b) The maintenance, repair, and replacement of each Lot and the Improvements thereon shall be the responsibility of the Owner of such Lot. The Association and each Owner, and their agents and contractors, are hereby granted an easement for the purpose of maintenance and repair of the Owner's Lot on, over, across, under and through any adjacent Lot upon reasonable notice to the Owner thereof. Any damage occurring to such adjacent Lot or the Improvements thereon in performing such repairs or maintenance shall be the responsibility of the party performing or authorizing such repairs or maintenance. A Townhome Owner shall maintain and keep in repair the interior of his or her own Townhome, including appliances, heating, ventilating, air conditioning, plumbing, electrical, and other fixtures and utilities located therein. All fixtures, equipment, and utilities within the Townhome and serving only such Townhome, commencing at a point where the fixtures, equipment, and utilities enter the Townhome, shall be maintained and kept in repair by the Owner thereof. A Townhome Owner shall do no act nor any work that will impair the structural soundness of the Townhome Building or impair the proper functioning of the Townhome Utilities.

**25-25.2 Association's Right to Repair, Maintain, and Restore.** In the event any Owner shall fail to perform his maintenance, repair, and/or reconstruction obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owner by the Board, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all such maintenance, repair, or restoration. The cost of such maintenance, repair, and/or reconstruction shall be the personal obligation of the Owner of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to assessments as provided in Article 7 hereof including, without limitation, interest, late charges, and lien rights. The Association shall have the duty of maintaining and

~~repairing the Townhome Buildings, Townhome Utilities, and Townhome Landscaping except to the extent such maintenance is to be performed by individual Owners as provided in Section 5.1. The cost of said maintenance and repair shall be a Common Expense assessed equally against all Townhome Lots within the Common Interest Community.~~

~~25.35.3~~ Owner's Act or Omission Causing Need for Maintenance, Replacement, or Repair. In the event that the need for Maintenance, Repair, or Replacement of the Common Elements, or any portion thereof, or to any ~~portion of a Lot~~ property for which the Association has the responsibility for maintaining, is caused through or by an act or omission of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association for such Maintenance, Repair, or Replacement shall be a personal obligation of such Owner. Such expense costs and fees incurred by the Association shall automatically become an assessment against such Lot. The Association shall not be obligated to prove that such damage occurred as a result of homeowner negligence or misconduct.

## ARTICLE 6 – MECHANIC'S LIENS

### 26.16.1 Mechanic's Liens.

- a) No labor performed and/or materials furnished for use and incorporated into any Lot with the consent or at the request of the Owner thereof, his agent, contractor, or subcontractor, shall be the basis for the filing of a lien against a Lot of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements.
- b) Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Lot of any other Owner, the Common Elements, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Lot.
- c) The Association may pay any sums necessary to eliminate any lien filed against Lots not benefitting from the labor and/or materials furnished and the Common Elements on behalf of the other Owners and all sums paid shall be an Individual Assessment against the Owner or Owners for whom the labor and/or materials were furnished.
- d) Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by it is proper and the mechanic's lien(s) or other liens are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided in Article 6 hereof by collecting from the Owner of the Lot on which the labor was performed or materials or utilities furnished, the amount necessary to discharge any such mechanic's lien or pay such utility charges, including all costs and reasonable attorneys' fees incidental thereto, and obtain a discharge of such lien. In the event that the Owner of the Lot on which the labor was performed or materials or utilities furnished refuses or

fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount, or any portions thereof, from time to time, of the amount to be identified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section and such amount to be indemnified shall automatically become a lien against such Lot, and the Association shall proceed to foreclose such lien in accordance with the procedures set forth in Article 7 hereof.

- e) Effect of Part Payment. In the event a lien attributable to labor performed and/or materials furnished on the Community, or any portion thereof, is effected against two or more Lots, the Owner(s) of any of the affected Lots may pay to the lien holder the amount of the lien attributable to such Owner's Lot and the lien holder shall release such ~~Unit~~ Lot from the lien. The amount required to be paid by any such Owners in order to obtain release of their ~~Unit~~ Lot from any such lien shall be equal to the amount of the lien attributable to such ~~Unit~~ Lot(s), or if such amount cannot be determined, then such amount shall be the quotient of (I) the amount of the lien, divided by (II) the total number of Lots affected by the lien. Partial payment and release of any such lien with respect to any ~~Unit~~ Lot(s) shall not prevent the lien holder from enforcing its rights against any ~~Unit~~ Lot for which payment has not been received.

## ARTICLE 27 - ~~ARTICLE 7~~ - COVENANT FOR COMMON EXPENSE ASSESSMENTS

### ~~27-17.1~~ Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments.

- a) The Association's annual Common Expense Assessments and such other assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines, and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made. If any assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.
- b) Each Lot, and each Lot Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance assessments (assessed in proportion to risk), if any, utility assessments (assessed in proportion to usage) if any, and such other assessments as imposed by the Association, pursuant to Section 7.4 below.
- c) Such assessments, including fees, charges, late charges, attorney fees, fines, and interest charged by the Association shall be the personal obligation of the Lot Owner of such Lot at the time when the assessment or other charges became or fell due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them.
- d) No Lot Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by

abandonment of the Lot against which the Common Expense Assessments are made.

- e) All assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

27.27.2 Levy of Annual Assessments.

- a) The Common Expense Assessment may be made on an annual basis by the Board of Directors against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year and an appropriate contribution to reserve funds for the replacement of those Common Elements that must be periodically replaced over time.
- b) The budget shall be adopted pursuant to Section 303(4) of the Act, which provides that a majority of the all Owners may reject the budget.
- c) Common Expense Assessments shall be due and payable in monthly or quarterly installments as determined by the Board of Directors.
- d) The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification, or a release of the Lot Owners from their obligation to pay.

27.37.3 Apportionment of Common Expenses. Except as otherwise provided in this Declaration, all Common Expense Assessments shall be assessed against all Lots equally.

27.47.4 Special Assessments.

- a) In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Elements, including fixtures and personal property related thereto, or for any other purpose deemed necessary and appropriate by the Board of Directors, provided that any such assessment shall have the approval of a majority vote of the Board of Directors who are voting in person or by proxy at a meeting duly called for this purpose and at which a quorum is present. Such assessment may be passed with or without the vote of the Owners of the Association. Though no Member vote is required, the Board of Directors is required to send notice of the proposed change to the Owners prior to the change being approved by the Board, and must allow a meaningful opportunity for Owner comment. Such comment may occur at an annual meeting, a Board of Directors meeting, or a special meeting called specifically for this purpose.
- b) Any such Special Assessment shall be levied against each Lot equally.

27-57.5 Individual Assessments. The Board of Directors shall have the authority to individually levy assessments against individual Lots as specifically provided in this Declaration.

27-67.6 Default Assessments. All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

27-77.7 Effect of Non-Payment of Assessments.

- a) Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis from the due date, and the Association may assess a reasonable late charge as determined by the Board of Directors.
- b) Failure to make payment within sixty (60) days of the due date shall cause the total amount of such Lot Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board.
- c) The Association may bring an action at law or in equity, or both, against any Lot Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments, and may also proceed to foreclose its lien against such Lot Owner's Lot. An action at law or in equity by the Association against a Lot Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien.
- d) In the event that any such assessment, charge or fee, or monthly or other installment thereof, is not fully paid when due and the Association shall commence such an action (or shall counterclaim or cross claim for such relief in any action) against any Owner personally obligated to pay the same, or shall proceed to foreclose its lien against the particular Lot, then all unpaid assessments, charges and fees, and all unpaid monthly or other installments thereof, any and all late charges and accrued interest under this Section 7.7, the Association's costs, expenses and reasonable attorney fees incurred for any such action and/or foreclosure proceedings, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Lot.
- e) Foreclosure or attempted foreclosure by the Association of its lien shall not preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments

thereof, which are not fully paid when due.

- f) If a foreclosure action is filed to foreclose any assessment lien, and a Lot Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Lot Owner.
- g) The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.
- h) The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey, or otherwise deal with the same.

27-87.8 **Successor's Liability for Assessments.** Notwithstanding any terms and provisions of this Declaration to the contrary, the sale or transfer of any Lot shall not effect a lien for assessments, charges or fees levied hereunder except that in the case of a sale or transfer of a Lot pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, the priority of the lien of the Association for assessments over the lien of the First Mortgage shall be determined in accordance with the provisions of the Colorado Common Interest Ownership Act, as amended from time to time including amendments enacted after the date hereof.

27-97.9 **Lien Priority.**

- a) The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except:
  - i. liens and encumbrances recorded before the recordation of the Declaration;
  - ii. a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and
  - iii. liens for real estate taxes and other governmental assessments or charges against the Lot.
- b) This Section does not affect the priority of mechanics' or materialmen's liens.
- c) The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law.
- d) Sale or conveyance of any Lot shall not affect the lien for assessments or charges except that sale or conveyance of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture, shall only extinguish the lien of assessment charges as provided by applicable state law. No such sale, conveyance, foreclosure, or any proceeding in lieu

thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture, shall relieve any Lot from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

27.107.10 Owner's Act or Omission Causing Need For Maintenance, Repair or Replacement. In the event that the need for Maintenance, Repair, or Replacement of the Common Elements, or any portion thereof, or to any portion of ~~a Unit property~~ for which the Association has the responsibility for insurance coverage, is caused through or by an act or omission of an Owner, or the Owner's agents, employees, guests, customers, or invitees, ~~including, but not limited to, damage from water overflowing from a tub, hot water heater leaks, or water damage from a washing machine, dishwasher or hose,~~ then the expenses, costs, and fees incurred by the Association for such Maintenance, Repair, or Replacement shall be a personal obligation of such Owner. Such expenses, costs, and fees incurred by the Association shall automatically become a Default Assessment determined and levied against such ~~Unit Owner~~. The Association shall not be obligated to prove that such damage occurred as a result of homeowner negligence or misconduct.

27.117.11 Certificate of Status of Assessments. Upon receipt of a written request from an Owner, prospective purchaser, First Mortgagee, prospective First Mortgagee, junior mortgagee, or prospective junior mortgagee of the subject Lot, and upon payment of a reasonable fee, but in no event less than twenty-five dollars (\$25.00), the Association, through its Board of Directors or by its managing agent, shall issue a written statement setting forth the amount of any unpaid Association assessments, charges, fees, or portions thereof, if any, with respect to the subject Lot, the amount of the current monthly common expense assessment and the date that such assessment becomes due, the due date of any special assessment then existing against the Lot, the amount of the current monthly expense assessment and the date that such assessment becomes due, the due date of any special assessment then existing against the Lot, the amount of any credit for any advance payments of assessments, for prepaid items (such as insurance premiums), and for funds remaining in the working capital fund to which the Owner would be entitled from its transferee upon the sale of the subject Lot, and any other information deemed appropriate by the Association. Said written statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

27.127.12 Mortgagees May Pay Assessments and Cure Defaults. In the event any assessment or monthly or other installment thereof on any Lot shall not be paid by the Owner thereof within thirty (30) days after the same is due, or if a default by any Owner of any provision of this Declaration, the Articles or Bylaws shall not be cured within thirty (30) days after written notice thereof is given to such Owner, then the Owner or holder of any mortgage or deed of trust encumbering such Lot may (but shall not be required to) pay such assessment or monthly or other installments thereof, together with any other amounts secured by the Association's lien created by this Article 7, and may (but shall not be required to) cure any such default.

27.137.13 Date of Commencement of Annual Assessments; Due Dates. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in



advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject hereto. Annual assessments shall be collected in twelve (12) equal monthly installments. Omission or failure to fix an assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or release of a Lot Owner from his or her obligation to pay the same.

~~27.147.14~~ Record of Receipts and Expenditures. The Association shall keep detailed and accurate records in chronological order of all of its receipts and expenditures, specifying and itemizing the maintenance and repair of the Common Elements ~~and the Townhome Buildings and Landscaping~~ within the Common Interest Community and any other expenses incurred. Such records shall be available on request for examination by the Lot Owners and others with an interest, such as prospective lenders.

~~27.157.15~~ Exempt Property. The following property subject to the Declaration shall be exempted from the assessments, charges, and liens created herein:

- a) All properties to the extent of any easement or other interest therein dedicated and accepted by a Governmental Authority and devoted to public use.
- b) All Common Elements.

~~29.0~~ Water And Sewer Assessments. ~~Nothing in this Section shall prohibit the Association from separately assessing a water and sewer assessment against all Owners.~~

#### ARTICLE 30 - ~~ARTICLE 8~~ - RESTRICTIONS ON USE AND OCCUPANCY

All Real Estate within the 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 of Directors or by an appropriate committee (subject to review by the Board of Directors) 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 guidelines or rules.

##### ~~30.18.1~~ Use/Occupancy.

- a) All Lots within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control, and regulation.
- b) Occupancies may also be subject to any Rules and Regulations adopted by the Association.
- c) Lots shall not be used for any purpose other than as a residential dwelling. No building or other structure shall be erected, altered, or permitted to remain on any Lot other than one Single-Family Dwelling for residential use, subject to approval by the Architectural Control Committee, and such additional Improvements as may be approved by the Architectural Control Committee, pursuant to the terms of Article 14. Commercial and business uses with any adverse external effect on the nature, perception, operation, or

ambiance of the Community as a first class residential Community, as reasonably determined by the Board, are prohibited unless approved by the Association and allowed pursuant to restrictions of record and by local zoning ordinances and regulations. Notwithstanding this Section, Home Occupations shall be allowed pursuant to the terms of Section- ~~8.23~~8.24.

~~30.28.2~~30.28.2 **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, and subject to the following:

- a) Short term occupancies and rentals of less than six (6) months of Lots shall be prohibited, without prior written permission from the Board of Directors. Such approval shall not be unreasonably withheld;
- b) Any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation and the Rules and Regulations of the Association;
- c) Owners are required to provide tenants with copies of the current Declaration, Articles of Incorporation, Bylaws, and any Rules and Regulations of the Association. A copy of the lease or rental agreement shall be provided to the Association, in care of any manager of the Association or an officer;
- d) All occupancy, lease, and rental agreements of Lots shall state that the failure of the tenant, lessee, renter, or their guests to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation, or the Rules and Regulations of the Association shall constitute a default of the occupancy, lease, or rental agreement, and of this Declaration, and such default shall be enforceable by either the Association or the landlord, or by both of them; and
- e) Leases and rentals shall be for or of the entire Lot.

~~30.38.3~~30.38.3 **Lots to be Maintained.**

- a) Lot Owners shall keep or cause to be kept all buildings, fences, and other structures and all Landscaping located on their Lot in good repair. Rubbish, refuse, garbage, and other solid, semi-solid, and liquid waste shall be kept within sealed containers, shall not be allowed to accumulate on any Lot, and shall be disposed of in a sanitary manner. No Lot shall be used or maintained as a dumping ground for such materials. All containers shall be kept in a neat, clean, and sanitary condition and shall be stored inside a garage or other approved structure, except on trash collection days, when all trash containers must be kept in gutter against the sidewalk. No trash, litter, or junk shall be permitted to remain on any Lot unless screened from view from other Lots and from the Streets, except for reasonable storage during construction.
- b) Nothing shall be kept or stored so that items including, but not limited to,

bicycles, kayaks, sport or recreational equipment, litter, junk boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon or within any Lot so that the same are visible from any neighboring Lot, or any street.

- c) The Association and its agents, after thirty (30) day's notice to the Owner, shall have the authority to enter, replace, maintain, repair, and clean-up Lots which do not conform to the provisions of this Section, and to charge and collect from the Lot Owners thereof all reasonable costs related thereto as an assessment.

**30.48.4 Restrictions on Animals and Pets.**

- a) Definitions. For purposes of this Section, the following terms shall have the meanings given:
- i. "Animal" shall mean any live vertebrate creature, either domestic or wild, excluding fish.
  - ii. "At Large" shall mean outside of a fence or other enclosure which restrains the Animal to a Lot, unless under the control by leash or lead of the Keeper. Animals tethered to a stationary object within reach of a Street, Common Element, or other common access point shall be considered "at large".
  - iii. "Keeper" shall mean a person who is the owner of an Animal. Keeper shall also mean any person who has custodial or supervisory authority or control over an Animal.
  - iv. "Leash" shall mean a cord, rope, chain, or similar device which holds an Animal in restraint.
  - v. "Pet" shall mean a dog or cat that has been bred and/or raised to live in or about the habitation of humans and is dependent upon humans for food and shelter and such other household Animals as may be designated by the Board.
  - vi. "Restraint" shall mean: (a) Secured by leash under the physical control of a responsible person; (b) tethered to a stationary object not within reach of a Street, Common Element, or other public access; or (c) within a fenced or other enclosed area limiting the Animal to a Lot.
  - vii. "Shelter" shall mean a structure or environment adequate to the species of Animal which provides protection from adverse weather conditions.
- b) Prohibition. No Animals other than Pet dogs or cats, or other Pets as determined by the Board, may be kept on any Lot. Without limiting the generality of the definition

of “Animal”, no snakes or other reptiles may be kept within the Common Interest Community.

- c) Commercial Purposes. No animal shall be boarded, kept, bred, or maintained on any Lot for commercial purposes.
- d) Number. No more than two (2) adult Pet dogs; no more than three (3) adult Pet cats; and no more than a total of four (4) adult Pet Animals may be kept on any Lot. (For example, two Pet dogs and two Pet cats; or three Pet cats and one Pet dog.) Pet Animals shall not be considered adults until they are six (6) months old.
- e) Rabies Vaccinations. The Association shall have the right, but not the obligation, to require that the Owners of all Pet Animals provide to the Board evidence of current vaccination against rabies.
- f) Improper Care or Treatment. No Owner or Keeper of an Animal shall fail to provide that Animal with sufficient good and wholesome food and water, proper Shelter, protection from the weather, veterinary care, and such other care as is customary and necessary for the Animal’s health and well-being, considering the species, breed, and type of Animal. No person shall beat, cruelly ill-treat, torment, overload, overwork, otherwise abuse, or needlessly kill an Animal, or cause, instigate, or permit any fight among Animals.
- g) Removal of Waste. The Owner or Keeper of any Animal shall be responsible for the immediate removal of any feces deposited by such Animal on any Lot or Common Element not owned or exclusively occupied by the Owner or Keeper of the Animal. The Owner or Keeper of any Animal shall also be responsible for the periodic removal of feces deposited by such Animal on such Owner’s Lot.
- h) Animals at Large. All Animals within the Common Interest Community shall be kept under Restraint. No Owner or Keeper of an Animal shall permit such Animal to be At Large within the Common Interest Community. All female Animals in season shall be kept inside a Building or within a fenced area or other enclosure which limits the Animal to the Owner’s Lot.
- i) Disturbance of Peace. No Owner or Keeper of an Animal shall permit such Animal to disturb the peace and quiet of any person within the Common Interest Community by barking, whining, howling, yowling, squawking, or making any other noise in an excessive, continuous, or untimely fashion.
- j) Nuisance. The Owner or Keeper of an Animal shall exercise proper care and control of his or her Animal to prevent it from becoming a public nuisance. For purposes of this Section, a public nuisance includes an Animal which is a safety or health hazard, damages or destroys the property of another, or creates offensive noise or odors which materially interfere with or disrupt another person in the conduct of activities on such other person’s Lot.

- k) Vicious Animals. No Person shall own or keep any vicious Animal within the Common Interest Community. A Vicious Animal is one that has bitten or clawed any person or in a vicious or terrorizing manner, approaches any person in an apparent attitude of attack whether or not the attack is consummated or is capable of being consummated. No dog may be kept within the Common Interest Community that is a member of a reputedly vicious breed including by example and not limitation, American Staffordshire Terriers, also known as Pit Bulls; Rottweiler's; Doberman Pinschers; and Presa Canarios.
- l) Defense. For purposes of this Section, it shall be a defense to a charge of owning or keeping a vicious Animal that the Person or Animal bitten or approached by the vicious Animal was:
- i. Attacking the Animal or engaging in conduct reasonably calculated to provoke the Animal to attack or bite;
  - ii. Unlawfully engaging in entry into or upon a fenced or enclosed portion of the Lot upon which the Animal was kept or properly Restrained;
  - iii. Unlawfully engaging in entry into or upon a vehicle in which the Animal was confined;
  - iv. Attempting to assault the Animal or another Person;
  - v. Attempting to stop a fight between the Animal and any other Animal;
  - vi. Attempting to aid the Animal when it was injured;
  - vii. Attempting to capture the Animal in the absence of the Owner or Keeper; or
  - viii. The Animal was acting in self-defense, defense of its offspring, or defense of its Owner or Keeper
- m) Rules and Regulations. The Board shall have the right to adopt Rules and Regulations for the governing and/or restricting the keeping of Animals within the Common Interest Community, which Rules and Regulations may include, but shall not be limited to, restrictions and limitations on the size of Pet dogs.

30.58.5 Antennae. No antennae or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, by example and not limitation, satellite dishes in excess of 18 inches in diameter, shall be erected, used, or maintained outdoors on any Lot, whether attached to a Building or structure or otherwise, unless approved by the Board. Antennae may be located in the attic space.

Satellite dishes over eighteen (18) inches are not allowed; no satellite dishes on front elevations will be permitted.

**30.68.6 Nuisances.**

- a) No nuisance shall be permitted within the Community, nor shall any use, 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 or the proper use of a Lot or Common Element or any portion of the Community by Lot Owners be allowed.
- b) No improper, offensive, or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed. Any violation of any statute, law, ordinance, resolution, rule or regulation, or ordinance of any Governmental Authority applicable to the Common Interest Community shall also be a violation of this Declaration.

**30.78.7 Motor Vehicles on Common Elements, Storage, and Repairs.**

- a) No motor-driven, engine powered, or other mechanically propelled vehicle, including, by example and not limitation, automobiles, trucks, motorcycles, all-terrain vehicles, and snowmobiles, may be used or operated within or upon any of the Common Elements, except in the event of an emergency or by the Association for maintenance purposes.
- b) Boats, campers, snowmobiles, all-terrain vehicles, trailers, machines, tractors, semi tractors, tractor trailers, trucks (except standard pickup trucks), and vehicles owned by any Person who is not a Resident of the Common Interest Community shall not be stored, parked, or permitted to remain on any Street, Lot, or Common Element, except within fully enclosed garages, for more than seventy-two (72) hours per month.
- c) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked within the Community.
  - i. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Board of Directors of the Association.
  - ii. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Lot Owner thereof or shall be conspicuously placed upon the vehicle.
  - iii. If the abandoned or inoperable vehicle is not removed within seventy-two (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.

- d) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any vehicles, trailers, or boats, may be performed on any Lot unless it is done within a completely enclosed garage which screens the sight and sound of the activity from the street and from adjoining Lots, nor shall any such activity be performed on the Common Elements. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities normally incident and necessary to such washing and polishing.
- e) 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 and are subject to immediate towing.

**30.88.8** **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. The use of the Common Elements shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors.

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

**30.108.10** **Compliance with Insurance Requirements.** Except as may be approved in writing by the Board of Directors, nothing shall be done or kept in the 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.

**30.118.11** **No Unsightliness.** All unsightly conditions, structures, facilities, equipment, objects, and conditions shall be enclosed within an approved structure.

**30.128.12** **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 Community except such sign or signs as may be approved in writing by the Board of Directors, or as specifically permitted by the Act.

**30.138.13** **Signs.** No sign of any character shall be displayed or placed upon any Lot, with the following exceptions:

- a) One (1) sign per Lot of not more than six (6) square feet in total area advertising a Lot for sale shall be permitted on any Lot.
- b) The Association shall have the right to place a permanent sign at each entrance to the Common Interest Community identifying the Common Interest Community.
- c) Additional signs may be permitted only if approved by the Board.

**30.148.14** Plat Restrictions. The restrictions, if any, included on the plat for the Real Estate are incorporated herein by this reference.

**30.158.15** Trash Collection. The Association, acting through its Board, shall have the right to require that any trash collection within the Common Interest Community be performed by one company and that trash be collected from all Lots by such company on the same day of each week. The Board shall select the trash company based on competitive bids. At the option of the Association, the cost of trash collection shall be paid by each Owner directly to the trash collection company, and in such event, the Association shall have no duty to assess the cost of trash collection as a Common Expense. Nothing herein contained shall be construed to prohibit an Owner from personally disposing of trash from his or her Lot. This Section shall not apply to a contractor during the construction of a Dwelling or other Improvements on a Lot. The contractor may dispose of trash, rubbish, debris, and other construction materials from the Lot either personally or by contracting with a trash collection company. The trash collection company may remove trash, rubbish, debris, and other construction materials from the Lot during the construction of the Dwelling as often as the contractor deems appropriate. All trash receptacles shall have lid tie-downs to protect them from Animals. Except during the construction or remodeling of a Dwelling or other Improvements on a Lot and except on the day designated for trash collection, all trash receptacles shall be kept in a garage, outbuilding, or screened from view by screening approved by the Architectural Control Committee.

**30.168.16** No Hazardous Activities. No activities shall be conducted within the Common Interest Community which are or might be unsafe or hazardous to any person or property. ~~Without limiting the generality of the foregoing, no open fires shall be lighted or permitted except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace. Barbecue units shall not be used within ten (10) feet of any Building.~~

**30.178.17** Storage Tanks and Containers. No elevated tanks of any kind shall be erected, placed, or permitted to remain on any Lot unless such tanks are screened from view from other Lots and from the Streets by fencing or Landscaping in a Manner approved by the Architectural Control Committee. All air-conditioning, refrigeration, cooling, heating, or other mechanical equipment or system which is located outside of a Dwelling, including but not limited to, window air-conditioning units and swamp coolers, shall be screened from view from other Lots and from the Streets by fencing or Landscaping approved by the Architectural Control Committee.



**30.188.18** Discharge of Weapons. No person shall discharge, fire, or shoot any gun, pistol, rifle, shotgun, crossbow, bow and arrow, slingshot, spud-gun, paint gun, BB gun, pellet gun, stun gun, or other firearm or weapon of any kind within the Common Interest Community. Notwithstanding the foregoing, the discharge of firearms or weapons by any person acting in self-defense as permitted by C.R.S. Section 18-1-70 or by any member of any law enforcement agency in the course of such member's official duty shall not be deemed a violation of this provision.

**30.198.19** Mineral Extraction. No mining or extraction of oil, gas, gravel, or other minerals shall be permitted on any Lot.

**30.208.20** Resubdivision. No Lot may be further subdivided without the approval of the Board. This provision shall not be construed to prohibit or prevent the dedication or conveyance of any portion of a Lot as an easement for public utilities.

**30.218.21** Temporary Structures. No structure of a temporary character, including, by example and not limitation, trailers, converted trailers, shacks, sheds, basements, tents, garages, or accessory buildings, shall be used on any Lot for Residential Use, temporarily or permanently.

~~**30.22** Garage Sales. No garage, patio, porch or lawn sale shall be held on any Lot without the prior written approval of the Association.~~

**30.238.22** Smoking.

- a) No smoking of any kind shall be permitted in the Common Elements.
- b) The possession, growing, and sale of any such smokable substance shall be governed by the ordinances and laws of the community.

**30.248.23** Home Occupations. The conduct of a home occupation within a Dwelling on a Lot shall be considered accessory to the Residential Use and shall not be deemed a violation of this Declaration, provided that the following requirements are met:

- a) Such home occupation shall be conducted only within the interior of the Dwelling and shall not occupy more than twenty-five percent (25%) of the floor area within the Dwelling;
- b) The home occupation shall be conducted only by residents of the Dwelling and no non-residents shall be employed in connection with the home occupation carried on in the Dwelling;
- c) No retail sales shall be conducted upon a Lot;
- d) Only those home occupations which require no visits from customers and no parking at or near the Dwelling in connection with such occupation shall be allowed;

- e) There shall be no evidence of a home occupation visible from the outside of the Dwelling;
- f) The conduct of such home occupation must be permitted under the zoning ordinances of the Town.

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

30.268.25 Compliance with Governing Documents. Each Owner, his/her guests, family members, and tenants shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended.

#### ARTICLE 31 - ARTICLE 9 - INSURANCE

31.19.1 Insurance Carried. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. The Association shall maintain, to the extent reasonably available and appropriate considering the availability, cost and risk coverage provided by such insurance, insurance policies with the following terms or provisions:

- a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Lot Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days' prior written notice to all of the Lot Owners, Eligible Holders, and the Association.
- b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all Eligible Holders at least ten (10) days prior to the expiration of the then-current policies.
- c) All liability insurance arising in connection with the ownership, existence, use, or management of the Common Elements shall include the Association, the Board, the Board members, the manager or managing agent, if any, the officers of the Association, Eligible Holders, their successors and assigns, and Lot Owners as insureds.
- ~~e) In no event shall any casualty insurance policy contain a co-insurance clause.~~
- ~~e) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Lot Owner guilty of a breach of warranty, act, omission, negligence, or non-compliance of any provision of~~

such policy, including payment of the insurance premium applicable to the Lot Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Lot Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

- ee) ~~Insurance on the Townhomes shall be carried in blanket form naming the Association as the insured, as attorney in fact for all of the Owners, which policy or policies shall identify the interest of each Owner (Owner's name and Lot number designation) and First Mortgagee.~~

**31.59.2 Insurance to be Obtained by the Association.** ~~The types of coverage to be obtained and risks to be covered by the Association are as follows: Association shall obtain and keep in full force and effect the following insurance coverage, if appropriate:~~

- a) ~~Fire Insurance. The Association shall maintain fire insurance with extended coverage and standard all risk endorsements, which endorsements shall include endorsements for vandalism and malicious mischief. Such policy shall also include an agreed amount endorsement and, if available, an inflation guard endorsement. Said casualty insurance shall insure all Townhome Buildings, including all of the Townhomes, Townhome Utilities, any fixtures, equipment, or other property within the Townhomes which are to be financed by a First Mortgagee, together with all service equipment contained therein ("all inclusive" insurance policy) in an amount equal to the full replacement value without deduction or depreciation. All policies shall contain a standard noncontributory mortgage clause in favor of each Mortgagee of a Townhome which shall provide that the loss, if any, thereunder shall be payable to the Association for the use and benefit of the Owners and Mortgagees of the Townhomes as their interests may appear. The Association shall hold any proceeds of insurance in trust for the use and benefit of the Owners and Mortgagees of the Townhomes as their interests may appear. Premiums for policies and insurance insuring the Townhome Buildings and Townhomes shall be assessed as a Common Expense. General liability and property insurance in an amount to be determined by the Board, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the ownership, operation, maintenance, or other use of the Common Elements or Improvements thereon. This policy shall also cover operation of automobiles or other vehicles or equipment on behalf of the Association.~~
- b) ~~Liability Insurance. The Association shall maintain public liability and property damage insurance in such limits as the Board may from time to time determine but not in an amount less than One Million Dollars (\$1,000,000) per injury, per Person, per occurrence, and umbrella liability limits of One Million Dollars (\$1,000,000) per occurrence covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance, and other use of the Common Elements (including, but not limited to, the Non Potable Water System), Townhome Buildings, Townhome Utilities, and~~

~~Landscaping. Said policy shall also contain a "severability of interest" endorsement. Coverage under such policy shall include, without limitation, legal liability of the insured's for property damage, bodily injuries, and death of Persons in connection with the operation, maintenance, or use of the Common Elements (including, but not limited to, the Non-Potable Water System), Townhome Buildings, Townhome Utilities, and Landscaping and legal liability arising out of lawsuits related to employment contracts of the Association. Premiums for liability insurance shall be assessed as a Common Expense. Worker's compensation and employer's liability insurance in the amounts and in the forms required by law.~~

- c) ~~Workers' Compensation Insurance. The Association shall maintain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law. Premiums for Worker's Compensation Insurance shall be assessed as a Common Expense. Coverage for members of the Board of Directors and officers of the Association, including committee members, against errors and omissions, libel, slander, false arrest, invasion of privacy, and other forms of liability generally covered in officers and directors liability policies.~~
- d) ~~Officers' and Directors' Insurance. To the extent such insurance can be obtained at reasonable cost, the Association shall maintain blanket Fidelity bonds coverage for all officers, directors, and employees of the Association and all other Persons handling or responsible for funds of or administered by the Association. If the managing agent has the responsibility of handling or administering funds of the Association, the managing agent shall be required to maintain fidelity bond coverage for its officers, employees, and agents handling or responsible for funds of or administered on behalf of the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the managing agent at any given time during the term of each bond. In no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate Common Expense assessments on all Lots plus reserve funds. Such bonds shall contain waivers by the issuers thereof of all defenses based upon the exclusion of Persons serving without compensation from the definition of employees or similar terms or expressions. The premiums on all bonds required hereunder, except those maintained by the managing agent, shall be paid by the Association as a Common Expense, against dishonesty, destruction or disappearance of money or securities, and forgery. This policy shall also cover persons who serve the Association without compensation.~~
- e) ~~Other Insurance. The Association may obtain insurance against such other risks of a similar or dissimilar nature as shall be deemed appropriate.~~

**31.69.3 Attorney-in-Fact.** Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, an authorized representative who shall have the exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish such purpose. All of the Owners hereby irrevocable constitute the Association as their true and lawful attorney-

in-fact in their name, place, and stead for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses, the execution of all documents, and the performance of all other acts necessary to accomplish such purpose.

~~**31.79.4 Insurance to be Obtained by Owners.** Each Owner shall maintain public liability insurance in such limits as the Board may from time to time determine to be reasonably necessary but not less than Three Hundred Thousand Dollars (\$300,000) per injury, per Person, per occurrence, covering all claims for bodily injury or property damage. Owners may carry other insurance for their benefit and at their expense. All such policies shall contain waivers of subrogation and provide further that the liability of the carriers issuing such insurance shall not be affected or diminished by reason of any such additional insurance carried by the Association. Insurance coverage on furnishings or other property belonging to an Owner shall be the sole and direct responsibility of the Owner thereof, and the Board, Association, and/or the managing agent of the Association shall have no responsibility therefore. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Lot and the Improvements thereon, including but not limited to flood insurance, and the furnishings and other items of personal property belonging to an Owner, and general liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot.~~

~~**31.89.5 Managing Agent Insurance.** The manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association. The Association may indemnify its managing agent, except for that agent's intentional acts or omissions or negligence outside the scope of their duties and obligations to the Association, or outside of direction from or of the Association.~~

~~**31.99.6 Annual Insurance Review.** The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.~~

~~**31.109.7 Adjustments by the Association.** Any loss covered by an Association insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Lot Owners, and holders of first lien security interests as their interests may appear. Proceeds must be distributed first for the repair or restoration of the damaged property. The Lot Owners and holders of first lien security interest are not entitled to receive payment of any portion of the proceeds. The Association, through the Board of Directors, may determine how a surplus of proceeds, if any, shall be utilized.~~

~~**31.119.8 Duty to Repair.** Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced, within one year or less, by the Association or Lot Owner.~~

**31.129.9 Responsibility for Payment of Deductible Amount.** Whether the Board, in its discretion, chooses to submit a claim under the Association’s insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows: the Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Elements unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under the Declaration.

~~→ The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Elements unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under the Declaration.~~

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~~→ Any loss falling within the deductible portion of the Association policies to property for which Owners have repair and maintenance responsibility shall be paid or absorbed by the Owners of the Lots involved in the same proportion as each Owner’s claim bears to the total amount of insurance proceeds paid for the occurrence.~~

**31.159.10 Exclusive Right to File.** The Board of the Association as owner of the policies shall have the exclusive right to file and administer the settlement of any claim made against an Association policy. ~~Owners are responsible for carrying at their expense insurance to augment or cover losses and damages not covered by the insurance carried by the Association.~~

**31.169.11 Prohibition of Increase in Insurable Risks and Certain Activities.** Nothing shall be done or kept in or on any Lot or in any Common Elements, or any part thereof, which could result in the cancellation of any insurance on the Community, or any part thereof, or increase in the rate of any insurance on the Community, or any part thereof, over what the prior written approval of the Association, but for such activity, would pay, without the prior written approval of the Association. Each Owner shall identify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by it, the members of its family, its guests, invitees or contract purchasers, which is in violation of this Section 9.11.

**ARTICLE 32 - ARTICLE 10 - DAMAGE, DESTRUCTION, OBSOLESCENCE, OR CONDEMNATION**

**32.110.1 Association as Attorney-in-Fact.**

- a) This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Property in the event of its destruction, damage, obsolescence, or condemnation, including the repair, replacement, and improvement of any Lots, Lot buildings, Common Elements, or other portions of the Property which

have been destroyed, damaged, condemned, or become obsolete, and to represent the Owners in any related proceedings, negotiations, settlements, or agreements. Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from any Owner or grantor shall constitute and appoint the Association as their true and lawful attorney in their name, place, and stead for the purpose of dealing with the Community upon its damage, destruction, obsolescence, or condemnation, as is hereinafter provided. If requested to do so by the Association, each Lot Owner, as applicable, shall execute and deliver a written instrument confirming such appointment. As attorney-in-fact, the Association by its President and Secretary, or its other duly authorized officers and agents, shall have full and complete authorization, right, and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which are necessary and appropriate to exercise the powers hereby granted. No Owner shall have any rights against the Association or any of its officers or directors with respect thereto except in case of fraud or gross negligence. Any payment from any settlement award or insurance claim obtained in relation to any condemnation, destruction, taking, or liquidation of any or all of the Community shall be payable to the Association for the benefit of affected Owners and First Mortgagees. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact, to deal with the Community upon damage, obsolescence, or condemnation, shall be appointed. Such appointment must be approved by the Owners holding in aggregate more than fifty percent (50%) of the votes in the Association and more than fifty percent (50%) of the First Mortgagees of Lots based upon one vote for each First Mortgage held.

- b) Any payment from any settlement award or insurance claim obtained in relation to any condemnation, destruction, taking, or liquidation of any or all of the Community shall be payable to the Association for the benefit of affected Owners and First Security Interest.
- c) In the event the Association receives funds from the sale of property, or if the Association realizes any losses, awards, or proceeds from any other source, or from the termination of the Declaration, these proceeds, awards, or losses shall be allocated among the Owners of Lots in proportion to the relative value of the Lots (subject to the provision of Section 10.2(c) below).

**32-210.2 Damage or Destruction of Common Elements.** “Repair and reconstruction” of the Improvements, as used in the succeeding subparagraphs, means restoring the Improvement(s) to substantially the same condition in which they existed prior to their damage or destruction, with each Lot and the Common Elements having substantially the same vertical and horizontal boundaries as before, and all Improvements being reconstructed or repaired in substantial conformance with the Community’s original architectural plan and scheme, to the extent then reasonably and economically feasible, unless other action is approved by First Mortgagees which have at least sixty seven percent (67%) of the votes of Lots subject to eligible security interests. The proceeds of any insurance collected shall be available to the Association for the purpose of repair,

reconstruction, restoration, and replacement, in accordance with the provisions hereinafter set forth:

- a) In the event of damage or destruction due to fire or other adversity or disaster, the insurance proceeds, if sufficient to repair or reconstruct the Improvement(s), shall be applied by the Association as attorney-in-fact, to such repair and reconstruction, and the Improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and reconstruction of the Improvement(s). Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and construction.
- b) If the insurance proceeds are insufficient to repair and reconstruct the Improvement(s), such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment which shall be made without a vote of the Owners against all of the Owners and their Lots and shall be due and payable not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement, or restoration of the Improvement(s), using all of the insurance proceeds for such purpose, notwithstanding failure of the Owner to pay the aforesaid special assessment. The special assessment provided for herein shall be a debt of each Owner and a lien on his Lot, and may be enforced and collected as provided in Article 7 hereof, including the provisions therein pertaining to the payment of interest, late charges, costs, attorneys' fees, and expenses. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.
- c) Notwithstanding subsection (b) of this Section 10.2, the Owners may agree not to repair or reconstruct the Improvements; in such event, the Association shall forthwith record a notice in the office of the Clerk and Recorder of the County of Larimer, Colorado, setting forth such facts, and upon the recordation of such notice executed by the Association's President and Secretary, the entire Community shall be sold by the Association pursuant to the provisions of this Section, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the Map, and the Articles of Incorporation and Bylaws of the Association. Assessments for Common Expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, combined with all sale proceeds, and all such proceeds shall be divided into portions by the Association, each portion representing one Lot, with the amount of each portion to be reasonably, and in good faith, allocated to each Lot by the Board of Directors of the Association based on the comparative value of the Lots as they existed immediately prior to the damage and destruction, using such evidence of the appraised values as is then available, including but not limited to recent appraisals of the Property, portions thereof or comparable property. Such divided proceeds shall be paid into separate accounts. Each such account shall be in the name of the Association, and shall be further identified by the Lot designation and the name of the Owner(s) and first Mortgagees thereof. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each such account, without contribution from one account to



another, towards the payment of the liens encumbering the Lot represented by such separate account, as follows:

- i. For payment of taxes and special assessment liens in favor of any assessing entity;
- ii. For payment of the lien of any first Mortgage;
- iii. For payment of unpaid Association common expense assessments, other assessments, charges and fees, and all costs, expenses, and fees incurred by the Association;
- iv. For payment of the customary expenses of sale;
- v. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- vi. The balance remaining, if any, shall be paid to the Owner(s) of the Lot.

**32.310.3** **Damage or Destruction of Lot.** In the event of damage or destruction of any Lot, as applicable, the Owner thereof shall reconstruct the same as soon as reasonably practicable and substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of receipt thereof by the Association, they shall be deemed to have been approved.

**32.410.4** **Obsolescence.**

- a) The Owners holding in aggregate more than fifty percent (50%) of the votes in the Association may agree that the Common Elements are obsolete and adopt a plan for the renewal and reconstruction thereof. If a plan for the renewal of reconstruction is adopted, notice of such plan shall be recorded in the office of the Clerk and Recorder for the County of Larimer, Colorado, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a Common Expense, whether or not they have previously consented to the plan of renewal and reconstruction of the Common Elements, and shall be a debt of each Owner and a lien on its Lot which may be enforced and collected as provided in Article 7 hereof.
- b) The Owners may agree that the Lots are obsolete and that the same should be sold. In such instance, the Association shall forthwith record in the office of the Clerk and Recorder of the County of Larimer, Colorado, a notice setting forth such facts, and upon the recordation of such notice executed by the Association's President and Secretary, the entire Community shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, and the Articles of Incorporation and the Bylaws of the Association. The sale proceeds shall be paid into separate accounts, each such account representing the Lot as more fully provided in Section 10.2(c) hereof. Each such account shall be in the name of the Association and shall be further identified by the Lot designation and the name of the Owner(s) thereof. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of each such account, without contribution from one account to another, for the same purposes and in the same order as provided in Section 10.2(c) hereof.

**32.510.5 Condemnation.** If at any time or times during the continuance of Lot ownership pursuant to this Declaration, all or any part of the Community shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Section shall apply:

- a) All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award," shall be payable to the Association.
- b) In the event that the entire Community is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condemnation ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners by the Board of Directors of the Association in accordance with the procedure set forth in Section 10.2(c) hereof; provided, however, that if a standard different from the value of the Community as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. The Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed, as soon as practicable, in the same manner as provided in Section 10.2(c) hereof. Any decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided in Section 10.2 to determine whether or not to repair or rebuild the damage or destruction.
- c) In the event that less than the entire Community is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance thereof, the Lot ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award, to be determined in the following manner: as soon as practicable, subject to the following sentence, the Association shall reasonably, and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts to be allocated among the Owners as follows: (I) the total amount allocated to taking of or injury to the Common Elements divided equally between each Lot; (II) the total amount allocated to severance damages shall be apportioned to those Lots which were not taken or condemned; (III) the respective amounts allocated to the taking of or damage to a particular Lot, and to the Improvements an Owner has made within its Lot, shall be apportioned to the particular Lot involved; and (IV) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances, or as determined by judicial decree. Notwithstanding anything to the contrary contained in this Declaration, the allocation of the Condemnation Award to each affected Lot shall be based on the comparative values of the affected Lots as they existed immediately prior to the condemnation, using such evidence of the appraised values as is then available, including but not limited to recent appraisals, prepared by an appraiser certified by the MAI or the reasonable equivalent of such certification, of the affected property or comparable property. If the allocation of the Condemnation Award is already established in negotiations, judicial decree, or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Apportioned proceeds shall be

disbursed, as soon as practicable, in the same manner as provided in Section 10.2(c) hereof.

- d) In the event a partial taking results in the taking of a complete Lot, the Owner(s) thereof shall automatically cease to be member(s) of the Association, shall cease to hold any rights in the remaining Common Elements, and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the ownership, voting rights, and assessment ratio in accordance with this Declaration according to the principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners and to the First Mortgagees of all remaining Lots for amendment of this Declaration as provided in this Article. The Condemnation Award as to each such completely taken Lot shall be paid into a separate account and disbursed, as soon as practicable, in the same manner as provided in Section 10.2(c) hereof.
- e) Any reconstruction and repair necessitated by condemnation shall be governed by the procedures of Section 10.2 hereof.

**ARTICLE 33 - ARTICLE 11 - SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS**

**33.411.1** General Provisions. The provisions of this Article are for the benefit of holders, insurers, or guarantors of holders of first lien security interests recorded within the Community. To the extent applicable, necessary, or proper, the provisions of this Article apply to this Declaration and to the Articles and Bylaws of the Association. A holder, insurer or guarantor of a first lien security interest who has delivered a written request to the Association containing its name, address, the legal description, and the address of the Lot upon which it holds a security interest shall be considered an "Eligible Holder." Eligible insurers and guarantors of a first lien security interest shall have the same rights as Eligible Holders.

**33.211.2** Special Rights. Eligible Holders shall be entitled to:

- a) examine the books and records of the Association during normal business hours;
- b) receive a copy of financial statements of the Association, including any annual audited financial statement;
- c) receive written notice of all meetings of the Members of the Association;
- d) designate a representative to attend any such meetings;
- e) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity coverage maintained by the Association;
- f) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration;

g) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws;

h) thirty (30) days' written notice prior to the effective date of termination of professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Community or by an Eligible Holder; and

i) immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or to the Lot on which the Eligible Holder holds a security interest, if the cost of reconstruction exceeds Twenty Thousand Dollars (\$20,000.00), and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Lots.

**33.311.3** Right to Pay Taxes and Insurance Premiums. Any holder of a first lien security interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Lot or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Lots.

## **ARTICLE 12 – BURDENS AND BENEFITS OF THE DECLARATION**

**34.12.1** Covenants Running with Property. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Property.

**34.212.2** Binding Upon and Inure to the Successors. The benefits, burdens, and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Association and all Owners, and upon and to respective heirs, executors, administrators, personal representatives, successors and assigns, and shall be in effect in perpetuity unless amended or terminated as provided in the Act.

## **ARTICLE 35 - ~~ARTICLE 13~~ - DRAINAGE**

**35.13.1** Acknowledgement. The soils within the state of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of a Building if the Building and the Lot on which it is 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.

**35.213.2 Moisture.** Each Owner of a Lot shall use his or her best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the Building constructed thereon remain stable and shall not introduce excessive water into the soils surrounding the Building.

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

**35.413.4 Action by Owner.** To accomplish the foregoing, each Owner of a Lot covenants and agrees, among other things:

- a) **Not** to install Improvements, including, but not limited to Landscaping, items related to Landscaping, walls, walks, driveways, parking pads, patios, fences, additions to the Building, outbuildings, or any other item or Improvement which will change the grading of the Lot.
- b) To fill with additional soil any back-filled areas adjacent to the foundation of the Building and in or about the utility trenches on the Lot in which settling occurs to the extent necessary from time to time to maintain the grading and drainage patterns of the Lot.
- c) **Not** to water the lawn or other Landscaping on the Lot excessively.
- d) **Not** to plant flower beds (especially annuals) and vegetable gardens adjacent to or within three (3) feet of the foundation and slabs of the Building.
- e) If evergreen shrubbery and grass is used within five (5) feet of the foundation walls, to water the shrubbery and grass by controlled hand watering and to avoid excessive watering.
- f) To minimize or eliminate the installation of piping and heads for sprinkler systems within five (5) feet of foundation walls and slabs.
- g) To install any gravel beds in a manner which will assure that water will not pond in the gravel areas, whether due to non-perforated edging or due to installation of the base of the gravel bed at a level lower than the adjacent lawn.
- h) To maintain the gutters and downspouts which discharge water into extensions or splash blocks by assuring that (i) the gutters and downspouts remain free and clear of all obstructions and debris; (ii) the water that flows from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (iii) the splash blocks are maintained under sill cocks.
- i) To re-caulk construction joints opening up between portions of the exterior slabs and garage slabs in order to thereby seal out moisture.

~~**36.0 Disclaimer.** The Declarant shall not be liable for any loss or damage to the Building, any outbuilding, concrete slab, driveway, sidewalk, or other Improvement on any Lot caused by, resulting from, or in any way connected with soil conditions on any Lot.~~

## ARTICLE 37 - ~~ARTICLE 14~~ - ARCHITECTURAL CONTROL

### ~~37-14.1~~ Architectural Control Committee.

- a) Committees. The number of architectural control committees and the area governed by each committee shall be established by the Board.
- b) Membership. The members of each Architectural Control Committee shall be appointed by the Board from among the Owners of Lots within the area governed by that particular Architectural Control Committee.
- c) Purpose. Each Architectural Control Committee shall be established for the purpose of maintaining within a particular area of the Common Interest Community a consistent and harmonious general character of development and a style and nature of building design and visual appeal consistent with the natural beauty and features of that particular area of the Common Interest Community.
- d) Term. Each member of an Architectural Control Committee shall serve at the pleasure of the person or entity appointing such member. In the event of the death or resignation of any member of an Architectural Control Committee, the person or entity that appointed such member shall appoint a successor.
- e) Decision. All decisions of each Architectural Control Committee shall be by a majority vote of those members of the Committee present at a meeting at which a quorum is present. A majority of the members of the Architectural Control Committee shall constitute a quorum.
- f) Compensation. The members of the Architectural Control Committee(s) shall not be entitled to any compensation for services performed pursuant to this Declaration but shall be entitled to reimbursement by the Association for all costs and expenses incurred in performing their duties pursuant to this Declaration.
- g) Delegation. Each Architectural Control Committee shall have the power to delegate the responsibility for reviewing any application submitted to the Architectural Control Committee to a professional architect, landscape architect, engineer, or other professional person who is qualified to pass on the issues raised in the application. The Architectural Control Committee shall also have the power to require that the applicant pay the fees reasonably incurred by the Architectural Control Committee in retaining such professional to review the application submitted.
- h) Non-liability. No member of any Architectural Control Committee shall be liable to the Association or to any Owner or prospective Owner for any loss, damage, or injury arising out of or in connection with the performance of the duties of the Architectural Control Committee under this Declaration, unless such action constitutes willful misconduct or bad faith on the part of the Architectural Control Committee. Review and consideration of any application submitted to an Architectural Control Committee shall be pursuant to this Declaration, and any approval granted shall not be considered approval of the structural safety or integrity of the Improvements to be constructed or conformance of such Improvements with any statute, law, ordinance, resolution, rule,

or regulation or ordinance of any Governmental Authority applicable to the Common Interest Community.

**37.214.2 Control.** No constructions, alteration, addition, modification, exterior decoration, exterior redecoration, or reconstruction of any building, fence, wall, structure, Landscaping, or other Improvement within the Common Interest Community shall be commenced or maintained until the plans and specifications thereof shall have been approved by the Architectural Control Committee having jurisdiction over the Lot to be improved.

**37.214.3 Rules and Guidelines.** Each Architectural Control Committee shall issue rules setting forth procedures for the submission of plans for approval and shall also issue guidelines setting forth the criteria that the Architectural Control Committee will use in considering plans submitted to it for approval. The Rules and Guidelines may be amended from time to time by the Architectural Control Committee, **but may only be amended one time per calendar year.** The Guidelines may include by example and not by limitation, rules and regulations governing the following:

- a) Standards establishing and dictating an architectural theme and requirements pertaining to building type, style, architectural design, location, orientation, and site planning;
- b) Procedures for making application to the Architectural Control Committee for design review approval, including the documents to be submitted and the time limits in which the Architectural Control Committee must act to approve or disapprove any submission;
- c) Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under the Architectural Guidelines;
- d) Designation of a building site on a Lot, establishing the maximum developable area of a Lot and set-back or view corridor requirements;
- e) Minimum and maximum square foot areas of living space that may be developed on any Lot;
- f) Building size, type, height, design, orientation, location, and number of outbuildings, accessory buildings, and storage sheds;
- g) Experience and reputation of the contractor and major subcontractor;
- h) Construction methods and timetables;
- i) Fence regulations, including requirements that a fence be installed by the Lot Owner; the materials, color, design, style, height, and location of any fence; and maintenance of the fence;
- j) Signs, clotheslines, antennae, satellite dishes, and play structures;
- k) Storage tanks, containers, and exterior mechanical equipment;
- l) Window style, design, size, material, location, and orientation;
- m) Solar energy devices;
- n) Outdoor ornamentation and seasonal decorations;

- o) Site drainage, grading, and water conservation;
- p) Paved areas, culverts, and driveways;
- q) House numbers and entry monuments;
- r) Exterior lighting;
- s) Specifications for the location, dimensions, and appearance or screening of any accessory structures, antennae, or other such Improvements;
- t) Garage size, type, height, design, orientation, and location;
- u) Roof materials, color, overhang, and pitch;
- v) Siding style, type, material, design, and color;
- w) Quality, durability, aesthetic appeal, compatibility, and longevity of building materials;
- x) Regulations for parking vehicles off the street, within an enclosed garage or a designated area on a Lot;
- y) General instructions for the construction, reconstruction, refinishing or alteration of any Improvement, including any plan to evacuate, fill, or make any other temporary or permanent change in the natural or existing surface contour or drainage of any installation of utility lines or conduits on the Lot, addressing matters such as loading areas, water storage, trash removal, equipment and materials storage, grading, transformers, and meters;
- z) Minimum setback from Common Elements, public parks, ditches, and canals, if any, within the Common Interest Community;
- aa) Designation of front-entry garages or side-entry garages;
- bb) Restrictions on driveways providing direct access to traffic circles; and
- cc) Landscaping regulations, including requirements for installing and maintaining Landscaping on the entire Lot and in certain areas identified in the Architectural Guidelines, on parkways abutting the Lot and the street or road providing access to the Lot; time limitations within which all Landscaping must be completed; limitations and restrictions prohibiting the removal or requiring the replacement of existing trees; requirements for the use of drought hardy plants indigenous to the local and compatible with the design theme in questions; and other practices benefiting the conservation of water, protection of the environment, aesthetics, and architectural harmony of the Common Interest Community.

**37.414.4 Review of Plans and Specifications.** Each Architectural Control Committee shall consider and act upon any and all requests submitted for its approval prior to commencement of the construction, alteration, addition, modification, exterior decoration, exterior redecoration, or reconstruction. The Architectural Control Committee shall approve plans and specifications submitted to it only if it determines that the construction, alteration, additions, or Landscaping contemplated thereby, and in the location as indicated, will comply with this Declaration and all applicable Architectural Guidelines, will serve to preserve and enhance the values of Lots within the area of the Common Interest Community over which that particular Committee has



jurisdiction, and will maintain a harmonious relationship among structures, vegetation, topography, and the overall development within the area of the Common Interest Community over which that particular committee has jurisdiction. The governing Architectural Control Committee shall consider the quality of workmanship, type of materials, and harmony of exterior design with other Dwellings located within the area of the Common Interest Community over which that particular Committee has jurisdiction. Approval by the Architectural Control Committee shall be in writing or by endorsement on the plans. The issuance of a building permit or license for the construction of Improvements inconsistent with this Declaration shall not prevent the Association or any Owner from enforcing the provisions of this Declaration.

**37.514.5 Enforcement.**

- a) **Inspection.** Any member or authorized consultant of the Architectural Control Committee, or any authorized officer, director, employee, or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect Improvements constructed or under construction on the Lot to determine whether the Improvements constructed or under construction on the Lot have been or are being built in compliance with the Governing Documents and the Plans and Specifications approved by the governing Architectural Control Committee.
- b) **Construction and Certificate of Compliance.** All Improvements constructed upon a Lot shall be constructed in strict accordance with the plans approved by the governing Architectural Control Committee. Upon written request of any Owner or his agent, an existing or prospective Mortgagee, or a prospective grantee, and upon payment of a reasonable fee established from time-to-time by the Architectural Control Committee, the Architectural Control Committee shall issue a certificate setting forth generally whether, to the best of the Architectural Control Committee's knowledge, the Improvements on a particular Lot are in compliance with the terms and conditions of the Architectural Guidelines.
- c) **Conditions of Lot Prior to and During Construction.** Prior to and during construction of any Dwelling on a Lot, the Lot Owner shall cut weeds and install grass or other suitable groundcover as may be first approved by the governing Architectural Control Committee to eliminate blowing dirt, weeds, and unsightly appearances on the Lot. If such Owner fails to do so, the Board may impose fines and penalties pursuant to the schedule of fines and penalties adopted by the Board from time-to-time.

**37.614.6 Appeal.** If any Owner is dissatisfied with the decision of an Architectural Control Committee to approve or deny any application submitted to it, such Owner may appeal the decision to the Board by giving written notice of appeal to the Board, the Architectural Control Committee, and the applicant (if other than the appellant). The notice shall be given within ten (10) days after the decision of the Architectural Control Committee. The Board shall hear and consider the appeal at its next regular meeting following the date notice of appeal is given. The appellant, the applicant (if other than the appellant), and the Architectural Control Committee may have a representative present at the hearing, and shall have the right to present such evidence as may be

relevant to the appeal. The Board shall give notice of its decision within ten (10) days after the conclusion of the hearing. If the Architectural Control Committee, the applicant or the appellant is dissatisfied with the decision of the Board, such person or entity may appeal the decision to the Owners. Notice of appeal to the Owners shall be given to the Board, the applicant, the appellant (if other than the applicant) and the Architectural Control Committee within ten (10) days of the Board's decision. The Board shall schedule and give notice of a special meeting of the Owners to consider the appeal, which meeting shall be held not less than ten (10) nor more than sixty (60) days following the date that notice of appeal is given to the Board. If a decision of the Architectural Control Committee is appealed to the Board, the decision shall be affirmed unless a majority of all directors then in office (regardless of the number of directors actually present at the meeting) vote to overturn the decision of the Architectural Control Committee. If the decision of the Board is appealed to the Owners, the decision of the Board shall be affirmed unless a majority of all Owners (regardless of the number of Owners actually present at the special meeting called for the purpose of considering the appeal) vote to overturn the Board's decision.

**37.714.7** **No Waiver of Future Approval.** The approval by an Architectural Control Committee of any proposal or plans and specifications for any work to be done on a Lot shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans, specifications, drawings, or other matter subsequently or additionally submitted for approval by the same Owner or by another Owner.

**37.814.8** **Damage or Destruction of Improvements.** In the event any Detached Dwelling Unit or other structure constructed on a Lot is damaged, either in whole or in part, by fire or other casualty, said Building or other structure shall be promptly rebuilt or remodeled to comply with this Declaration; or in the alternative, if the Building or other structure is not to be rebuilt, all remaining portions of the damaged structure, including the foundation and all debris, shall be promptly removed from the Lot, and the Lot shall be restored to its natural condition existing prior to the construction of the Building or other structure.

#### **ARTICLE 38 - ARTICLE 15 - NON-POTABLE WATER SYSTEM**

**38.115.1** **Maintenance.** The Association shall operate, maintain, repair, replace, and improve the Non-Potable Water System as necessary to irrigate all Landscaping within the Common Interest Community ("Operate and Maintain" or "Operation and Maintenance"). To the extent the Non-Potable Water System is also used to irrigate parks, open spaces, or other land owned by the Town, the Town shall Operate and Maintain that portion of the Non-Potable Water System which provides irrigation water to parks, open spaces, and other lands owned by the Town. To the extent repairs are made to the Non-Potable Water System which benefits both the Association and the Town, the parties shall mutually agree on their pro-rata share of the cost of such repairs. If the parties cannot agree on their respective share of the cost of the repairs within thirty (30) days after any party submits a proposed division of cost to the other party, then the dispute shall be submitted to mediation before two (2) mediators, one (1)

selected by each party. If, after thirty (30) days mediation has not successfully resolved the dispute, the dispute shall be submitted to binding arbitration pursuant to the commercial arbitration rules of the American Arbitration Association.

**38-215.2 Escrow Account.** The cost of Operating and Maintaining the Non-Potable Water System shall be paid by the Association from Common Expense assessments made by the Association against Lot Owners. The cost of the Operation and Maintenance of the Non-Potable Water System as necessary to irrigate all of the Landscaping within the Common Interest Community shall have first and paramount priority for payment from the Common Expense assessments collected by the Association from the Lot Owners. Funds on deposit in the Escrow Account may be used to pay the unbudgeted costs of emergency, unusual, or unanticipated necessary maintenance required to assure that the Non-Potable Water System remains fully operational. Any withdrawals to be made from the Escrow Account which would cause the Escrow Account to fall below Thirty Thousand Dollars (\$30,000.00) may be made only upon the prior written consent of the Town.

**38-315.3 Dissolution.** The Association may not be dissolved without the prior, written consent of the Town.

**38-415.4 Amendment.** No provision of this Article may be altered or amended in whole or in part without the written consent of the Town.

**38-515.5 Security Interest.** The Association shall grant to the Town a first security interest in the Non-Potable Water System. If the Town reasonably determines that the Association has failed to Operate and Maintain the Non-Potable Water System as reasonably necessary to irrigate all Landscaping within the Common Interest Community, then the Town may serve written notice upon the Association setting forth the manner in which the Association has failed to properly Operate or Maintain the Non-Potable Water System. Such notice shall include demand that the deficiencies be corrected within thirty (30) days and shall state the date and place of the hearing to be held at the expiration of the thirty (30) days. If the deficiencies set forth in the original notice are not cured within the thirty (30) days, the Town, in order to preserve the taxable value of the Property within the Common Interest Community, and to prevent the Lots and Common Elements from becoming public nuisances and public liabilities, may, but shall not be obligated to, undertake the Operation and Maintenance of the Non-Potable Water System. At any time after the Town assumes the Operation and Maintenance of the Non-Potable Water System, the Association may request a public hearing at which hearing the Association shall have the right to show cause why such Operation and Maintenance by the Town should not continue. If, after such hearing the Town determines that the Association is ready and able to once again assume responsibility for the Operation and Maintenance of the Non-Potable Water System, the Town shall cease to maintain the Non-Potable Water System. If the Town determines that the Association is not ready and able to resume Operation and Maintenance of the Non-Potable Water System, the Town may, in its discretion, continue to Operate and Maintain the Non-Potable Water System subject to a similar hearing and determination to be made upon the request of the Association. The Association may not request a

hearing more frequently than once a year. The cost of any Operation and Maintenance of the Non-Potable Water System by the Town (except Operation and Maintenance of that portion of the Non-Potable Water System which irrigates parks, open spaces, and other lands owned by the Town) shall be paid by the Owners of the Lots within the Common Interest Community and any unpaid assessments made by the Town, may be collected by the Town pursuant to Article 7 of this Declaration or, at the option of the Town, such unpaid Common Expense assessments shall become a tax lien upon the Lot or Lots of the delinquent Owner or Owners. The Town may certify the unpaid Common Expense assessments to the County Treasurer for collection, enforcement, and remittance in the manner provided by law for the collection, enforcement, and remittance of general property taxes.

**38.615.6 Membership.** The Town shall be a member of the Association and shall have one (1) vote on all matters coming before the Association which concern the Non-Potable Water System. The Town shall pay to the Association the equivalent of the General Common assessment made against one (1) Lot.

**38.715.7 Outdoor Watering.** No Dwelling shall have an outdoor faucet. Neither the Association nor any Owner shall use domestic water provided by the Town outside of a Dwelling for watering or irrigating Landscaping, or for any other reason or purpose whatsoever. If an Owner uses domestic water outside of the Residence or connects the Non-Potable Water System for such Owner's Lot to the Town's domestic water system, then such Owner shall pay the then-current fees, charges, costs, expenses, including but not limited to, raw water costs and fees, charged by the Town for a domestic water tap. If the Non-Potable Water System becomes inadequate for the irrigation of all Landscaping within the Common Interest Community, the Association shall have the right, but not the obligation, to connect the Non-Potable Water System to the Town's domestic water system, upon payment to the Town of all of the then-current fees, costs, charges, and expenses including, but not limited to, raw water costs and fees, charged by the Town for a domestic water tap of the size and quantity necessary to Operate the Non-Potable Water System.

**38.815.8 Signage.** The Association shall construct, install, and maintain signage throughout the Common Interest Community as reasonably required by the Town to advise Lot Owners and other Persons entering the Common Interest Community that non-potable water is used to irrigate all Landscaping within the Common Interest Community, and that such water is not suitable for consumption by humans or Animals.

**38.915.9 Maintenance Contract.** The Association shall enter into a contract with an independent licensed irrigation company to provide required Maintenance of the Non-Potable Water System. The Association shall provide to the Town the name, address, and telephone number of the company selected by the Association. The Town shall have the right, but not the obligation, to reject for cause any company proposed by the Association.

**38.1015.10 Disclaimer.** Non-potable irrigation water is not fit for human consumption. Owners shall take appropriate precautions to prevent any Person from drinking the non-

potable irrigation water or otherwise making any other use of such water which may be damaging to a Person's health. To the extent such water may be harmful to Animals, the Owner and Keeper of such Animals shall take appropriate precautions to prevent the 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. The Association shall not be liable for any claims resulting from the use of non-potable irrigation water for any purpose other than the irrigation of Landscaping, and by accepting a deed to a Lot, the Lot Owner knowingly, voluntarily, and expressly waives and releases any such claims against the Association, its officers, directors, agents, employees, members, successors, and assigns.

~~38.11~~15.11 **Quantity and Quality of Water.** At the time of final approval of the Plat, the Declarant obtained and provided to the Town a report of a licensed engineer. In the engineer's opinion, the quantity and quality of water to be obtained from the wells was sufficient to irrigate all Landscaping within the Common Interest Community, as well as all Landscaping within any parks, open spaces, or other public or private lands to be served by the Non-Potable Water System. Neither the Declarant nor the Town has independent knowledge as to the adequacy of the quantity or quality of the water to be obtained from the wells, but has relied solely upon the engineer's opinion. Neither the Declarant, the Town, nor the Association make any warranties, express or implied, as to the quantity or quality of water which may be obtained from the wells. The Owner of each Lot by acceptance of a deed to such Lot, waives and releases the Declarant, its managers, members, agents and employees and their respective heirs, personal representatives, successors, and assigns, as well as the Town, its board members, employees, agents, and their respective heirs, personal representatives, successors, and assigns, and the Association, its officers, directors, agents, employees, members, successors, and assigns from all claims and possible claims, known or unknown, arising out of or as a result of a deficiency in the quantity or quality of water which may be obtained from the wells.

~~38.12~~15.12 **Adjacent Properties.** The Association shall have the right to use the Non-Potable Water System to provide raw water irrigation for Landscaping on properties adjacent to the Common Interest Community. In such event, the Association shall enter into an agreement with the adjacent property owner for the payment of the costs and expenses incurred by the Association in providing raw water to the adjacent property for the irrigation of Landscaping on such property.

#### **ARTICLE 39 - ARTICLE 16 - PROHIBITION OF PARTITION OR SEPARATION OF INTEREST**

~~39.11~~16.1 **Inseparability of Lot.** Each Lot, as well as all appurtenances, rights, and burdens connected therewith, shall comprise one Lot, which Lot may be conveyed, leased, devised or encumbered only as a Lot. Every conveyance, transfer, devise, lease, encumbrance, or other disposition of a Lot shall be deemed to be a conveyance,

transfer, devise, lease, encumbrance, or other disposition, as the case may be, of the entire Lot, together with all appurtenant rights, interests, duties and obligations, created by law or by this Declaration. No Owner shall sell, assign, lease or convey any rights to use of the Common Elements, other than as permitted by this Declaration, the By-Laws, or the Rules and Regulations as established from time to time by the Association. Any attempt to make a prohibited sale, assignment, lease, conveyance, or other transfer is void.

**39.216.2 Prohibition of Partition.** Each of the Owners of a Lot, whether such ownership is in fee simple or as a tenant-in common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Community, except upon the showing that:

- a) More than three (3) years before the filing of the action, the Community was damaged or destroyed so that a material part thereof was unfit for its use and the Community has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or
- b) That three-fourths (3/4) or more of the Community has been destroyed or substantially damaged, and that Owners holding in aggregate more than fifty percent (50%) of the votes in the Association, or
- c) That the Community has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than fifty percent (50%) of the votes in the Association are opposed to retention of the Community:

provided, however, that if any Lot shall be owned by two (2) or more co-tenants as tenants-in-common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition as between such co-tenants, so long as there is not a physical division of the Lot. No Lot may be partitioned or subdivided without the prior written approval of the Board of Directors and the Mortgagee holding the first security interest on that Lot, as applicable.

#### **ARTICLE 40 - ARTICLE 17 - GENERAL PROVISIONS**

**40.117.1 Deemed Nuisances.** Every violation of this Declaration is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against an Owner shall be applicable. Without limiting the generality of the foregoing, this Declaration may be enforceable as provided below.

- a) **Fines for Violations.** The Board may adopt a schedule of fines including, but not limited to, fines for failure to abide by the Architectural Guidelines, fines for failure to obtain any required approval from the Architectural Control Committee, fines for violating the restrictions applicable to Animals, and fines for violating the restrictions applicable to storage of vehicles.
- b) **Removal of Nonconforming Improvements.** The Association shall have the right to obtain a court order to remove any Improvement constructed, reconstructed, refinished, altered or maintained upon a Lot in violation of this Declaration.

- c) Removal of Animals. The Association shall have the right, but not the obligation, to obtain a Court order requiring removal of any Animal being kept within the Common Interest Community in violation of this Declaration.
- d) Removal of Vehicles. The Association shall have the right, but not the obligation, to have any vehicle parked in violation of this Declaration removed from the Common Interest Community at the expense of the owner of the vehicle. If the owner of the vehicle is also the Owner of a Lot, the cost of removing the vehicle may be assessed against the Owner and Lot.

40.217.2 Enforcement. In addition to the foregoing remedies, enforcement of this Declaration may be by appropriate proceedings at law or in equity against those Persons or entities violating or attempting to violate any covenant, condition, or restriction herein contained. Such judicial proceeding shall be for the purpose of removing a violation, for restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such judicial proceedings may be prosecuted by an Owner or by the Association. In the event it becomes necessary to commence an action to enforce this Declaration, the court shall award to the party that substantially prevails in such litigation, in addition to such damages as the court may deem just and proper, an amount equal to the costs and reasonable attorney's fees incurred by the party that substantially prevails in such litigation. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of the Declaration.

40.317.3 Non-Waiver. Failure of the Association or of any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, irrespective of the number of violations or breaches which may occur.

40.417.4 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

40.517.5 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

40.617.6 Amendment of Declaration by Lot Owners. Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of sixty-seven percent (67%) of the Owners. The amendment or repeal shall be effective upon recording a certificate in the real property records of Larimer County, Colorado, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

40.717.7 Amendment of Declaration by Board of Directors: Technical Corrections. The Association, through its Board of Directors, is hereby granted the right and power to record technical corrections to the Declaration (and all Amendments to the Declaration) for the purpose of correcting spelling, grammar, dates, and typographical errors, ~~or as may otherwise be necessary to clarify the meaning of the provisions of the Declaration and any Amendments to the Declaration.~~ Such technical corrections become effective after approval by the Board of Directors and upon recording at the office of the Clerk and Recorder and do not require Mortgagee or member approval. Technical corrections are not amendments and shall not be construed as such.

40.817.8 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

40.917.9 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any paragraph, section, or article.

40.1017.10 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

40.1117.11 Conflict. This Declaration is intended to comply with the requirements of the Act. If there is any conflict between the Declaration and the provisions of the Act, the provisions of the Act shall control. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

40.1217.12 Challenge to this Amendment. All challenges to the validity of this amendment must be made within one (1) year after the date of recording of this document.

40.1317.13 Counterparts. This Declaration, and any amendments hereto, may be executed in several counterparts and all counterparts so executed shall constitute one document binding on all signatories thereof, notwithstanding that all signatories have not executed the original or the same counterpart. In the event that any such document is executed in counterparts, those pages from the counterparts on which signatures and/or certificates of notaries public appear may be attached to the original instrument for the recordation thereof, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are identical

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**IN WITNESS WHEREOF**, the undersigned, being the president and the secretary of the Homeowners Association of Wellington South, hereby certify that the Association has obtained approval of this Amended and Restated Declaration from two-thirds (66.67%) of the Members of the Association as evidenced by written instruments filed with the records of the Association, or alternatively, has obtained court approval of this Declaration pursuant to the provisions of the Act, Section 217(7).

Dated \_\_\_\_\_

**The Homeowners Association of Wellington South,**  
a Colorado nonprofit corporation

By: \_\_\_\_\_ By: \_\_\_\_\_  
.President Secretary

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

The foregoing Declaration was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ as President of The Homeowners Association of Wellington South, a Colorado nonprofit corporation.

Witness my hand and official seal.

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

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

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

The foregoing Declaration was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ as President of The Homeowners Association of Wellington South, a Colorado nonprofit corporation.

Witness my hand and official seal.

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

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

Final Draft

