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**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
WATER'S EDGE TOWNHOMES**

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This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR WATER'S EDGE TOWNHOMES (this "Declaration") dated as of July 29, 2022, shall be effective upon recordation and is made by BASALT RIVER PARK LLC, a Colorado limited liability company ("Declarant"). Declarant is the owner of certain real property in Eagle County, Colorado, more particularly described on Exhibit A attached and made part of this Declaration by this reference (the "Property"). Declarant hereby makes the following grants, submissions, and declarations:

RECITALS

A. Declarant is owner of that certain real property located in the County of Eagle, Colorado, more particularly described on the attached Exhibit A attached hereto and incorporated herein (the "Property").

B. Declarant desires to create a Small Planned Community which is excepted from most provisions of the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes 38-33.3-101, et. seq. on the Property, the name of which is Water's Edge Townhomes.

C. Declarant hereby makes the following grants, submissions, and declarations:

**ARTICLE 1
IMPOSITION OF COVENANTS**

Section 1.1 Purpose. The purpose of this Declaration is to create a residential small planned community within the Property (the "Community") which is excepted from most provisions of the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes (the "Act"), and other improvements located on the Property.

Section 1.2 Intention of Declarant. Declarant desires to (a) protect the value and desirability of the Community as a whole while respecting the separate and distinct interests of the owners of each of the Units (as defined below), (b) further a plan for the improvement, sales, and common ownership of the Community, (c) create a harmonious and attractive residential development within the Community, and (d) promote and safeguard the health, comfort, safety, convenience, and welfare of the owners of Units of the Community.

Section 1.3 Development and Use. The Community will consist of a maximum of five (5) Units. No additional units may be established on the Property by subdivision of existing units, conversion of open space, or otherwise.

Section 1.4 Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration below, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved, subject to the provisions of this Declaration.

Section 1.5 Master Declaration. The Property is subject to the Master Declaration for Basalt River Park recorded in the public records of Eagle County, Colorado on June 18, 2021 at Reception No. 202114343, and as amended and supplemented from time to time.

Section 1.6 Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

ARTICLE 2 DEFINITIONS

The following words, when used in this Declaration, shall have the meanings designated below unless the context shall expressly provide otherwise:

"Act" means the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as such act exists on the date hereof, except to the extent that the applicability of future amendments to the Act are mandatory.

"Articles" mean the Articles of Incorporation for the Association, currently on file with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.

"Assessments" means the annual, special and default Assessments levied pursuant to Article 8 below.

"Association" means Water's Edge Townhomes Association, a Colorado nonprofit corporation, and its successors and assigns, charged with the duties and obligations of administering the Community. The Association will act through its Board of Directors ("Board" or "Executive Board").

"Association Documents" means the basic documents creating and governing the Community, including, but not limited to, this Declaration, the Articles and Bylaws of the Association, the

Plat, and any procedures, rules, regulations, or policies relating to the Community adopted under such documents by the Association or the Board.

"Common Area" means the real property or improvements, if any, for the common use and enjoyment of all of the Owners on a non-exclusive basis (i) owned by the Association, including estates in fee and terms of years, including all portions of the Property that are not within a Lot, as shown on the Plat, or (ii) owned by a person or entity other than the Association, but in which the Association has rights of use or possession pursuant to a lease, license, easement or other agreement, in each case together with any improvements located thereon.

"Common Expenses" means (i) all expenses expressly declared to be common expenses by this Declaration, or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Area, the Exterior Maintenance Area or the Party Walls; (iii) insurance premiums for the insurance carried by the Association under Article 9; and (iv) all expenses lawfully determined to be common expenses by the Executive Board of the Association.

"Declarant" means Basalt River Park LLC, a Colorado limited liability company, and its successors and assigns. No party other than Basalt River Park LLC shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the Office of the Clerk and Recorder of Eagle County, Colorado, a written assignment from Basalt River Park LLC of all or a portion of such rights and privileges.

"Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements for Water's Edge Townhomes together with any supplement or amendment to this Declaration, recorded by Declarant in the Office of the Clerk and Recorder of Eagle County, Colorado.

"Director" means a member of the Executive Board.

"Driveway" means the driveway shown on the Plat and serving as vehicular access to the Property and each Unit.

"Executive Board" means the governing body of the Association, as provided in this Declaration and in the Articles and Bylaws of the Association.

"Exterior Maintenance Area" means those portions of the exterior of each Residence, of the Lot surrounding the Residence and of improvements on the Lot to be maintained by the Association as described in Section 5.1 below.

"First Mortgage" means a Mortgage which has priority of record over all other recorded security interests except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

"First Mortgagee" means the Mortgagee under a First Mortgage.

"Lot" means a plot of land subject to this Declaration and designated as a "Lot" on the Plat.

"Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance, and management of the Community.

"Managing Agent" means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Community.

"Master Association" means Basalt River Park Master Association, a Colorado non-profit corporation.

"Master Declaration" means the Declaration for Basalt River park recorded June 18, 2021 at Reception No. 202114343.

"Maximum Rate" shall mean Eighteen Percent (18%) per annum.

"Mortgage" means any unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, which secures financing for the construction or development of the Community or which encumbers a Unit.

"Mortgagee" means any person or entity named as a mortgagee or beneficiary under any Mortgage, or any successor to the interest of any such person under such Mortgage.

"Owner" means any record owner (including Declarant, and including a contract seller, but excluding a contract purchaser), whether a natural person or persons, or an entity, of a fee simple title interest in and to any Unit; excluding, however, any record owner who holds such interest merely as security for the performance of a debt or other obligation, including a Mortgagee (unless such Mortgagee has acquired fee simple title interest in the Unit pursuant to foreclosure or any proceedings in lieu of foreclosure).

"Party Wall" means any common wall adjoining two Residences and shall be deemed to include the utility lines within a common wall.

"Plat" means the Water's Edge Townhomes, 4th Amended Plat of Basalt River Park, a resubdivision of Parcel B, Lot 1, recorded August 29, 2022, at Reception No. 202212901, in the Office of the Clerk and Recorder of the County of Eagle, Colorado, and all supplements and amendments thereto.

"Property" means the real property described in the attached Exhibit A.

"Residence" means the residence constructed on any Lot.

"Residential Unit" or "Unit" means a Lot together with all improvements thereon, including a Residence, and all easements and rights-of-way appurtenant thereto.

"Sharing Ratio" means the allocation of Assessments to which an Owner's Unit is subject. Each Unit will be allocated a Sharing Ratio of 1/5.

"Successor Declarant" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

"Town" means the Town of Basalt, Colorado.

ARTICLE 3 DIVISION OF COMMUNITY INTO UNIT OWNERSHIP

Section 3.1 Name. The name of the project is Water's Edge Townhomes. The project is a Small Planned Community, which is excepted from most provisions of the Act.

Section 3.2 Association. The name of the association is Water's Edge Townhomes Association. Declarant has caused the Association to be incorporated under the laws of the State of Colorado as a non-profit corporation with the purpose of exercising the functions as herein set forth.

Section 3.3 Division Into Units. The number of Residential Units submitted to this Declaration is five (5).

Section 3.4 Identification of Residential Units. The identification number of each Residential Unit is shown on the Plat.

Section 3.5. Description of Residential Units.

3.5.1 Each Residential Unit shall be inseparable and may be leased, devised or encumbered only as a residence.

3.5.2 Title to a Residential Unit may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Residential Unit in which he owns an interest. For all purposes herein, there shall be deemed to be only one Owner for each Residential Unit. The parties, if more than one, having the ownership of a Residential Unit shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Residential Unit in which they own an interest.

3.5.3 Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Residential Unit may describe it by its Lot number, according to the Water's Edge Townhomes, 4th Amended Plat of Basalt River Park, a resubdivision of Parcel B, Lot 1, recorded August 29, 2022, at Reception No. 202212801 County of Eagle, State of Colorado, and July

any recorded amendment and supplement thereto, and this Declaration, which will be recorded in the records of the Clerk and Recorder of the County of Eagle, Colorado, and any recorded amendment and supplement hereto (with applicable recording information inserted therein).

3.5.4 Each Residential Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed. Accordingly, the Common Area shall not be assessed separately but shall be assessed with the Residential Units as provided pursuant to Colorado Revised Statutes Subsection 38-33.3-105(2).

3.5.5 Each Residential Unit shall be used and occupied solely for residential dwelling purposes in the manner described in Article 15 below. Notwithstanding the foregoing, Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Residential Unit or Units as sales offices, management offices or model residences so long as Declarant, or its successors or assigns, is the Owner or lessee of the Residential Unit. The use by Declarant of any Residential Unit as a model residence, office or other use shall not affect the Residential Unit's designation on the Plat as a separate Residential Unit.

3.5.6 An Owner shall have the right to lease its Residential Unit upon such terms and conditions as the Owner may deem advisable; provided, however, that (i) any such lease shall be in writing and shall provide that the lease is subject to the terms of this Declaration, (ii) a Residential Unit may be leased only for the uses provided hereinabove, (iii) a Residential Unit may not be leased for a period of time that is less than thirty (30) consecutive days, (iv) any failure of a lessee to comply with the terms of this Declaration, the Articles, the Bylaws or the rules of the Association shall be a default under the lease enforceable by the Association.

Section 3.6 Inseparability of Unit. No part of a Unit or of the legal rights comprising ownership of a Unit may be condominiumized, partitioned or separated from any other part thereof during the period prescribed in this Declaration. Subject to Section 3.2 above, each Unit shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Unit. Every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Unit or any part thereof shall be presumed to be a disposition of the entire Unit, together with all appurtenant rights and interests created by law or by this Declaration. Timeshare estates, as defined at C.R.S. § 38-33.3-110(5), as well as any interval ownership, fractional estate, vacation club or similar arrangement by which any person, group or entity has a right to use a Unit for any period less than 30 days are prohibited.

Section 3.7 Nonpartitionability of Common Area, Exterior Maintenance Area and Party Walls. By acceptance of a deed or other instrument of conveyance or assignment to a Unit, each Owner of the Unit shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Area, Exterior Maintenance Area and Party Walls. Any Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Association's costs, expenses, and reasonable attorneys' fees in defending any such action. Such amounts shall automatically become a default assessment determined and levied against such Owner's Unit and enforced by the Association in accordance with this Declaration.

ARTICLE 4

MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 4.1 The Association. Every Owner of a Unit shall be a Member of the Association. No Owner, whether one or more persons, shall have more than one membership per Unit owned, but all of the persons owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

Section 4.2 Transfer of Membership. An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit.

Section 4.3 Membership. The Association shall have one (1) category of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. There are five (5) total votes that may be cast on Association matters. Except as otherwise provided for in this Declaration, each Member shall be entitled to one (1) vote in Association matters pursuant to this Declaration. Declarant shall be entitled to vote with respect to Units owned by it. Members of the Association may exercise such voting rights subject to and in accordance with the provisions of the Bylaws. All members of the Association shall be entitled to vote on all matters affecting the Community.

Section 4.4 Declarant Control. Notwithstanding anything to the contrary provided for herein or in the Bylaws, Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association as set forth in the Bylaws. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set out in the Bylaws. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded in the Office of the Clerk and Recorder for the County of Eagle, Colorado but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove Directors and officers, be approved by Declarant before they become effective.

Section 4.5 Owner's and Association's Address for Notices. All Owners of each Unit shall have one and the same mailing address to be registered with the Association and used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Unit shall furnish such address to the Secretary of the Association within five (5) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners of the Unit. Notwithstanding the foregoing, the Association shall be entitled to rely upon any such registration or other notice of a change in address of the Owners of the Unit which is signed by less than all of the Owners of such Unit.

If no address is registered or if all the Owners cannot agree, then the address set forth in the deed to the Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

Any notice delivered to a First Mortgagee in accordance with the terms of this Declaration shall be sent to the address for such party specified in the First Mortgage unless the First Mortgagee notifies the Association in writing of a different address.

All notices and demands intended to be served upon the Executive Board shall be sent to the following address or such other address as the Executive Board may designate from time to time by notice to all of the Owners:

Executive Board
Water's Edge Townhomes Association
723 E. Valley Road, Suite 200
Basalt, CO 81621

All notices given in accordance with this Section shall be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. mail.

ARTICLE 5 MAINTENANCE AND COMMON AREA

Section 5.1 Maintenance. In order to maintain a uniform appearance and a high standard of maintenance within the Community, the Association shall maintain the Exterior Maintenance Area and the Common Area.

5.1.1 Residence Exteriors. Subject to the insurance responsibilities set forth in Article 9 below, the Association shall maintain the Exterior Maintenance Area and Common Area of all Residences, which shall include (a) the painting and/or staining of all exterior surfaces, including walls, windows, doors, balconies, decks, porches, railings, (b) the maintenance, repair and replacement of exterior siding and siding elements, stucco, balcony railings and solar panels on the roof, and (c) the maintenance, repair and replacement of all sidewalks and walkways within the Community (and the maintenance provided under this Section shall include snow removal services on sidewalks and walkways within the Common Area, but unless the Association elects to provide additional snow removal services from time to time, the Association will not remove snow from walkways, stoops, stairs, patios, decks or balconies serving a single Unit), unless any of the foregoing are covered by an Owner's insurance. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used to maintain the Residences. The Owner shall be responsible for interior window washing, the maintenance, repair and replacement of windows (including window panes, frames and operational mechanisms), the interior doors (including

frames, hinges and door knobs and locks), and the maintenance of stoops, stairs, patios, balconies, decks, porches and railings (other than painting or staining that are the responsibility of the Association to the extent described above) and all other maintenance and repairs that are not the responsibility of the Association. Any exterior maintenance and repair by an Owner shall maintain a consistent and harmonious appearance among the Residential Units and shall be subject to the approval of the Executive Board. Notwithstanding the foregoing maintenance responsibilities of the Owner, the Association may, without obligation, elect to replace, repair, maintain or alter any exterior element (e.g., windows, window frames, doors, decks) for the Residential Units so as to maintain an attractive, functional and harmonious appearance.

5.1.2 Landscaping. The Association shall maintain landscaping of the Lots and landscaping within the Common Area. Maintenance of the landscaping shall include, but not be limited to, maintaining lawns, trees and shrubs. The Association shall provide all irrigation to landscaping within the Lots and Common Area, and shall provide all other utilities necessary for the maintenance and upkeep of such landscaping. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed, including, without limitation, decisions related to dying landscaping and the replacement thereof, if any.

5.1.3 Roof and Foundations. The Association shall maintain and repair all roofs within the Community, including, without limitation, solar arrays installed by the Declarant or the Association on the roofs, as well as snow and ice removal from the roofs to the extent the Association deems appropriate. The Association shall have the sole discretion to determine the time and manner in which roof maintenance and shall be performed as well as the type of materials used to maintain same. Any work conducted by an Owner on the roof over the Owner's Unit (including, but not limited to, the installation, maintenance and repair of solar panels) shall be subject to the Association's regulation, oversight and/or inspection, and the Owner hereby agrees to indemnify and hold the Association fully harmless from any damage, liability, cost or expense arising from such Owner's roof work, including, without limitation, as related to roof damage or water intrusion caused by or as a result of Owner's work. Any costs incurred by the Association to repair same shall be reimbursed to the Association by the Owner upon demand. The Association shall maintain and repair all foundations within the Community. The Association shall have the sole discretion to determine the time and manner in which foundation maintenance and shall be performed as well as the type of materials used to maintain same.

5.1.4 Fire and Life Safety Systems. The Association shall maintain and repair all fire and life safety systems within the Community, including without limitation, fire alarms and fire suppression systems. The fire and life safety systems will be tested and inspected annually. All reports of deficiencies noted will be addressed and corrected within a timely manner by the Association.

5.1.5 Refuse Collection. The Association shall provide refuse collection for the Community. Refuse collection may include collection of garbage, recycled materials and compost, at the Association's discretion. The Association will provide refuse collection bins required by the service provider and that comply with all local laws and regulations. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed.

5.1.6 Insurance Proceeds; Damage. Notwithstanding the foregoing, in the event insurance proceeds under Article 9 are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost. Further, Owners acknowledge that they may be responsible for the cost of repair of any damage or for the deductible amount on the Association's insurance related to such damage, even if resulting from failures of the Exterior Maintenance Area, in the manner described in Article 9 below.

5.1.7 Association's Right to Grant Owner's Maintenance Area. The Association reserves the right to grant the maintenance responsibility of certain areas of each Unit to the Unit Owner, and the Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner. Furthermore, the Association shall have the right to promulgate reasonable rules and regulations regarding the maintenance by the Owner.

Section 5.2 Special Easement. The Association and the Executive Board and their respective representatives are hereby granted a nonexclusive easement to enter upon and use the Exterior Maintenance Area as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article 5.

Section 5.3 Maintenance Contract. The Association or Executive Board may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Area, Exterior Maintenance Area or Party Walls. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

Section 5.4 Owner's Responsibility. Owner shall be responsible for maintaining all portions of the Owner's Unit, except for those portions that are to be maintained by the Association pursuant to this Declaration. The Owner shall not be responsible for maintaining the Exterior Maintenance Area, unless modified by Section 5.1.6. The Association shall have the right and power to prohibit on a Unit any storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Area. No Owner shall make any addition or other alteration to any portion of the Exterior Maintenance Area, the Common Area, a Party Wall, the roof, foundation or fire and life safety systems without the express consent of the Association, and any such work conducted by an Owner shall be subject to the Association's regulation, oversight and/or inspection. Notwithstanding the foregoing, an Owner may paint or decorate a Party Wall; provided that Owner does not alter or damage the function of the Party Wall or any utilities or systems contained within the Party Wall. Each Owner hereby agrees to indemnify and hold the Association fully harmless from any damage, liability, cost or expense arising from such work by an Owner. Any costs incurred by the Association to repair same shall be reimbursed to the Association by the Owner upon demand. The Association will have no responsibility for repairing any Owner's alterations to the Exterior Maintenance Area, the Common Area, a Party

Wall, the roof, foundation or fire and life safety systems in the event the Association damages such alterations during the Association's maintenance required or allowed by this Declaration.

Section 5.5 Owner's Failure to Maintain or Repair. In the event that (a) a Unit and the improvements and landscaping thereupon are not properly maintained and repaired or have been altered in a manner which deviates from the consistent appearance of Units within the Community, and if the maintenance responsibility for the unmaintained or inconsistent portion of the Unit lies with the Owner of the Unit, or (b) in the event that the improvements or landscaping on the Unit that are insured by the Owner are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and the buildings and other improvements thereon to a condition of good order, repair and consistency. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

Section 5.6 Party Walls. Party Walls between Residences are part of a common structure shared by Residences within the Community. Therefore, the Association shall maintain and repair all Party Walls within the Community. The cost of reasonable repair and maintenance of a Party Wall shall be a Common Expense and the Association shall have a perpetual easement in and to that part of the Property on which the Party Wall is located, for Party Wall purposes, including maintenance, repair, and inspection. No Owner or the Association shall alter or change the Party Wall in any manner, interior decoration excepted, and the Party Wall shall always remain in the same location as when erected.

5.6.1 In the event of damage or destruction of a Party Wall from any cause, the Association shall repair or rebuild said wall to its previous condition, interior decoration excepted, which specifically includes the previous sound transmission coefficient and fire rating, and the Owners of the Units sharing that Party Wall, their successors and assigns shall have the right to the full use of said wall so repaired and rebuilt.

5.6.2 The Association and each of the Owners sharing a Party Wall shall have the right to break through the Party Wall for the purpose of repairing or restoring utility pipes or lines, and structural components, subject to the obligation to restore said wall to its previous structural condition, which specifically includes the previous sound transmission coefficient and fire rating, and the payment to the adjoining Owner of any damage caused thereby. Adjoining Owners shall have the right to make use of the Party Wall provided such use shall not impair the structural support, the sound transmission coefficient, the fire rating of, or the utility lines contained inside the Party Wall.

5.6.3 Declarant hereby grants to the Association and the Executive Board and their respective representatives a nonexclusive easement to enter upon and use the Property on which

a Party Wall is located as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform under this Declaration.

ARTICLE 6 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 6.1 Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Community and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Area and the Exterior Maintenance Area (including facilities, furnishings, and equipment related thereto), and for the nonexclusive management, control, maintenance, repair, replacement and improvements of the Party Walls, and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments, and, subject to the budget approval procedures of Section 10.5 below, prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees.

Section 6.2 Reserve Account. The Association shall establish and maintain, as part of its budget and out of the installments of the annual Assessments, adequate reserve accounts for maintenance, repair, or replacement of any portion of the Common Area, the Exterior Maintenance Area or the Party Walls that must be maintained, repaired and/or replaced on a periodic basis.

Section 6.3 Owner's Negligence. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Area, the Exterior Maintenance Area or a Party wall is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's family, or by an Owner's guests, invitees, or tenants, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If the Owner fails to repay the expenses incurred by the Association within thirty (30) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Section, and such expenses shall automatically become a default assessment determined and levied against such Unit, enforceable by the Association in accordance with Sections 10.9, 10.10 and 10.11 below.

Section 6.4 Delegation of Management and Maintenance Duties. The Executive Board may delegate all or any part of its powers and duties to a Managing Agent, including Declarant; however, the Executive Board, when so delegating, shall not be relieved of its responsibilities under this Declaration.

Section 6.5 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. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners.

Section 6.6 Pledge of Future Income. The Association is authorized to pledge and assign its right to future income, including the right to receive Assessments, as collateral for loans or to secure other monetary obligations of the Association.

Section 6.7 Cooperation with Other Associations. The Association may contract or cooperate with other owners' associations, including the Master Association, metropolitan districts or entities as convenient or necessary to provide services and privileges and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their family members, guests, tenants, and invitees. The costs associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense.

Section 6.8 Issuance of Rules and Regulations. The Executive Board may make and amend reasonable rules and regulations governing the use and rental of the Units and the use of the Common Area, Exterior Maintenance Area and Party Walls, which rules and regulations shall be substantially consistent with the rights and duties established in this Declaration. The Executive Board shall provide thirty (30) days' written notice prior to the adoption or amendment of any rules and regulations and provide for a reasonable opportunity for Owners to comment at a meeting of the Executive Board on the proposed adoption or amendment of any rules and regulations.

Section 6.9 Enforcement of Association Documents. The Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such rules and regulations and with the other provisions of the Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law.

Section 6.10 Identity of Executive Board and Managing Agent. From time to time, but no less frequently than annually, the Association shall deliver to each Owner a notice containing the names and addresses of the members of the Executive Board and the Managing Agent, if any.

Section 6.11 Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association shall collect an amount equal to twenty-five percent (25%) of the then-current annual assessments from the purchaser at the time of the sale of each Unit. The Association shall maintain the working capital funds to meet unforeseen expenditures or to acquire additional equipment or services in connection with the Common Area, the Exterior Maintenance Area or the Party Walls, for the benefit of the members of the Association, subject to the budget approval procedures of Section 10.5 below. Such payments to this fund shall not be considered advance payments of Annual Assessments. The unused portion of the working capital contribution shall be returned to each Owner upon the sale of his Unit, provided that the subsequent purchaser of the Unit has contributed the required working capital to the Association.

Section 6.12 Implied Rights. The Association may exercise any and all other rights or privileges given to it by this Declaration, or by the other Association Documents, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied from the existence

of any right or privilege given to the Association or reasonably necessary to effectuate any such right or privilege.

Section 6.13 Books and Records of the Association. The Executive Board or the Managing Agent, as the case may be, shall keep detailed, accurate records of the receipts and expenditures of the Association and shall maintain such other books and records as may be required by law. Owners and Mortgagees may inspect the records of receipts and expenditures of the Managing Agent or the Executive Board at convenient weekday business hours. In addition, the other books, records, and papers of the Association, including this Declaration, the Articles and Bylaws, as well as any Management Agreement and any rules and regulations of the Association, shall be available for inspection by any Owner or Mortgagee at all times during convenient weekday business hours.

Section 6.14 LIMITATION OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR THE COMMON AREA, EXTERIOR MAINTENANCE AREA, PARTY WALLS, ROOF, FOUNDATION OR OTHER AREA MAINTAINED BY THE ASSOCIATION PURSUANT TO THIS DECLARATION AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE 9, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THE COMMON AREA, THE EXTERIOR MAINTENANCE AREA, THE PARTY WALLS, THE ROOF, FOUNDATION OR ANY OTHER AREA TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

ARTICLE 7 MECHANICS LIENS

Section 7.1 No Liability. If any Owner shall cause any material to be furnished to his Residential Unit or any labor to be performed therein or thereon, no Owner of any other Residential Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Residential Unit. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Common Area or any Residential Unit other than of such Owner with any mechanic's lien or other lien or encumbrance whatever. On the contrary (and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against the Common Area or against any Owner or any Owner's Residential Unit for work done or materials furnished to any other Owner's Residential Unit are hereby expressly denied.

Section 7.2 Indemnification. If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Area or against any other Owner's Residential Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the

basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

Section 7.3 Association Action. Labor performed or materials furnished for the Common Area, Exterior Maintenance Area, Party Walls, roof, foundation or any other area maintained by the Association, if duly authorized by the Association in accordance with this Declaration or its bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against the Common Area. Any such lien shall be limited to the Common Area and no lien may be effected against an individual Residential Unit or Units.

ARTICLE 8

PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY DECLARANT

Section 8.1 Owners' Easements. Every Owner has a right and non-exclusive easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Residential Unit subject to the provisions contained herein. Every Owner shall have a right of access to and from his or her Residential Unit, subject to the terms of the Master Declaration. No Owner shall hinder nor permit their invitees to hinder reasonable access by any other Owner and their invitees to their Residential Unit. Subject to the Association's rights of maintenance as provided herein, every Owner possesses the full right of use and enjoyment of the Exterior Maintenance Area related to such Owner's Residential Unit. No Owner has use and enjoyment rights over the Exterior Maintenance Area of another Owner's Residential Unit.

Section 8.2 Recorded Easements. The Property shall be subject to all easements set forth in the Master Declaration or as shown on the Plat or any other recorded plat affecting the Property and in any other documents, encumbrances, easements and licenses of record or of use as of the date of recordation of this Declaration. In addition, the Property is subject to those easements set forth in this Article 8.

Section 8.3 Declarant's Rights Incident to Construction and Marketing. Declarant, for itself and its successors and specific assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Property and the right to store materials on the Property and to make such other use of the Property as may be reasonably necessary or incident to the complete construction and sale of the Community, including, but not limited to, construction trailers, temporary construction offices, sales offices, and directional and marketing signs; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, or family members, guests, tenants, or invitees of any Owner. Declarant, for itself and its successors and specific assigns, hereby retains a right to maintain any Unit or Units as sales offices, management offices, or model residences so long as Declarant, or any Successor Declarant, continues to own, lease, or control a Unit. The use by Declarant of any Unit as a model

residence, office, or other use shall not affect the Unit's designation on the Plat as a separate Unit.

Section 8.4 Other Easements. Each Unit shall be subject to an easement for encroachments created by construction, settling and overhang, previously existing or as designed and constructed by Declarant or as a result of any addition or improvement pursuant to this Declaration including, without limitation, any patios and decks encroaching into the Common Area. A valid easement for such encroachments and for the maintenance of same, so long as they exist, shall and does exist. In the event any improvement is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Unit due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the improvements shall stand.

8.4.1 Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of the structures or improvements presently situated, or to be built in the future, on the Unit.

8.4.2 There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Units and the structures and improvements situated thereon, including the Common Area, Exterior Maintenance Area and Party Walls, for ingress and egress, installation, replacing, repairing and maintaining a common landscape irrigation system, a common fire safety system, and common solar panels, if any, and all utilities, including, but not limited to, water, sewer, gas, telephone, internet, cable television and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for Declarant, the Association or the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, and solar panels, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such lines and equipment in the area surrounding the Property, subject to approval by the Association as to locations.

Section 8.5 General Maintenance Easement. An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Executive Board or the Managing Agent, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs, to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, or to exercise its rights under Article 5 and Article 6 above, including the right to enter upon any Residential Unit for the purpose of performing maintenance to the exterior or Party Wall of any Residence, as set forth in Article 5 and Article 6 above.

Section 8.6 Drainage and Irrigation Easement. An easement is hereby reserved to Declarant and its successors and assigns and granted to the Association and its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Community for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels

of the Property, or changing any portions of the irrigation system, so as to improve the drainage of water on the Property.

Section 8.7 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area to the members of his family, his tenants, guests, licensees, and invitees, but only in accordance with and subject to the limitations of the Association Documents.

Section 8.8 Reservation of Easements, Exceptions, and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area, Exterior Maintenance Area, Party Walls, fire and life safety systems, roof or foundation for the best interest of the Owners and the Association.

Section 8.9 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

Section 8.10 Declarant Easements. Declarant reserves unto itself, its successors, assigns, lessees, guests, licensees and invitees, for so long as it holds any interest in any of the Property or Units, as set forth on the Plat, the same easement rights granted to Owners under this Declaration and specific easement rights over and across the Property as it may deem necessary for its use from time to time. During the period of Declarant Control, Declarant reserves (a) the right to dedicate any access road or walkway to public use, to grant easements with respect thereto and to allow such road or walkway to be used by owners of adjacent land; and (b) the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking, which may or may not be a part of the Property for the benefit of the Owners or the Association.

ARTICLE 9 INSURANCE

Section 9.1 General Insurance Provisions. The Association shall maintain, to the extent reasonably available:

9.1.1 Property insurance on the Common Area for special form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping and other items normally excluded from property policies. Such insurance shall cover all insurable improvements located on or constituting part of the Common Area, if any.

9.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area, the Exterior Maintenance Area, Party Walls, roof, foundation and the Association, in an amount deemed sufficient in the judgment of the Executive Board, insuring the Executive

Board, the Association, the Managing Agent, and their respective employees, agents, and all persons acting as agents.

9.13 Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners and First Mortgagees which have delivered written notice thereof to the Association, shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area, the Exterior Maintenance Area, the Party Walls, or the roofs or foundation. The insurance shall cover claims of one or more insured parties against other insured parties.

9.14 In the event that a Unit Owner is unable to obtain or maintain physical damage insurance for its Residence as set out in Section 9.12, the Association shall obtain such Physical damage insurance for such Unit and the costs for such insurance will be specifically charged to that Unit Owner.

9.15 The Association may carry such other and further insurance that the Executive Board considers appropriate, including Director's and Officer's liability insurance and insurance on Units that the Association is not obligated to insure, to protect the Association or the Owners.

Section 9.2 Cancellation. If the insurance described in Section 9.1 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be delivered to all Owners.

Section 9.3 Policy Provisions. Insurance policies carried pursuant to Section 9.1 must provide that:

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

9.3.2 The insurer waives its rights to subrogation under the policy against any Owner, tenant or a member of their household;

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

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

Section 9.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 9.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the

Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 9.7 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 9.5 Association Policies. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration, all or any equitable portion of the deductibles paid by the Association.

Section 9.6 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Section 9.1 shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

Section 9.7 Repair and Replacement.

9.7.1 Any portion of the Property for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

9.7.1.1 The regime created by this Declaration is terminated;

9.7.1.2 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

9.7.1.3 Sixty-seven percent (67%) of the Owners and all directly adversely affected Owners agree in writing not to rebuild; or

9.7.1.4 Prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a deed of trust or mortgage on the damaged portion of the Property rightfully demands all or a substantial part of the insurance proceeds.

9.7.2 The cost of repair or replacement of the Common Area in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Area is not repaired or replaced, the insurance proceeds attributable to the damaged Common Area must be used to restore the damaged area to a condition compatible with the remainder of the Community and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in

proportion to the Sharing Ratios of all the Units.

Section 9.8 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 9.9 Fidelity Insurance. Fidelity bonds shall be maintained by the Association, to the extent reasonably available, to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than six (6) months' current Assessments plus reserves as calculated from the then-current budget of the Association. The Association must also secure and maintain, or require to be secured or maintained by any parties handling the collection, deposit, transfer, or disbursement of Association funds, fidelity insurance with aggregate coverage of not less than six (6) months' assessments plus reserves as calculated from the then-current budget of the Association; provided, however, in no event shall the coverage for third parties handling the collection, deposit, transfer, or disbursement of Association funds be less than \$50,000. In addition, all funds and accounts of the Association being held by a Managing Agent or other third persons shall be kept in an account separate from the funds of other parties held by such Managing Agent or third party, and all reserves of the Association shall be kept in an account separate from the operational account of the Association. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 9.10 Worker's Compensation Insurance. The Executive Board shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 9.11 Other Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 9.12 Insurance Obtained by Owners. Each Owner shall obtain and at all times maintain physical damage insurance as described below at such Owner's expense, covering the full replacement value of such Owner's Residence and any other requirements of the First Mortgagee. The beneficiaries under such policy shall be the Owner, the Association and any and all other Owners. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Unit. Such insurance shall cover the full replacement value of the Unit, less applicable deductibles, at the time the insurance is purchased and at each renewal date, exclusive of those items normally excluded from property policies. The insurance coverage shall include, interior fixed finishes, cabinets, countertops, interior doors and windows, interior walls and trim, plumbing, electrical and lighting fixtures including furnace and water heater, appliances and carpet, all such insurance

covering the interests of the Owners and their Mortgagees as their respective interests may appear.

9.12.1 Each Owner shall obtain and at all times maintain liability insurance for such Owner's benefit, at such Owner's expense, in a limit of not less than One Million Dollars (\$1,000,000.00) in respect of bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to personal property, and if the Executive Board determines that higher limits shall at any time be customary to protect against tort liability, such higher limits shall be carried. In addition, an Owner may obtain such other and additional insurance coverage on the Unit as such Owner in the Owner's sole discretion shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Executive Board or otherwise affect any insurance coverage obtained by the Association, or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Unit.

9.12.2 The Executive Board may require an Owner to file copies of such policies with the Association.

Section 9.13 Association Policy on Insurance and Deductible Responsibilities. The provisions of this Article 9 may be supplemented by an Association Policy on Insurance and Deductible Responsibilities, which provides further details on the responsibility for coverage of specific improvements within the Community and the responsibility for payment of the deductible under the Association's insurance policies, which may be assessed against an Owner in certain instances.

ARTICLE 10 ASSESSMENTS

Section 10.1 Covenant of Personal Obligation of Assessments. Declarant, by creating the Units pursuant to this Declaration, and every other Owner, by acceptance of the deed or other instrument of transfer of its Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), is deemed to personally covenant and agree, with the Association, and hereby does so covenant and agree to pay to the Association the (1) the annual Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Area, the Exterior Maintenance Area and the Party Walls, and to perform the functions of the Association; (2) special Assessments for capital improvements and other purposes as stated in this Declaration or determined by the Executive Board from time to time; and (3) default Assessments applicable to the Owner's Unit for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents. No Owner may waive or otherwise escape personal liability for the payment of the Assessments

provided for in this Declaration by not using the Common Area or the facilities contained in the Common Area or by abandoning or leasing its Unit. In the event Assessments have not first been levied by the Association at the time of any conveyance of a Unit from Declarant to an Owner, then that Owner shall not be obligated for Common Expenses until the first levy of Assessments, which the Association may effect at any time upon written notice to Owners.

Section 10.2 Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of promoting the health, safety, convenience, and general welfare of the Owners, as determined by the Executive Board from time to time, and for the improvement and maintenance of the Common Area, the Exterior Maintenance Area, the Party Walls and other areas of Association responsibility referred to herein, as more fully set forth in this Article below.

Section 10.3 Annual Assessments. Annual Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to Section 10.5 below. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Area, Exterior Maintenance Area and Party Walls; assessments payable by the Units under the Master Declaration; expenses of management; insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping of the Property; care of grounds within the Common Area and Exterior Maintenance Area; routine repairs and renovations within the Common Area, Exterior Maintenance Area and Party Walls; wages; common water and utility charges for the Common Area and Exterior Maintenance Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements within the Common Area, Exterior Maintenance Area and Party Walls on a periodic basis, as needed.

10.3.1 Annual Assessments shall be payable in quarterly installments, or on such other schedule as determined by the Executive Board from time to time, on a prorated basis in advance and shall be due on the first day of each payment period. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any annual Assessments in excess of the actual expenses incurred in any fiscal year.

Section 10.4 Apportionment of Annual Assessments. The total annual Assessment for any fiscal year of the Association shall be assessed to the Units on the basis of the Sharing Ratios of the Units. The Executive Board shall have full authority to determine the applicable budgeting category for each cost and expense of the Association, subject only the Owners' right to veto the budget pursuant to Section 10.5 below. Notwithstanding any terms in this Section to the contrary, (a) the Executive Board, with the assistance of any company providing insurance for the benefit of the Owners under Article 9, may reasonably adjust the allocation to each Owner of the cost of premiums for any insurance carried for, and to be charged to, a particular Owner, as more fully detailed in Article 9; and (b) in the event an item in the Association's budget may more directly benefit certain Units in excess of its Sharing Ratio, or in the event the Association

has provided services to such Units in excess of those provided to other Units, the rate of Assessments levied with respect to such item or services may be modified to reflect such additional benefit at the sole and exclusive discretion of the Executive Board; provided, however, that such unequal allocation of Assessments shall be reasonable and fair to all Units.

Section 10.5 Annual Budget. Within ninety (90) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than ten (10) nor more than fifty (50) days after mailing or other delivery of the summary. Unless at that meeting sixty-seven percent (67%) or more of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Association's annual Assessments in accordance with the annual budget.

Section 10.6 Special Assessments. In addition to the annual Assessments authorized above, the Executive Board may at any time and from time to time determine, levy, and assess in any fiscal year (without the vote of the members of the Association, except as required by law and in this Section below) a special Assessment applicable to that particular fiscal year (and for any such longer period as the Executive Board may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Common Area, Exterior Maintenance Area, or Party Walls, or for any other expense incurred or to be incurred by this Association as provided in this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for annual Assessments, subject to the requirements that any maintenance, repair or restoration work shall be allocated among the Owners of affected Residential Units only and in proportion to the relative maintenance, repair and restoration costs attributable to their Units; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Residence or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Special Assessments shall be based on a budget adopted in accordance with Section 10.5; provided that, if necessary, the Association may adopt a new budget pursuant to Section 10.5 prior to levying a Special Assessment. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

Section 10.7 Due Dates for Assessment Payments. Unless otherwise determined by the Executive Board, the annual Assessments and any special Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Executive Board may otherwise direct, without notice (except for the notices required by this Article 10), on the first day of each quarter. If any such installment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Executive Board may assess a "late charge" on the installment in an amount of fifteen percent (15%) of the installment (or of the amount outstanding on such installment, if less) or such other charge as the Executive Board may fix by rule from time to time. An Owner's Assessment shall be prorated if

the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of a quarter or other applicable payment period.

Section 10.8 Declarant's Obligation to Pay Assessments. Declarant shall be obligated to pay the annual and special Assessments (including installments thereof) on each Unit owned by it and Declarant will pay all common expenses up until the time the Association makes a common expense assessment.

Section 10.9 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association 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 Association Documents and any expenses incurred by the Association as a result of the failure of an Owner to abide by the Association Documents (including without limitation attorney's fees) shall become liens against such Owner's Unit 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 the Assessment at least thirty (30) days prior to the due date.

Section 10.10 Lien for Assessments. The annual, special, and default Assessments (including installments of the Assessments) arising under the provisions of this Declaration (together with any and all interest, costs, late charges, expenses, and reasonable attorneys' fees, including legal assistants' fees, which may arise under the provisions of Section 10.12 below) shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Unit to which such Assessments apply. To further evidence such lien upon a specific Unit, the Association may, but shall not be obligated to, prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the Bylaws of the Association and Section 10.11 below, the name of the Owner or Owners of the Unit, and any and all other information that the Association may deem proper. Any such lien notice shall be signed by a member of the Executive Board, an officer of the Association, or the Managing Agent and shall be recorded in the Office of the Clerk and Recorder of Eagle County, Colorado. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied.

Section 10.11 Effect of Nonpayment of Assessments. If any annual, special, or default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (i) interest shall accrue at eighteen percent (18%) per annum on any amount of the Assessment which was not paid within such 30-day period or on the amount of Assessment in default, whichever shall be applicable, accruing from the due date until date of payment, (ii) the Association may declare due and payable all unpaid quarterly or other installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (iii) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, and (iv) the Association may proceed to foreclose its lien against the particular Unit in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

10.11.1 An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. If any such Assessment (or installment thereof) is not fully paid when due and if the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against any Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Unit, then all unpaid installments of annual and special Assessments and all default Assessments (including any such installments or Assessments arising during the proceedings of such action or foreclosure proceedings), any late charges under Section 10.7 above, any accrued interest under this Section 10.11, the Association's costs, expenses, and reasonable attorneys' fees (including legal assistants' fees) incurred for any such action or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Unit in satisfaction of the Association's lien.

10.11.2 Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, or mortgage the Unit, and to convey, or otherwise deal with the Unit acquired in such proceedings.

10.11.3 First Mortgagees shall be entitled to cure any delinquency in the payment of Assessments of the Owner of a Unit encumbered by the First Mortgagee. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 10.12 Successor's Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Unit to pay all Assessments on the Unit, and notwithstanding the Association's perpetual lien upon a Unit for such Assessments, all successors in interest to the fee simple title of a Unit, except as provided in Section 10.14 and Section 10.15 below, shall be jointly and severally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. However, such successor in interest shall be entitled to rely upon the existence and status of unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest pursuant to the provisions of Section 10.14 below.

Section 10.13 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. To the fullest extent allowed by law, the Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

10.13.1 Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute;

10.13.2 Except to the extent Colorado law provides a priority for the Association's lien for Assessments over a First Mortgage, the lien for all sums unpaid on a First Mortgage recorded before the date which the Assessment sought to be enforced became delinquent, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens; and

10.13.3 Any lien created by the Master Declaration.

With respect to the foregoing subpart 10.13.2, and to the extent provided by law, any First Mortgagee who acquires title to a Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Association Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Unit, and the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

All other persons not holding liens described in Section 10.13 above and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for Assessments, interest, late charges, costs, expenses, and attorneys' fees, as provided in this Article 10, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of any Unit, including but not limited to a foreclosure sale, except as provided in Section 10.13 above and except as provided in Section 10.14 below, shall not affect the Association's lien on such Unit for Assessments, interest, late charges, costs, expenses, and attorneys' fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 10.14 Statement of Status of Assessments. Upon fourteen (14) calendar days written request (furnished in the manner described below for the response to such request) to the Managing Agent, Executive Board or the Association's registered agent and payment of a reasonable fee set from time to time by the Executive Board, any Owner, prospective purchaser of a Unit, or Mortgagee shall be furnished, by personal delivery, overnight delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) a statement of the Owner's account setting forth:

10.14.1 The amount of any unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Unit;

10.14.2 The amount of the current installments of the annual Assessment and the date that the next installment is due and payable;

10.14.3 The date of the payment of any installments of any special Assessments then existing against the Unit; and

10.14.4 Any other information deemed proper by the Association.

Upon the issuance of such a certificate signed by a member of the Executive Board, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith. Unless such a statement of status of Assessments is delivered as described above within said fourteen (14) calendar day period, the Association shall have no right to assert a lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

Section 10.15 Liens. Except for annual, special, and default Assessment liens as provided in this Declaration, mechanics' liens (except as provided in Article 7), tax liens, and judgment liens and other liens validly arising by operation of law and liens arising under Mortgages, there shall be no other liens obtainable against the Common Area or against the interest of the Owner of any Unit.

Section 10.16 Protection of Association's Lien. With the approval of the Executive Board, the Association may protect its lien for Assessments against any Unit by submitting a bid at any sale held for delinquent taxes payable with respect to the Unit.

Section 10.17 Failure to Assess. The omission or failure of the Executive Board to fix the Assessment amounts or rates or to deliver or mail an Assessment notice to each Owner will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association in accordance with any budget procedures as may be required by law.

ARTICLE 11 ASSOCIATION AS ATTORNEY IN FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any Association-Insured Property or Owner-Insured Property (as defined in Section 12.1 below), upon their damage or destruction as provided in Article 12, or a complete or partial taking as provided in Article 13 below. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to

make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. The Association may exercise its authority as attorney-in-fact for any purpose permitted pursuant to this Declaration only if, in each and every instance where such exercise is so permitted, the Executive Board approves the exercise of such authority by the affirmative vote of a majority of the voting Directors. If the Executive Board fails to so approve any exercise of authority as attorney-in-fact, the Association shall have such authority as it may have pursuant to applicable law.

ARTICLE 12 DAMAGE OR DESTRUCTION

Section 12.1 The Role of the Executive Board. In the event of damage to or destruction of all or part of any Common Area, or other property covered by insurance written in the name of the Association under Article 9, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property. The property insured by the Association pursuant to Article 9 is sometimes referred to as the "Association-Insured Property". As set forth in Section 5.1.6, the Executive Board shall also arrange for and supervise the repair and restoration of damage to portions of the Property maintained by the Association, even though the insurance is written in the name in the Owners pursuant to Article 9. (The property insured by the Owners pursuant to Article 9, but maintained by the Association pursuant to Article 5, is sometimes referred to as the "Owner-Insured Property").

Section 12.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property or the Owner-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete, of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article 12 shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the insurance trustee, if any, determines to be necessary.

Section 12.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property or Owner-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property and the Owner-Insured Property, and no consent or other action by any Owner shall be necessary. If the Executive Board and the Owners of all damaged Units agree, the Association may allow such Owners to pursue the repair and reconstruction of the damage to their own Unit using the proceeds of their own insurance policy. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 12.4 Funds for Repair and Reconstruction; Insufficient Funds. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the

purpose of repair, replacement, and reconstruction of the Association-Insured Property. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction. The proceeds received by an Owner from any hazard insurance on Owner-Insured Property shall be paid to the Association and used for the purpose of repair, replacement, and reconstruction of the Owner-Insured Property. If the proceeds of the Owner's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction of the Owner-Insured Property, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may levy, assess, and collect in advance from the respective Owner or Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction.

Notwithstanding the foregoing or any contrary provision in this Article 12, in the event that insurance proceeds are insufficient to pay the estimated cost of repair, replacement or reconstruction of the Association-Insured Property or Owner-Insured Property based on the estimate or estimates of the costs to complete same, then Owners representing at least sixty-seven percent (67%) of the votes in the Association, may agree in writing not to repair and reconstruct the damaged improvements or may adopt a plan for the construction of alternative improvements. If less than all of the Units are damaged, then all of the Owners of the damaged Units, may agree in writing not to repair and reconstruct their damaged Units or may adopt a plan for the construction of alternative improvements, subject to the Association's approval of such plan. Any Association-Insured Property or Owner-Insured Property not reconstructed shall be restored to its natural state and maintained by the Association in a neat and attractive condition.

Section 12.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. To the extent reasonably possible, the Association will use the insurance proceeds and Special Assessments paid by an Owner to pay the costs of repair and reconstruction of that Owner's Unit. If there is a balance remaining after payment of all costs of such repair and reconstruction, and such balance cannot be attributed to a specific Unit or Units, such balance shall be distributed to the Owners in proportion to the contributions of each Owner to the Association of (a) insurance proceeds attributable to their Unit and (b) Special Assessments for such repair and reconstruction, first to the Mortgagees and then to the Owners, as their interests appear.

Section 12.6 Repairs. All repairs and reconstruction contemplated by this Article shall be performed substantially in accordance with this Declaration, the Plat of the Community and the original plans and specifications for the Community, unless other action is approved by the

Association in accordance with the requirements of this Declaration and the other Association Documents.

Section 12.7 Notice of Damage or Destruction/Construction Mortgagee Rights. In the event that any portion of the Community is substantially damaged or destroyed by fire or other casualty, then written notice of the damage or destruction shall be given by the Association to each Owner and First Mortgagee of the affected Units within a reasonable time following the event of casualty damage. Notwithstanding anything to the contrary in this Article 12 or otherwise in the Declaration, in the event of damage or destruction before issuance of a final certificate of occupancy for the Property and transfer of a Unit from the Declarant, the First Mortgagee shall be entitled to use of all insurance proceeds, including those received by the Association, on and in accordance with the terms and conditions of its First Mortgage and the associated loan documents.

ARTICLE 13 CONDEMNATION

Section 13.1 Rights of Owners. Whenever all or any part of the Common Area shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Area is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 13.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Area was conveyed and, unless otherwise required by law, the award shall be disbursed as follows:

13.2.1 If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least sixty-seven percent (67%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in Article 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Residential Unit among the Owners, first to the Mortgagees and then to the Owners, as their interests appear.

Section 13.3 Complete Condemnation. If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by

this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Section 12.5 above.

Section 13.4 Notice of Condemnation. In the event that any portion of the Community shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and First Mortgagee.

ARTICLE 14 OBSOLESCENCE

Section 14.1 Adoption of Plan; Rights of Owners. The Owners representing an aggregate Sharing Ratio of sixty-seven percent (67%) or more may agree that the Community is obsolete and adopt a written plan for the renewal and reconstruction thereof. Written notice of the adoption of such a plan shall be given to all Owners and a copy of such plan shall be recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, and the expense of renewal and reconstruction shall be payable by all of the Owners as Common Expenses.

Section 14.2 Sale of Obsolete Units. The Owners representing an aggregate Sharing Ratio of sixty-seven percent (67%) or more may agree that the Units are obsolete and that the Community should be sold. In such instance, the Association shall immediately record in the Office of the Clerk and Recorder of Eagle County, Colorado, a notice setting forth such fact or facts, and upon the recording of such notice by the Association, the 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 Plat, and the articles of incorporation and bylaws of the Association. Unless otherwise agreed in writing by all the Owners, the sale proceeds (and any insurance proceeds under Section 12.5 above) shall be apportioned among the Owners in proportion to the ratio of each Unit's most recent assessed valuation as determined by the Eagle County Assessor, to the aggregate amount of the most recent assessed valuation for all of the Units, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Unit. Each such account shall be in the name of the Association and shall be further identified by the Unit designation and the name of the Owner and designated as an agency account. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to another, to the respective Unit Owner.

ARTICLE 15 PROPERTY RESTRICTIONS

Section 15.1 Residential Use. All Units shall be used for residential dwelling purposes only, in conformity with all zoning laws, ordinances and regulations; provided, however, a Unit may be used for business activities if, and only if, any such activity (a) is incidental to the Unit's residential use and is lawful and complies with all zoning requirements and other applicable laws and ordinances, (b) employs no outside employees, (c) is conducted entirely within the Unit, with no visible signage whatsoever, (d) is not detectable to any extent from outside the Unit by sight, sound, smell or otherwise, (e) requires no parking or the physical presence of clients or customers and requires no repeated or continual delivery or shipping services, and (f) conforms to any rules and regulations adopted by the Board from time to time. Uses described as "licensed

day care" or "licensed child care" facilities are expressly prohibited. Notwithstanding the foregoing, Units owned, leased or controlled by Declarant may be used as a sales office, management office, rental management office, storage facility and other similar uses.

Section 15.2 Restrictions on Leasing; Prohibition on Timesharing. An Owner shall have the right to lease its Residential Unit upon such terms and conditions as the Owner may deem advisable, subject to the limitations and requirements set forth below (which limitations and requirements shall similarly apply to any subleases by tenants of any Owner). No Residential Unit may be used for the creation of "time share estates" as defined in C.R.S. § 38-33-110.

15.2.1 Any lease, sub-lease or rental agreement related to a Residential Unit must be in compliance with all laws, ordinances and regulations. Any lease or rental agreement shall lease the Residential Unit for no less than thirty (30) consecutive days. 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 and all governing documents of the Association (copies of which are to be furnished to the tenant of the Unit by the Owner thereof). Both the Unit Owner and the tenant(s) shall be jointly and severally liable to the Association for any and all violations caused by said tenants. Leasing of a Unit shall not relieve the Unit Owner of his or her rights, responsibilities and obligations under this Declaration and other governing documents, including, but not specifically limited to, the duty to pay Assessments, and the same shall be as fully enforceable as to such Unit Owner as though such Unit Owner were itself occupying such Unit.

Section 15.3 Conveyance of Units. All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, as the same may be amended from time to time.

Section 15.4 Use of Common Area and Exterior Maintenance Area. There shall be no obstruction of the Common Area, the Exterior Maintenance Area, or any utilities or other improvements in the Party Walls, nor shall anything be kept or stored on any part of the Common Area or the Exterior Maintenance Area by any Owner without the prior written approval of the Association. Notwithstanding the foregoing, patio furniture, planters and other items appropriate for use and display on patios, decks and balconies may be kept in those portions of the Common Area and Exterior Maintenance Area designed for such uses, unless the Association requests that such items be moved or removed. Outdoor gas and electric cooking devices are permitted only on patios. Nothing shall be altered on, constructed in, attached to or removed from the Common Area or the Exterior Maintenance Area by any Owner without the prior written approval of the Association. Nothing shall be altered on, constructed or penetrated in, or removed from a Party Wall (interior decoration excepted) by any Owner without the prior written approval of the Association.

Section 15.5 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Area or Exterior Maintenance Area, or any part thereof, that would result in the cancellation of the insurance on all or any part of the Community or in an increase in the rate of the insurance on all or any part of the Community over what the Association or Owners, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common

Area or Exterior Maintenance Area which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the Property. No damage to or waste of the Common Area or Exterior Maintenance Area shall be committed by any Owner, or by any member of the Owner's family, or by any guest, lessee, invitee, or contract purchaser of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him, the members of his family, or his guests, lessees, invitees, or contract purchasers. Failure to so indemnify shall be a default by such Owner under this Section, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Unit. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a Default Assessment as provided in this Declaration.

Section 15.6 Restriction on Signs. Except as specifically provided otherwise in this Declaration and subject to applicable law, no signs or advertising of any kind shall be erected or maintained anywhere within the Community, except for those signs permitted by law or otherwise specifically approved by the Executive Board. For-Sale signs shall generally be permitted, and For-Lease or For-Rent signs shall generally not be permitted, subject to the regulation of signs by the Executive Board. Other permitted signs shall also be subject to regulation by the Executive Board.

Section 15.7 Regulation of Pets. Subject to applicable law, the Executive Board shall have full and absolute authority to adopt and enforce rules and regulations related to animals and pets within the Community, including, without limitation, the prohibition of animals or pets by tenants or of animals or pets deemed dangerous, exotic or a threat to the well-being of people or other animals or otherwise being possessed of a disposition that is unreasonably annoying to other residents. Habitually barking, howling or yelping dogs shall be deemed a nuisance and shall be subject to permanent removal from the Community. No animals of any kind are allowed to be raised, bred or maintained for any commercial purpose. The Executive Board has the right to determine in its sole discretion whether any animals are being kept for commercial purposes or are being kept in violation of any of the rules and regulations adopted by the Executive Board with respect to animals. The Executive Board may take such action or actions as it deems reasonably necessary to correct any violation, including, after notice and the opportunity for a hearing as provided in the Responsible Governance Policies of the Association, directing permanent removal of the animal(s) from the Community and/or the imposition of fines during any period of violation.

Section 15.8 Nuisances and Unsightliness. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done or maintained thereon that may be or become an annoyance or nuisance to others, endanger the health or safety of other Owners, violate the law or any other provision of this Declaration or the governing documents of the Association, or otherwise detract from the Community's value as an attractive residential community. Subject to applicable law, the Executive Board shall have full and absolute authority to adopt and enforce rules and regulations related to nuisances, unsightliness and/or hazardous activities or conditions within the Community, including, without limitation, the regulation or prohibition or storage, refuse receptacles, trailers and campers, sports equipment or improvements, exterior lighting and light bulb color, and other activities or items deemed unsightly or a nuisance by the Executive

Board. The Executive Board may take such action or actions as it deems reasonably necessary to correct any violation, including, after notice and the opportunity for a hearing as provided in the Bylaws or policies of the Association, directing permanent removal of the offending item(s) from the Community and/or the imposition of fines during any period of violation.

Section 15.9 Antennas and Satellite Dishes. No satellite dishes, antennas and similar devices for the transmission or reception of television, radio, satellite or other signals of any kind (hereinafter, a "Reception Device") shall be permitted upon the exterior of any Residential Unit within the Community except as otherwise expressly provided herein and except with the express prior written consent of the Executive Board. In addition, subject to the review and prior written approval of the Executive Board with respect to the location, configuration and any potential negative impacts upon the Community arising from the same, any Unit Owner may be permitted to locate a satellite dish on the exterior of the Residence so long as such satellite dish is 18" or less in diameter or diagonal measurement and is designed to receive direct broadcast satellite services, video programming services via multi-point distribution or television broadcast signals ("Permitted Devices"). Any such Permitted Devices so approved by the Executive Board pursuant to the foregoing shall be placed in the least conspicuous location possible on the exterior of the Residence, shall be screened from view, all in a manner approved in writing by the Executive Board. This Section is intended to comply with the Telecommunications Act of 1996 and the rules and regulations promulgated by the Federal Communications Commission (FCC). Specifically, this Section is not intended to unreasonably delay or prevent installation, maintenance or use of Permitted Devices, unreasonably increase the cost of installation, maintenance or use of Permitted Devices, or preclude reception of an acceptable quality signal. In the event that any portion of this Section is found to violate such Act or any rule or regulation of the FCC the portion of this Section that is found to be in violation shall be stricken and the remaining provisions of this Section shall remain in full force and effect.

Section 15.10 Marijuana: The cultivation, processing, distribution, sale (including offer for sale) of marijuana whether by an Owner or any family member, guest, tenant, agent, invitee or licensee of Owner is prohibited within the Community. For purposes of this Section, "marijuana" shall mean any part of the cannabis plant, whether dried, living, in seed or extract form, and whether or not incorporated into a topical, ingestible, edible or vaporized product, and shall include synthetic cannabis.

Section 15.11 Hot Tubs and Spas. Due to the configuration of the Community and the location of the Residences within the Community, exterior or outdoor hot tubs or spas are only permitted on the third-floor deck of a Residence. Each Owner specifically acknowledges and agrees that the Owner will not have any right to construct or install any exterior or outdoor hot tub or spa as part of the Owner's Residence in any location other than the third-floor deck.

Section 15.12 Garages. The Residences within the Community will have two-car garages. Each Owner acknowledges, covenants and agrees that all of Owner's vehicles (whether owned by Owner or any family member, tenant or guest of Owner) must be parked within the garage, and no such vehicles shall be permitted to be parked at any time on the Driveway. Refuse receptacles may be placed in the outdoor space of a Unit adjacent to the Driveway, only between 6:00 AM

and 8:00 PM on the day of collection. Refuse receptacles must remain inside the garage of each Unit at all other times.

Section 15.13 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent (i) the exercise by Declarant of any special declarant rights, with the exception of development rights (as those terms are defined in the Act); or (ii) the erection or maintenance by Declarant or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of property within Property; provided, however, that Declarant shall comply with all applicable laws in the exercise of the rights in this Section.

ARTICLE 16

OTHER ASSOCIATION MATTERS AND OWNER ACKNOWLEDGEMENTS

Section 16.1 Architectural Control.

16.1.1 No exterior or structural addition, attachment, change or alteration to any Residential Unit or its landscaping, irrigation system or other exterior improvement (including, without limitation, the construction of any additional skylight, window, awning, or door or the installation of any basketball hoop or sports equipment) shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Executive Board. The alterations and changes described in this Section shall also be in compliance with all applicable zoning and other laws, rules, and regulations.

16.1.2 After receiving the approval of the Executive Board, the Owner required to obtain such approval shall thereafter obtain all other approvals as may be required by any governmental or quasi-governmental body having jurisdiction over the Property.

Section 16.2 General Reservation. Declarant reserves the right to dedicate any access roads, streets and/or sidewalks serving the Community for and to public use and to allow such improvement to be used by owners of adjacent land.

Section 16.3 No Use of Trademark. The term "Water's Edge" is a service mark and trade name of Declarant. Each Owner, by accepting a deed to a Unit, covenants and agrees that such Owner shall not use the terms "Water's Edge" without the prior written permission of Declarant.

Section 16.4 Acknowledgements. Each Owner is hereby advised of, and acknowledges and understands, the following matters affecting the Community and the Owners' use and enjoyment thereof:

16.4.1 Other Properties. Each Owner acknowledges and accepts that other

properties are located adjacent to and in the general vicinity of the Community (the "Other Properties") and that the Other Properties may be developed pursuant to the land uses permitted by the applicable zoning ordinances, as well as any other governmental rules, regulations, or policies in effect now or in the future which are applicable to the Other Properties (collectively, the "Ordinances"). Neither Declarant nor Declarant's employees, agents, officers, directors and affiliates make any representations concerning the planned uses of the Other Properties. Each Owner further acknowledges and accepts that the zoning for the Property and the Other Properties is established and governed by the Ordinances. Any amendment of those Ordinances requires approval of the applicable governmental body.

1642 No Environmental Representation. Each Owner acknowledges and agrees that Declarant has not made, and Declarant hereby specifically disclaims, any warranty or representation concerning any geological or environmental matters pertaining to the Property, the Residence or the Community.

1643 No Interest in Amenities. No interest in or right to use any amenity located near the Community, such as swimming pools, spas, workout facilities, club facilities, concierge services or the like, shall be conveyed to any Owner pursuant to this Declaration.

1644 Declarant's Disclosure Regarding Activities. Each Owner is hereby advised of and Declarant hereby discloses the following matters affecting the Property:

1644.1 Mountain Conditions. Ownership of real property in mountain areas involves certain inherent inconveniences. These include, but are not limited to, (a) dripping water onto decks and porches from snow melt, (b) snow and ice build-up on roofs, decks and porches during winter months, and the need to remove snow and ice to prevent leaking or damage to these structures, (c) the need to maintain the internal temperature of the Residence at a minimum temperature of 60 degrees in order to prevent broken pipes, and (d) other inconveniences arising from the sometimes severe winter conditions in the Rocky Mountains.

1644.2 Construction Activities. The Property is located in an area that is subject to or near ongoing construction activities (collectively, the "Construction Activities"). The Construction Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Construction Activities may include, without limitation: (a) construction traffic (including, without limitation, construction vehicles, equipment and vehicles used or owned by Declarant, its affiliates, adjacent landowners, and the employees, agents and contractors of any of them); and (b) construction activities (including, without limitation, grading, excavation, clearing, site work, relocation of roadways and public utilities and construction of improvements) relating to nearby properties.

1644.3 Commercial and Nearby Activities. IT IS HEREBY DISCLOSED TO ALL OWNERS, PURCHASERS, OCCUPANTS, LENDERS, TENANTS, AND ANY OTHER USERS OF THE PROPERTY SUBJECT TO THIS DECLARATION (COLLECTIVELY, "INTERESTED PARTIES") THAT SUCH PROPERTY IS BENEFITED BY ITS LOCATION NEAR THE ROARING FORK RIVER, A SIGNIFICANT TOWN-

OWNED PARK ON THE ROARING FORK RIVER, A TOWN- OWNED PARK AND GOVERNMENTAL BUILDINGS TO THE NORTH ACROSS TWO RIVERS ROAD, AN ADJACENT ROARING FORK TRANSPORTATION AUTHORITY BUS STOP, AN ADJACENT NONPROFIT ENTITY HEADQUARTERS, A NEARBY RECREATIONAL SHOOTING RANGE, RESTAURANTS AND BARS, AND NUMEROUS OTHER PUBLIC AND PRIVATE FACILITIES NEAR THE CENTER OF THE TOWN OF BASALT, COLORADO (COLLECTIVELY, "COMMERCIAL ACTIVITIES"). SUCH LOCATION REPRESENTS A UNIQUE AND DESIRABLE AMENITY THAT PROVIDES ACCESS TO MANY YEAR-ROUND ACTIVITIES. ALL OF THESE FACILITIES AND THE NUMEROUS ACTIVITIES ASSOCIATED WITH THOSE FACILITIES ARE ANTICIPATED TO GENERATE UNPREDICTABLE, YEAR-ROUND DISTURBANCES OF AND FROM, AMONG OTHER THINGS, LIGHT, NOISE (INCLUDING CONCERTS AND SIMILAR EVENTS, AND USE OF SHOOTING RANGE), CROWDS (INCLUDING PUBLIC MARKETS, FESTIVALS AND OTHER EVENTS), VEHICLES, CONSTRUCTION AND MAINTENANCE ACTIVITY, AND PUBLIC USE OF THE TOWN PARKS. IN APPROVING THIS DEVELOPMENT OF THE SUBJECT PROPERTY, THE TOWN IS NOT OBLIGATED TO MITIGATE SUCH IMPACTS OR THE USES AND ACTIVITIES CAUSING SUCH IMPACTS. EACH INTERESTED PARTY, AS THE CASE MAY BE, ACKNOWLEDGES AND ACCEPTS THE EXISTENCE, CONTINUATION, AND EXPANSION OF SUCH IMPACTS AND THE USES AND ACTIVITIES CAUSING SUCH IMPACTS. EACH INTERESTED PARTY CAN ANTICIPATE THE FOREGOING AND OTHER DISTURBANCES FROM TIME TO TIME. BY ACCEPTING A DEED TO OR LEASE OF ALL OR ANY PORTION OF THE PROPERTY, THE INTERESTED PARTY THEREOF FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, ACKNOWLEDGES THAT SUCH PROPERTY MAY BE SO AFFECTED AND FOREVER WAIVES, RELEASES AND RELINQUISHES ANY RIGHT TO CONTEST, OBJECT TO OR TO MAKE ANY CLAIM TO OR FOR DAMAGES, NUISANCE OR OTHERWISE AGAINST DECLARANT OR THE TOWN, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS ARISING OUT OF THE FOREGOING ACTIVITIES AND ANY DISTURBANCES CAUSED THEREBY WHATSOEVER. THIS LANGUAGE SHALL BE INCLUDED IN ANY LEASE OF THE PROPERTY.

16444 Waiver and Release. Each Owner acknowledges that the Construction Activities and the Commercial Activities, and the impacts and disturbances generated by the Mountain Activities, the Construction Activities and the Commercial Activities, may occur in and around the Property, and may occur during daytime and nighttime and may be temporarily or permanently interrupted, discontinued or modified, in whole or in part, from time to time. Each Owner agrees that Owner will not have the right to object to the existence, occurrence, or the temporary or permanent interruption, discontinuance or modification of the Construction Activities or the Commercial Activities.

1645 No View Easement. Notwithstanding any oral, written, or other representation made to each Owner to the contrary by Declarant, any real estate agency or any broker, agent, employee or representative of Declarant, or any other person, and by taking title to a Residential Unit each Owner acknowledges and agrees, there is no easement or other

right, express or implied, for the benefit of Owner for light, view or air included in or created by this Declaration, or as a result of owning a Residential Unit. Each Owner acknowledges and agrees that any view, sight lines, or openings for light or air available from the Property, may be blocked or altered in whole or in part in the future by virtue of natural or unnatural causes, including but not limited to future construction or expansion of commercial or residential buildings or facilities or by landscaping.

**ARTICLE 17
DECLARANT RIGHTS REGARDING TRANSFER**

Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association or other entity, by written instrument executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of the County of Eagle, Colorado. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument

**ARTICLE 18
ALTERNATIVE DISPUTE RESOLUTION**

Section 18.1 **IMPORTANT NOTICE: Agreement to Encourage Resolution of Disputes; Exclusive Procedures; Statutes of Limitation.** Declarant, the Association, its officers and directors, all Owners, and any person not otherwise subject to the Declaration but who agrees to submit to the procedures set forth in this Article (these "Procedures"), including all construction professionals, architects, contractors, subcontractors, developers, builders, builder vendors, engineers, inspectors and others who performed or furnished any engineering, design, planning, supervision, inspection, construction or observation of the construction of any improvement in the Community (each of the foregoing being referred to as a "Party"), hereby agree to encourage the amicable resolution of disputes involving the Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims, as defined below, each alleges to have to the Procedures set forth herein and not to a court of law. **All Parties hereby agree to the mandatory mediation and arbitration of all Claims as set forth in this Article and irrevocably waive any right to trial of any Claim by jury or otherwise in a court of law.**

Each Party agrees that these Procedures shall be the sole and exclusive remedy that each Party shall have for any Claim. Should any Party commence litigation or any other action against any Party in violation of the terms of this Article, such Party shall reimburse all costs and expenses, including attorneys' fees, incurred by the other Party(ies) in such litigation or action within ten (10) days after written demand.

The Parties understand and agree that no Claim may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

Section 18.2 Statement of Clarification. Without modifying or restricting the scope of these Procedures and as a statement of clarification only, the intent of these Procedures is to foster constructive dialogue between the Parties, to permit corrective measures to be implemented without the necessity of final settlement documentation, to inform Parties of implications related to certain Claims that may not otherwise be readily apparent to such Parties, and to assist the Parties in resolving Claims, if possible, *before* incurring significant legal and consultant expenses, particularly through the informal Procedures set forth in Section 18.4 below.

Section 18.3 Certain Definitions.

183.1 Definition of Claim. As used in this article, the term “Claim” shall mean all claims, disputes and other controversies between one Party and another Party, regardless of how the same may have arisen or on what it might be based, excepting only those matters identified as exclusions in this Section below. Without limiting the generality of the foregoing, “Claim” shall include all claims, disputes or controversies relating to or arising out of, in whole or in part, any of the following: (a) any Purchase and Sale Agreement between Declarant and any Owner; (b) the Property or the Unit (as defined in any such Agreement); (c) the purchase of the Property or the Unit; (d) the interpretation, application or enforcement of any of the Association Documents; (e) the soils of any property that lie within the Community or the presence of radon and/or mold within any Unit or other areas within the Community; (f) land development, design, construction and/or alteration of any of the improvements within the Community and/or any alleged defect therein; (g) any rights, obligations or duties of any Party under any of the Association Documents or any warranty, whether express, implied or limited, owed by a Party; (h) any limited warranty agreement between Declarant and any Owner and/or the Association; or (i) any breach of any of the foregoing referenced documents.

Notwithstanding the foregoing, the following will not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the Procedures set forth in this Article: (i) any suit by the Association to collect assessments or other amounts due from any Owner, (ii) any suit or other action by the Association or Declarant to act under or enforce any provisions of this Declaration relating to additions or alteration of improvements by Owners and/or any restrictive covenants or obligations of this Declaration, including any suit to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) or such other ancillary relief as the court may deem necessary, and (iii) any suit between Owners, which does not include Declarant or the Association as a party.

183.2 Definition of Defect Claim. Any Claim involving the development, design, construction and/or alteration of the Community or any improvement within the Community and/or any alleged defect therein, however arising, is referred to herein as a “Defect Claim” and the alleged defect, the “Alleged Defect.” The Association, its officers, directors and members, and Owners generally acknowledge, understand and agree that not every necessary repair or replacement of an improvement within the Community is due to a construction defect and, similarly, Declarant and other construction and design professionals that are Parties hereunder generally acknowledge, understand and agree that not every necessary repair or replacement of an improvement is due to faulty required maintenance of or

damage to such improvement. Often, such repair and replacement issues arise from a combination of issues that may or may not include the original design and construction, the level of inspection and maintenance programs (or lack thereof) and the existence of other factors such as unusual weather events or conditions, improper use and/or unforeseen wear and tear. This Article supports a proper evaluation of all factors and encourages a collaborative and comparative approach to responsibility.

1833 Association and Owner Responsibilities. The Association and its Executive Board and each Owner understand and acknowledge the importance of a regular inspection and maintenance program for the Community and the Units therein and shall comply with all maintenance manuals and other documents and recommendations provided to the Association and/or Owners with respect to the inspection, operation and routine maintenance of all systems, equipment, and similar items (including, but not limited to, mechanical, electrical, plumbing, structural and exterior systems and improvements) made part of or serving the Community or its Units. The Association and each Owner shall perform such recommended inspection and maintenance and shall make all necessary repairs and maintenance called for to reasonably address the results of these inspections and to maintain the Community and its Units to a level consistent with its original quality. Further, the Executive Board and each Owner shall cooperate, at no cost or expense to them, with all inspections that may be undertaken by or at the request of the Declarant on or with respect to the Community or its Units and any improvement thereon or therein. The Association and each Owner understand, assume the risk and agree that, if the Association or such Owner fails to follow the inspection, maintenance and repair requirements and standards contained in such manuals or materials delivered to them and such failure causes, whether in whole or in part, damage to the Community or its Units, to any improvement within the Community or to other property, the resulting damage shall not be deemed to be the result of a design or construction defect.

Section 18.4 Informal Procedures.

1841 Association Meetings. For a period of eight (8) years following the recording of this Declaration, notices of Association and director meetings (including notice of agenda items relating to potential Defect Claims) shall be given to Declarant, and Declarant and/or its representative(s) shall be entitled to attend and participate in at least one (1) meeting of the Association's members to discuss any potential Claim against Declarant. The Declarant and the Executive Board agree to use their respective good faith efforts to engage in constructive dialogue toward the goal of resolving any design or construction concerns.

1842 Initial Notice. Any Party asserting a Claim ("Claimant") against another Party ("Respondent") shall give written notice to each Respondent and to the Executive Board stating Claimant's good faith description of: (i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim, and (ii) the Claimants' desire to meet with the Respondent to discuss in good faith, ways to resolve the Claim. In that legal and professional fees are discouraged at this stage of these Procedures, no statement as to the legal basis of the Claim or of any proposed remedy is necessary.

1843 Right to be Heard; Negotiation. Any Respondent shall have the right

to be heard by the Claimant and, if any Claimant is the Association, by the Members, and the Claimant shall make itself reasonably available upon the request of Respondent to meet in person and to confer for the purpose of resolving the Claim by good faith negotiation. The Parties shall confer and negotiate in good faith toward such resolution for a minimum period of forty-five(45) days after the date that the Claimant has provided notice to each Respondent pursuant to Section 18.4.2 above. Notwithstanding such minimum negotiations period, the Parties are encouraged throughout these Procedures to attempt to resolve any differences between them through ongoing communications and informal dialogue. Any settlement of the Claim through discussion and negotiation shall be documented in writing and signed by the Parties in the manner described in Section 18.6.4 below.

1844 Right to Inspect, Cure and Correct. Any Respondent shall have the right (without obligation), before the institution by the Claimant of binding arbitration below, to inspect, cure and correct any improvement or condition within the Community with respect to a Defect Claim, as follows:

1844.1 In addition to other rights and obligations set forth in this Article, a Respondent may elect to inspect the Alleged Defect, in which event the Respondent shall complete the initial inspection and testing within thirty (30) days after the date that the Claimant has provided notice to each Respondent pursuant to Section 18.4.2 above, and at a mutually agreeable date and time. The Respondent shall bear all costs of inspection and testing, including any damage caused by the inspection and testing. Before entering onto the Community for the inspection, the Respondent shall supply the Claimant with proof of liability insurance coverage. The Respondent shall, upon request, allow the inspection to be observed and recorded or photographed. Nothing that occurs during a Respondent's inspection may be used or introduced as evidence to support a defense of spoliation of evidence by the Claimant or any potential party in subsequent litigation.

1844.2 Within sixty (60) days of completion of the initial inspection or testing, the Respondent may elect to repair some or all of the Alleged Defects by sending a written notice of election to repair to the Claimant. Notwithstanding any tolling provided by law, the applicable statutes of limitation and repose on any and all Claims relating to the Alleged Defects shall be tolled (i) from the completion of the initial inspection and/or testing until (a) Respondent's written notice of election to repair, or (b) the expiration of sixty (60) days, whichever is sooner; and (ii) from the date of any written notice of election to repair by Respondent until sixty (60) days after substantial completion of the repairs. This tolling applies to any and all Claims relating to Alleged Defects for which Claimant has given written notice pursuant to subparagraph 18.4.2 (regardless of whether Respondent has elected to repair none, some or all of the Alleged Defects). If the Respondent elects to repair some or all of the Alleged Defects, then (i) Respondent has the right to do so and the Claimant may not, directly or indirectly, impair, impede or prohibit the Respondent from making repairs; and (ii) until after the substantial completion of the repairs (a) the Claimant shall not file or pursue final binding arbitration (but may pursue mediation), and (b) if the Claimant is the Association, the Claimant shall not undertake the procedures for a consensus vote for Association action set forth in subparagraph 18.5.4. With any notice of election to repair, Respondent shall provide to Claimant a list of the Alleged Defects that Respondent has elected to repair, a detailed explanation of the repair work to be performed and the reasonably

expected completion date for the repairs. The notice shall also include the name of any contractors the Respondent intends to employ for the repairs. Claimant shall promptly cooperate with the Respondent to schedule the repairs and provide reasonable access to the Community (including common elements and residential units) for the repairs.

18443 For the purpose of exercising the rights to inspect, cure, correct and repair set forth above in subparagraphs 18.4.4.1 and 18.4.4.2, Declarant reserves for itself, its designees, the Association and its designees, a perpetual nonexclusive easement of access throughout the Community (including common elements and units) to the extent reasonably necessary to exercise such rights.

18444 Within ten (10) days after receipt of the Respondent's notice to repair, a Claimant may deliver to the Respondent a written objection to the proposed repair if the Claimant believes in good faith that the proposed repairs will not remedy the Alleged Defect. The Respondent may elect to modify the proposal in accordance with the Claimant's objection, or may proceed with the scope of work set forth in the original proposal.

18445 If the Respondent fails to send a notice to repair or otherwise strictly comply with this Section 18.4.4 within the specified time frames, or if the Respondent does not complete the repairs within the time set forth in the notice to repair, the Claimant shall be released from the requirements of this Section 18.4.4 and may proceed with the formal procedures set forth in Section 18.5 below. Notwithstanding the foregoing, if the Respondent notifies the Claimant in writing before the stated completion date that the repair work will not be completed by the completion date, the Respondent shall be entitled to one reasonable extension of the completion date.

18446 The Respondent shall notify the Claimant when repairs have been completed. The Claimant shall have ten (10) days following the completion date to have the work inspected to verify that the repairs are complete and satisfactorily resolved the Alleged Defect. A Claimant who believes in good faith that the repairs made do not resolve the Alleged Defect may proceed with the formal procedures set forth in Section 18.5 below.

18447 The specific materials and workmanship related to the repair work performed by the Respondent shall be warranted against material defects for a period of one (1) year, which warranty shall be in addition to any express warranties on the original work and shall be subject to the same terms and conditions of the original express warranty, but which repair work shall not be construed to be an "improvement" to real property for purposes of C.R.S. § 13-80-104.

18448 Any Alleged Defect discovered after repairs have been completed shall be subject to the same requirements of this Article if the Respondent did not have notice or an opportunity to repair the new Alleged Defect.

1845 No Requirement for Final Settlement to Begin Repairs; Settlement Proposal. The informal Procedures set forth in this Section 18.4 are for the purpose of encouraging early resolution of Claims and no formal written settlement or other agreement

shall be required for inspection and corrective work to occur pursuant to Section 18.4.4 above. No Party shall be deemed to have waived any rights or Claims by reason of such corrective work, and the Claimant shall be entitled to monitor the effectiveness of the corrective measures instituted. Alternatively, if the Respondent desires a formal settlement agreement before commencing corrective measures or other action to resolve the subject matter of the Claim, the following Procedures may be employed:

1845.1 Within thirty (30) days following completion of the inspection process, the Respondent may give Claimant written notification of its settlement proposal, including, in the case of a proposal to remedy a Defect Claim, a report of the scope, findings and results of the inspection, the damage caused by the Alleged Defect and a description of and a timetable for the work necessary to remedy the Alleged Defect.

1845.2 Within fifteen (15) days after its receipt of Respondent's settlement proposal, Claimant shall notify Respondent of its acceptance or rejection thereof. Failure to give such notice shall be deemed to be a rejection of the proposal.

1845.3 If the settlement proposal for remedial work is accepted, Claimant and Respondent shall endeavor to document the settlement proposal in writing within thirty (30) days after acceptance, which settlement shall be signed by the Parties in the manner described in Section 18.6.4 below.

1846 Effect of Corrective Work. It is acknowledged and agreed by all Parties and by any guarantors, insurers and/or indemnitors of the Parties that any work conducted pursuant to Section 18.4.4 above (a) is in the nature of corrective or repair work and does not constitute nor shall be asserted or construed to be an "improvement" to real property for purposes of C.R.S. § 13-80-104, and (b) unless part of a written settlement agreement signed by the Claimant and each Respondent, does not constitute nor shall be asserted or construed to be a voluntary payment or assumption of a voluntary obligation without insurer consent under any applicable commercial general liability insurance policy.

1847 Broad Construction. The Procedures set forth in this Section 18.4 shall be designed to encourage the good faith resolution of a Claim or appropriate correction of improvements and the right of the Respondent to be heard and to inspect and correct shall be ongoing and construed liberally throughout all of the Procedures set forth in this Article so as to permit the same, for example but not limitation, as there arise new issues, legal theories, engineering opinions, developments with insurers, and other developments and information, even if after the formal dispute resolution procedures commence as described below. Accordingly, the informal and formal dispute resolution procedures are anticipated to run concurrently from time to time and the Parties agree to reasonably, timely and in good faith cooperate with each other to respond to requests, to permit the rights set forth in these Procedures and to facilitate the processes of these Procedures toward the goal of a successful and voluntary resolution of Claims.

Section 18.5 Formal Notice and Association Consensus.

185.1 Formal Notice. At any time following the forty-five (45) day

negotiation period described in Section 18.4.3 above (or following such longer period as the Parties may agree), the Claimant may provide written formal notice to each Respondent stating (i) the nature of the Claim, including if applicable a list of any alleged construction defects and a description, in reasonable detail, of the type and location of such defects, the damages claimed to have been caused thereby, and Respondent's role in the Claim, (ii) the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises), (iii) the date on which the Claim first arose, and (iv) the specific relief and/or proposed remedy sought. Notwithstanding the foregoing or any contrary provision herein, the Claimant shall, in addition to complying with these Procedures, follow the alternative dispute resolution procedures set out in the Construction Defect Action Reform Act, Colo. Rev. Stat. § 13-20-801 et seq., as it may be amended from time to time ("CDARA") with respect to any Defect Claim, and the initial formal notice required under CDARA may be combined with the formal notice of Claim required by this Section 18.5.1.

Formal written notice as provided in this Section, following the satisfaction of the Association Consensus Vote (defined below), if applicable, is required as an express condition to commence the resolution Procedures set forth in Sections 18.6, 18.7 and the Sections following, below.

1852 Association Defect Claims. Notwithstanding any contrary provision herein, no formal notice of Claim under Section 18.5.1 (including, without limitation, a Notice of Claim under CDARA) may be made by a Claimant (a) if the Claim is a Defect Claim which relates, in whole or in part, to the Common Area, the Exterior Maintenance Area or the Party Walls of the Community or to any portion of the Units that is the responsibility of the Association to maintain, repair, and replace or to any Defect Claim that the Association intends to assert on its own behalf or on behalf of Owners (referred to herein as an "Association Defect Claim"), and (b) unless and until the Procedures set forth in this Section 18.5 below are satisfied. The Parties understand and agree that the Procedures of this Section 18.5 are essential to the protection of individual Owners who may not understand the implications and effects of the assertion of an Association Defect Claim by the Association, including, without limitation, the possible impact of such Claim on sales of Units within the Community and/or the ability of Owners to borrow funds when an Owner's Unit is being pledged as collateral for a loan.

1853 Power of Attorney to Association. The Association is hereby designated to act as the exclusive representative of all Owners in asserting any Association Defect Claim, and each Owner does hereby appoint the Association to exclusively act as its power of attorney (which power shall be irrevocable) with respect to any Association Defect Claims, including the right to compromise and settle the same. No Owner shall assert an Association Defect Claim except through the Association.

1854 Consensus Vote for Association Action. Notwithstanding anything contained in these Procedures to the contrary and in addition to any requirements prescribed by law, before asserting a Claim the Association shall do the following:

1854.1 The Executive Board of the Association, following the

approval of an Association Defect Claim by a majority of all Directors, shall mail or deliver written notice to each Owner at the Owner's last-known address described in the Association's records containing the following: (a) the nature of the Association Defect Claim, the parties involved, and the relief sought, (b) the expenses and fees that the Executive Board anticipates will be incurred, directly or indirectly, in the prosecuting the Association Defect Claim, including attorney fees and consultant and witness fees and other costs of prosecution of the Claim, (c) the costs, if any, to the Association pursuant to an agreement with its attorney or otherwise that would be incurred if the Association elects at any time not to proceed with the Association Defect Claim, (d) the manner in which the Association proposes to fund the cost of the Association Defect Claim, including any proposed special assessments or use of reserves, (e) the anticipated duration of the Association Defect Claim, the likelihood of its success, and the risks to which the Association is exposed (e.g., an assessment of counter-claims and/or other potential liability to the Association), (f) a reasonable assessment and explanation of the anticipated impact of the Association Defect Claim on the marketability of Units for sale within the Community and the impact on the ability of Owners to refinance and buyers of Units to secure financing, explained for both during the pendency of the Association Defect Claim and after its resolution, together with a prominent statement advising Owners if it is concluded that any such impact does exist, (g) a prominent statement advising Owners that the existence of the Association Defect Claim may represent a material matter requiring legal disclosure to lenders, purchasers, auditors and/or other appropriate parties, and (h) providing proper notice for a meeting of Owners to be held not sooner than thirty (30) days or longer than sixty (60) days after such mailing, at which Owners shall discuss and vote on the Association Defect Claim as described in Section 18.5.4.2 below.

18.5.4.2 The Association Defect Claim must be approved and authorized at the meeting of Owners held pursuant to the notice described in Section 18.5.4.1 above by the written affirmative vote, by ballot or by proxy directing the specific vote of the Owner (but not by proxy granting discretion to the proxy holder as to how to vote), of Owners holding at least sixty-seven percent (67%) of the total voting rights in the Association (the "Association Consensus Vote").

18.5.4.3 The Association Consensus Vote must be obtained within sixty (60) days after the mailing to Owners; otherwise the Owners shall be deemed to have declined to provide their informed consent to the Association Consensus Vote.

18.5.5 Limit on Director and Officer Liability. No director or officer of the Association shall be liable to any person or entity for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for an Association Defect Claim if the following criteria are satisfied: (i) the director or officer was acting within the scope of his or her duties; (ii) the director or officer was not acting in bad faith; and (iii) the act or omission was not willful, wanton or grossly negligent.

18.5.6 Association Approval. Only after an Association Consensus Vote is successfully secured by the Association in the manner described in this Section 18.5 may the Association deliver a formal notice of the Association Defect Claim to each Respondent in the manner described in Section 18.5.1 above.

Section 18.6

Mediation.

1861 Following the formal written notice discussed in Section 18.5.1 above, the Claimant shall have thirty (30) days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the County in which the Community is located, unless otherwise agreed by the Parties. A mediator shall be selected no later than forty-five (45) days after the Claimant has given notice to the Respondent of its submittal to mediation and, if the Association is a Party and the Parties are unable to agree on a mediator, one shall be chosen by the American Arbitration Association. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

1862 If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

1863 If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to submit the Claim to binding arbitration as provided below.

1864 Any settlement of the Claim through mediation or through negotiation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the Procedures set forth in this Article. In such event, the Party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney's fees and court costs.

Section 18.7 Final and Binding Arbitration. Upon termination of mediation as provided in Section 18.6.3 above, if Claimant desires to pursue the Claim, Claimant shall have forty-five (45) days to deliver an arbitration notice to Respondent(s) and to initiate final, binding arbitration of the Claim under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. If any Claim is not timely submitted to arbitration, or if Claimant fails to appear for the arbitration proceeding, then the Claim shall be deemed waived and abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of any such Claim. The following arbitration procedures shall be applicable to each Claim that is arbitrated:

18.7.1 The arbitrator must be a person qualified, with applicable industry experience and/or legal experience, to consider and resolve the applicable Claim.

18.7.2 No person shall serve as the arbitrator where that person has any financial or personal interest in the result of the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Arbitrator Disclosure"). If any Party objects to the service of any arbitrator with fourteen (14) days after receipt of the Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner in which that arbitrator was selected.

18.7.3 The arbitration shall be presided over by a single arbitrator. Notwithstanding any other provision of this Section 18.7, if the Parties are unable to agree upon an arbitrator to resolve a Claim, they shall request from the AAA a list of qualified arbitrators. Promptly following their receipt of the list, the Parties shall meet in person or by telephone and shall follow the AAA procedures of ranking and striking names so as to determine the person who shall serve as the arbitrator. The cost of the list shall be split equally by the Parties.

18.7.4 The arbitrator shall hold at least one hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in the County in which the Community is located unless otherwise agreed by the Parties.

18.7.5 Discovery shall be limited to document disclosures as provided by the AAA, and no other discovery shall be conducted in the absence of an order of the arbitrator or express written agreement among all the Parties. The manner, timing and extent of any discovery shall be committed to the arbitrator's sound discretion, provided that under no circumstances shall the arbitrator allow more depositions or interrogatories than permitted by the presumptive limitations set forth in Federal Rules of Civil Procedure 30(a)(2)(A) and 33(a). The arbitrator shall levy appropriate sanctions, including an award of reasonable attorneys' fees, against any Party that fails to cooperate in good faith in discovery agreed to by the Parties or ordered by the arbitrator pursuant to this Section.

18.7.6 The arbitrator may, in his or her reasonable discretion, permit the Parties to submit pre-hearing briefs, post-hearings briefs and/or proposed findings of fact and conclusions of law. The arbitrator shall also have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants, if applicable.

18.7.7 The Parties agree that where any Claim, dispute or other controversy existing between them is submitted to arbitration, and any other Party may have liability with respect thereto, all Parties agree that the third parties may be joined as additional Parties in the arbitration, or if a separate arbitration exists or is separately initiated, to the consolidation of all such arbitrations. By way of example only and not by limitation, in the event of an Alleged Defect, Declarant would have the right to join in the arbitration any design professional, contractor, subcontractor or other third party whose acts or omissions allegedly caused or contributed to the damages alleged by the Claimant.

18.7.8 The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered promptly after the close of the hearing and no later than thirty (30) days from the close of the hearing, unless otherwise agreed by the Parties. The arbitration award shall be in writing and shall be signed by the arbitrator.

18.7.9 Any issue about whether a Claim is covered by this Article shall be determined by the arbitrator. Notwithstanding anything to the contrary, if a Party contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party.

18.7.10 The arbitrator shall apply the substantive law of Colorado and may award injunctive relief or any other remedy available in Colorado.

18.7.11 The award rendered by the arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in the County in which the Community is located in accordance with applicable law and judgment obtained thereon, and execution may issue. If any Party objects to entry of judgment upon any arbitration award entered pursuant to this Section 18.7, the Party that substantially prevails in any ensuing dispute concerning the entry of judgment upon such award shall be entitled to all reasonable attorneys' fees and costs incurred in the enforcement of the award.

18.7.12 The fees and costs of the arbitration, including without limitation the arbitrator and its consultants, shall be borne equally by the Parties.

18.7.13 Except as may be required by law or for confirmation of an arbitration award, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration or arbitration award without the prior written consent of all Parties to the Claim.

Section 18.8 Amendments to this Article; Standing to Enforce. Notwithstanding anything to the contrary contained in this Declaration or any of the Association Documents, the terms and provisions of this Article 18 inure to the benefit of Declarant, are enforceable by Declarant, and shall not ever be amended or nullified without the written consent of Declarant and without regard to whether Declarant owns any portion of the Community at the time of such amendment. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 18 ARE A SIGNIFICANT INDUCEMENT TO THE DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. Any amendment made without the requisite written consent of Declarant shall be null and void and shall have no effect. Further, all employees and agents of Declarant and all contractors, subcontractors, architects, engineers and other development professionals associated with the design or construction of any portion of the Community (each a "Third

Party Beneficiary”) are third-party beneficiaries of this Article and of the terms and conditions contained herein, including without limitation the requirement for binding arbitration, and any Third Party Beneficiary has standing to enforce the terms and conditions of this Article, including without limitation to compel binding arbitration.

Section 18.9 Reformation. The Parties agree that reliance upon courts of law and equity can add significant costs and delays to the process of resolving Claims. Accordingly, they recognize that an essential part of the Declaration is this Article and its agreement between and among the Parties to provide for the submission of all Claims to informal negotiation and correction efforts, mediation and final and binding arbitration. Therefore, if any court or arbitrator concludes that any provision of these Procedures is void, voidable or otherwise unenforceable, the Parties understand and agree that the court or arbitrator shall reform each such provision to render it enforceable, but only to the extent absolutely necessary to render the provision enforceable and only in view of the Parties' express desire that the merits of all Claims be resolved only by arbitration and, to the greatest extent permitted by law, in accordance with the principles, limitations and procedures set forth in these Procedures.

Section 18.10 Notices; Computation of Time. All notices given or required by these Procedures shall be in writing and shall be deemed given and received (a) when hand delivered to the intended recipient by whatever means; (b) three business days after the same is deposited in the United States mail, with adequate postage prepaid and sent by certified mail, return receipt requested, or (c) one business day after the same is deposited with an overnight courier service of national reputation, with the delivery charges prepaid. In the event any date called for herein falls on a Saturday, Sunday or legal holiday for which U.S. mail service is not provided, such date shall be extended to the next business day following such Saturday, Sunday or holiday.

ARTICLE 19 MISCELLANEOUS

Section 19.1 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under applicable law. Any provision in this Declaration in conflict with the requirements of applicable law shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with applicable law.

Section 19.2 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the provisions of this Declaration and the termination provisions of applicable law.

Section 19.3 Amendment. The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon approval of Owners representing sixty- seven percent (67%) or more of the total voting interest in the Association at a meeting of the Owners called for that purpose or by written consent; provided, however, any

proposed amendment to this Declaration which affects any right of Declarant shall require the prior written approval of Declarant, in addition to the approval requirements otherwise set forth herein, including, without limitation, in the manner provided in Section 18.8 above; and provided further that any proposed amendment during the period of Declarant Control shall require the consent of the Town of Basalt, which approval will not be unreasonably withheld. In addition, a majority of the voting Directors of the Executive Board may make, without the approval of the Owners, changes to any Association Documents to the extent necessary to correct a factual error.

Section 19.4 Unilateral Amendment Rights Reserved by Declarant. Notwithstanding any provision in this Declaration to the contrary and upon approval of the Town of Basalt, which shall not be unreasonably withheld, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration to the fullest extent permitted under applicable law including, without limitation, to correct clerical, typographical or technical errors, or to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association.

Section 19.5 Recording of Amendments. Any amendment to this Declaration must be executed by the President of the Association and recorded in the Office of the Clerk and Recorder of the County of Eagle, Colorado, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment or that no approval of the Owners was necessary.

Section 19.6 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges, and other provisions contained in this Declaration, the Articles, the Bylaws, and the rules and regulations of the Association, all as amended, shall be by any proceeding pursuant to Article 18 of this Declaration to the extent required by the terms of this Declaration, or otherwise at law or in equity, against any person or persons, including the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain, and/or prosecute any such proceedings, and the Association shall further have the right (after notice and an opportunity to be heard) to levy and collect fines for the violation of any provision of the aforesaid documents. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded under Article 18 or by the Court, as applicable.

Section 19.7 Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 19.8 Conflict of Provisions. In case of any conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In case of any conflict between the Articles and the Bylaws, the Articles shall control.

Section 19.9 Nonwaiver. Failure by Declarant, the Association, or any Owner or First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 19.10 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular and the use of any gender shall include all genders.

Section 19.11 Captions. The captions to the Articles and Sections are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 19.12 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Executed as of the 29 day of July, 2022.

BASALT RIVER PARK LLC, a Colorado limited liability company

By: **BRP MANAGER LLC**, a Colorado limited liability company, its manager

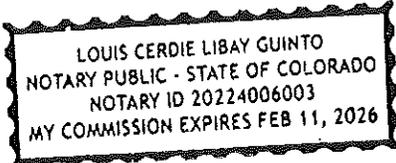
By: 
Timothy W. Belinski, Manager

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 29 day of July, 2022, by Timothy Belinski as Manager of BRP Manager LLC a Colorado limited liability company, manager of Basalt River Park LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires 02/11/26



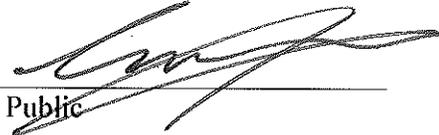

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOT 1, BASALT RIVER PARK SUBDIVISION, ACCORDING TO THE FINAL PLAT THEREOF RECORDED NOVEMBER 19, 2020 AS RECEPTION NO. 202022136 AND FIRST SUPPLEMENTAL PLAT OF PARCEL B, BASALT RIVER PARK RECORDED SEPTEMBER 7, 2021 AS RECEPTION NO. 202120248 AND SECOND SUPPLEMENTAL PLAT RECORDED MARCH 3, 2022 AS RECEPTION NO. 20220362 AND THIRD SUPPLEMENTAL PLAT RECORDED MARCH 29, 2022 AS RECEPTION NO. 202205576, COUNTY OF EAGLE, STATE OF COLORADO.