

**FIRST AMENDED
DECLARATION
OF
COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
OF
HAMLET AT FOUNTAIN GREENS
ASSOCIATION**

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RECITALS

THIS INSTRUMENT is made and adopted as of February 15, 2017, as the First Amended Declaration of Covenants, Conditions, and Restrictions for Hamlet at Fountain Greens Association, Inc. ("Association"), and is based on the following recitals:

WITNESSETH:

WHEREAS, the original Declaration of Covenants, Conditions and Restrictions for Hamlet at Fountain Greens Association, ("Original Declaration") was recorded on December 6, 2002, in Book 5223 at Page 29, Reception No. 2091852, in the records of the Mesa County Clerk and Recorder; and

WHEREAS, the First Amendment to the Declaration was recorded on June 1, 2005, in Book 3908 at Page 965, Reception No. 2256659 in the records of the Mesa County Clerk and Recorder, and the Second Amendment to the Declaration was also recorded on June 1, 2005 in Book 3908 at Page 966, Reception No. 2556660; and

WHEREAS, at the time the original Declaration was recorded, it made numerous references to the original developer of the subdivision as the "Declarant." Now that the subdivision is fully developed, the references to the "Declarant" no longer apply. Also, due to changes in the law since the Original Declaration and Amendments to the Declaration were recorded, certain sections of the Declaration, as amended, do not comply the Colorado Common Interest Ownership Act ("Act" or "CCIOA"), which

regulates the operation and governance of homeowners associations in the State of Colorado; and

WHEREAS, the Owners of at least two thirds (2/3) of the Lots within the Association have voted to revoke the Original Declaration and amendments thereto and readopt and restate it as provided for herein and to bring such Declaration into compliance with CCIOA.

NOW THEREFORE, based on the vote of the requisite number of Owners necessary to amend the Declaration, the Declaration of Covenants, Conditions and Restrictions for the Association and amendments thereto are hereby revoked in their entirety and made null and void and the following is substituted in their place as the First Amended Declaration of Covenants, Conditions and Restrictions for Hamlet at Fountain Greens Association, Inc.

ARTICLE ONE: DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 ACC means an architectural control committee of the Association appointed by the Board.

1.2 Act means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq. as it may be amended from time to time.

1.3 Agencies means and collectively refers to the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD/FHA), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

1.4 Articles means the Articles of Incorporation of the Association as they may be amended from time to time.

1.5 Assessments means (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, and (d) Fines levied pursuant to the Declaration and other governing documents of the Association.

1.6 Assessment Lien or Lien means the statutory lien on a Lot for any Assessment levied against that Lot together with all Costs of Enforcement as herein defined. All Costs of Enforcement are enforceable as Assessments.

If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

The recording of the original Declaration constitutes record notice and perfection of the lien. No further recordation or claim of lien for the Assessment is required.

1.7 Association means HAMLET AT FOUNTAIN GREENS ASSOCIATION, a Colorado Corporation, not for profit, as defined under C.R.S. § 38-33.3-103(3) and organized under § 38-33.3-301 of the Act.

1.8 Board of Directors or Board means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association as therein provided. The Board of Directors is the governing body of the Association and shall act on behalf of the Association.

1.9 Building means any building improvement constructed on the common areas by the Association.

1.10 Bylaws means the Bylaws which are adopted by the Board of Directors for the regulation and management of the Association, as they may be amended from time to time.

1.11 Common Area means all the real property and improvements thereon, if any, in which the Association owns an interest for the common use and enjoyment of all the Owners on a non-exclusive basis and any Limited Common Areas for the common use and enjoyment of fewer than all of the Owners. Such interest may include, without limitation, estates in fee, for terms of years, or easements.

In the event that additional real property is made subject to this Declaration in the manner provided in ARTICLE TWELVE hereof, "Common Areas" shall, from the date such additional real property is made subject to this Declaration, include any parts thereof designated as "Common Areas" (including all improvements thereon) in such Supplemental Declarations.

1.12 Common Expense Assessments means those assessments defined in Paragraph 6.2 hereof.

1.13 Common Expense Assessments Liability means those assessment defined in Paragraph 6.2 hereof.

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

1.15 Common Interest Community means Hamlet at Fountain Greens, which is a planned community as defined in CRS § 38-33.3-103(8) and (22) and located in Mesa County.

1.16 Costs of Enforcement means all fees, late charges, interest, expenses, including receiver's fees, and reasonable attorney's fees and costs incurred by the Association (a) in connection with the collection of the Assessments and Fines, or (b) in connection with the enforcement of the terms, conditions and obligation of the Project Documents.

1.17 Declaration means DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF HAMLET AT FOUNTAIN GREENS ASSOCIATION, as may be amended from time to time, together with any and all Supplemental Declarations that may be

recorded from time to time pursuant to the provisions of ARTICLE TWELVE hereof, which may create Sub-Associations hereunder and also including but not limited to plats and maps.

1.18 Eligible Mortgagee means a holder, insurer or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address and the legal description of property in which it is interested, requesting that the Association notify them on any proposed action requiring the consent of a specified percentage of Eligible Mortgagees.

1.19 First Mortgagee means any Person which owns, holds insures, or is a governmental guarantor of a Security Interest as herein defined, which is a First Security Interest encumbering a Lot within the Property. A First Mortgagee shall also include the holder of executory land sales contracts wherein the Administrator of Veterans Affairs (Veterans Administration) is the Seller, whether such contract is recorded or not.

1.20 First Lien means a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments.)

1.21 Governing Documents means the Act, the Declaration, the Articles, Bylaws, Policies, Rules and Regulations and any other documents that regulate or govern the Association.

1.22 Guest means (a) any person who resides with an Owner within the Property; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Residence within the Property, and any members of his or her household, invitee or cohabitant of any such person; or (d) a contract purchaser.

1.23 Lot shall mean and refer to that part of the Property owned in fee simple by the Owners thereof, together with any improvements and Residences appurtenant thereto, including single family Residences, duplexes and four-plexes, as shown on the Plat. The boundaries of each Lot, and an identifying number for each Lot, are reflected on the maps and plats as described in the plat books of the Mesa County Clerk and Recorder. The total number of Lots within the Association is 67.

1.24 Managing Agent means any one or more persons employed by the Association who is engaged to perform any of the duties or functions of the Association.

1.25 Member means and refers to a person or entity which is a member of the Association by virtue of his/her/its ownership of a Lot within the Common Interest Community.

1.26 Notice and Hearing means a written notice and an opportunity for a hearing before the board of Directors in the manner provided in the governing documents.

1.27 Owner means the owner of record of the fee simple title to any Lot which is subject to this Declaration, whether one of more persons or entities, excluding, however, those having an interest merely as security for the performance of any obligation.

1.28 Person means a natural person, a corporation, a partnership, an association, a trustee, a little liability company, a joint venture, or any other entity recognized as being capable of owning real property under Colorado law.

1.29 Plat means and refers to that Plat of the Common Interest Community, recorded in the records of the Mesa County Clerk and Recorder in Book 19 at Page 181-184, which legal description thereof and any recorded easements and licenses appurtenant thereto are incorporated herein by reference.

1.30 Property means and refers to all of the real estate situate within the area described on the maps and Plat for the Common Interest Community as described in the records of the Mesa County Clerk and Recorder.

1.31 Residence means the single or multifamily dwelling constructed on any one Lot used for residential purposes.

1.32 Rules means the Rules and Regulations adopted by the Board of Directors for the regulation and management of the Association.

1.33 Security Interest means an interest in real estate or personal property created by contract or conveyance which secures payment of performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

1.34 Special Assessment means assessments charged to all Owners other than a regular Assessment. It shall also include any assessment charged against the Owner or Owners of an individual Lot which is not charged equally against the Owners of all Lots. Such Special Assessment may include charges directly attributable to such Owner due to corrective action performed by the Association pursuant to the provisions of the governing documents, reasonable fines and/or penalties and any other charges assessed against such Owner.

1.35 VA and/or FHA Approval means that the Property has been approved by the Veterans Administration and/or the Federal Housing Administration so that such agencies will insure or guarantee loans made upon the Residences within the Property.

ARTICLE TWO: COMPLIANCE

2.1 Compliance With Provisions of Declarations, Articles and Bylaws of the Association. Each Owner shall comply strictly with, and shall cause each of his or her Guests to comply strictly with, all of the provisions of this Declaration and the Articles and Bylaws of the Association, and the decisions, rules, regulations and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Each Owner shall be responsible for the compliance by his or her Guests.

Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit and reasonable attorney's fees, by the Association on behalf of the Owners, or, in a proper case, by any aggrieved Owner.

ARTICLE THREE: VARIOUS RIGHTS AND EASEMENTS

3.1 Owner's Rights in the Common Areas. Every Owner and such Owner's Guests shall have the right and easement of use and enjoyment in and to the Common Areas, subject to the following rights of the - Association:

(a) To borrow money to improve the Common Areas and to mortgage said Common Areas as security for any such loan; provided, however, that the Association may not subject any portion of the Common Areas to a security interest unless such is approved by Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty seven percent (67%) of the votes in the Association as more fully set forth in § 38-33.3-312 of the Act.

(b) To convey or dedicate all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners entitled to cast at least sixty-seven percent (67%) of the votes in the Association as more fully set forth in §38-33.3-312 of the Act.

The granting of permits, licenses and easements shall not be deemed a conveyance or encumbrance within the meaning of this Article as more fully set forth in § 38-33.3-312 of the Act.

(c) To promulgate and adopt Rules and Regulations with which each Owner and their Guests shall strictly comply.

(d) To suspend the voting rights of a Member for any period during which any Assessment remains unpaid and, for a period not to exceed sixty days, for any infraction of the Declaration, Bylaws or Rules and Regulations.

(e) To take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

(f) To enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of Common Areas or other property by Owners and Guests for any purpose the Board may deem to be useful, beneficial or otherwise appropriate.

(g) To close or limit the use of the Common Areas temporarily while maintaining, repairing or making replacements in the Common Areas, or permanently if approved by Members to which at least sixty-seven percent (67%) of the votes in the Association are allocated, as more fully set forth in § 38-33.3-312 of the Act; unless required to be open by the City of Grand Junction.

(h) To make such use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.

(i) The rights granted to the board of Directors in Paragraph 4.3 hereof.

3.2 Delegation of Use. Any Owner may delegate his or her right of enjoyment to the Common Areas and facilities to their Guests.

3.3 Easements for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. The easement shall extend for whatever period the encroachment exists.

Such easements for encroachments shall not be considered to be encumbrances either on the Common Areas or on a Lot. Encroachments referred to herein include, but are not limited to, encroachments caused by survey errors.

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

3.5 Utility Easements. The Board of Directors has the right to grant permits, licenses and easements over the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property.

3.6 Owner's Easement for Access. Each Owner shall have a nonexclusive easement for access between his or her Lot and the streets within the Property. There shall be no restrictions upon any Owner's right of ingress and egress to or from such Owner's Lot. Such easement shall extend for whatever period of time the need for access shall exist.

3.7 Easements Deemed Appurtenant. The easements, uses and rights herein created for an Owner shall be perpetual and appurtenant to the Lot owned by such Owner. All Conveyances or any other instruments affecting title to a Lot shall be deemed to grant and reserve the easements, uses and rights as provided for herein, as though set forth in said document in full, even though no specific reference to such easements, uses or rights appear in such conveyance.

ARTICLE FOUR: THE ASSOCIATION

4.1 Name. The name of the Association is HAMLET AT FOUNTAIN GREENS ASSOCIATION.

4.2 Purposes and Powers. The Association, through its Board of Directors, shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of all of the Owners and the residents of the Association. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all the power necessary or desirable to effectuate such purposes.

The Board of Directors shall have all the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Association.

4.3 Board of Directors. The Affairs of the Association shall be managed by a Board of Directors which may, by resolution, delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws and under Colorado law, provided no such delegation shall relieve the Board of final responsibility.

4.4 Articles, Bylaws and Rules and Regulations and Policies. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation, Bylaws, and Rules and Regulations and Policies of the Association. In the event the Articles, Bylaws, Rules and Regulations or Policies conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

4.5 Membership. Members of the Association shall be every record owner of a -Lot subject to this Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person holds interest in any Lot, all such persons shall be Members.

4.6 Voting Rights. The Association shall have one class of voting membership. Owners of a Lot shall be entitled to one vote for each Lot owned.

The vote for such Lot, the ownership of which is held by more than one Owner, may be exercised by any one of them, unless an objection or protest by any other holder of an interest of the Lot is made prior to the completion of the vote, in which case the vote for such Lot shall be exercised, as the persons holding such interest shall determine between themselves. Should the joint owners of a Lot be unable, within a reasonable time, to agree upon how they will vote any issue, no vote for such Lot shall be counted nor shall such Lot be counted for determining a quorum, and their right to vote shall be lost.

Except as provided above, the total number of votes which may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association.

4.7 Election by Owners. The Owners shall elect a board of Directors all of whom shall be Members. The Board shall elect the officers who shall also be Members. The Owners elected to the board shall take office upon election.

4.8 Budget.

(a) The Board of Directors shall cause to be prepared, at least sixty days prior to the commencement of each calendar year, a Budget for such calendar year. Within thirty days after the adoption of any Budget by the Board, the board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to each Owner and shall set a date for meeting of the Owners to consider ratification of the Budget not less than fourteen days nor more than sixty days after delivery of the summary.

Unless at that meeting Owners to which at least ninety-eight percent (98%) of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. In the event the Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget adopted by the Board of Directors.

(b) If the Board of Directors deems it necessary or advisable to amend a Budget that has been ratified by the Owners pursuant to Paragraph 4.10 (a) above, the board may adopt a proposed amendment to the budget, deliver a summary of the proposed amendment to all Owners and set a date for meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen days, nor more than sixty days, after the delivery of the summary of the proposed amendment.

Unless at that meeting Owners to which at least sixty-seven percent (67%) if the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present.

4.9 Association Agreements. Any agreement for professional management of the Property or any contract purporting to bind the Association may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty days' written notice.

4.10 Indemnification. Each Officer, Director, and committee member of the Association shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of him or her being or having been an Officer, Director, or committee member of the Association, or any settlements thereof, whether or not he or she is an Officer, Director, or committee member of the Association at the time such expenses are incurred, to the full extent permitted by Colorado law. The power to collect money through liens shall be available to pay for this indemnification.

4.11 Certain Rights and Obligations of the Association.

(a) **Attorney-in-Fact.** This Declaration does hereby make mandatory the irrevocable appointment of an Attorney-in-Fact to deal with the Property upon its damage, destruction, condemnation and obsolescence.

The Board of Directors is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner in the Common Areas so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Property upon its destruction, condemnation or obsolescence as hereinafter provided.

The acceptance by any person of any interest in any Lot shall constitute an appointment of the Board of Directors as attorney-in-fact as provided above and hereinafter. The Board of Directors shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Property and to perform all of the duties required of it.

(b) **Contracts, Easements and Other Agreements.** Subject to the rights and requirements the City of Grand Junction, the Board of Directors shall have the right to enter into,

grant, perform, enforce, cancel and vacate: contracts, easements, licenses, leases, agreements, and/or rights of way, for the use by Owners, their Guests, and other persons, concerning the Common Areas.

Any of such contracts, licenses, leases, agreements, easements and/or rights of way shall be upon such terms and conditions as may be agreed to from time to time by the Board of Directors, without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagees.

(c) Other Association Functions. The Association may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Members on a self-supporting Special Assessment of Common Expense Assessment basis.

(d) Implied Rights. The Board of Directors shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

ARTICLE FIVE: COMMON AREA

5.1 Conveyance of Common Area. Certain parcels within the Property have been conveyed to the Association as Common Area for use by all of the Owners subject to the limitations set forth in this Declaration.

5.2 Maintenance. The Association shall maintain and keep the Common Area, Park, Open Space and pressurized irrigation system in good repair, and the cost of such maintenance shall be funded with assessments as provided in ARTICLE SIX. This maintenance shall include, but shall not be limited to, upkeep, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements on the Common Areas. The cost for such maintenance and upkeep of the Common Area irrigation systems and Open Space shall be funded by the Assessments as provided in ARTICLE SIX.

5.3 Private Streets.

5.3.1 Maintenance. The Association shall maintain and keep the Private Streets in good repair, and the cost of such maintenance shall be funded with assessments, as provided in Article Six. This maintenance shall include, but shall not be limited to, upkeep, repair, and replacement of the Private Streets and street surfaces, but shall not include utilities and installations within the streets. With respect to such maintenance, the Association shall contract for the performance of such maintenance functions, as set forth on a maintenance schedule established by the Board. Such Contract may be with any person or entity, including the City of Grand Junction.

5.3.2 Additional Provisions (Private Roads):

5.3.2.1 A turnaround, cul-de-sac or other applicable and acceptable improvement shall be required, pursuant to adopted street standards in effect at the time of the

development by the City of Grand Junction. A “Y” or “T” turnaround may be acceptable if designed according to Fire Department access requirements.

5.3.2.2 Street cross sections shall conform to the adopted streets standards. Streets with a minimum 20-foot wide pavement section may be allowed, if on-street parking is provided. Streets with no on-street parking shall be signed in accordance with the MUTCD. If required by the City, the Association shall execute an irrevocable covenant running with the land granting the City or County the right and power to enter the street for the purpose of enforcing the parking restriction.

5.3.2.3 If off-street parking is utilized, it shall conform to the following:

- (i) It shall be provided at a rate of one space per two Residences plus at least four on-site parking spaces per Residence. Two of these spaces may be in a garage or carport.
- (ii) Off-street parking shall be located within 200 feet of any unit the private street serves.
- (iii) Off-street parking shall be included within the same tract as the private street and shall be maintained by the homeowner’s association.
- (iv) The Association shall be responsible for the enforcement of the foregoing conditions regarding utilization of off-street parking.

5.3.2.4 The finished surface of the private street may be composed of variable surfaces such as brick, interlocking pavers, cobblestones, or other similar finishes, designed by a Professional Engineer and as approved by the City Engineer.

5.3.2.5 Any and all private street(s) shall include concrete curb and gutter construction as required by the City Standard Details.

5.3.2.6 A pedestrian trail system may be substituted for an attached walk if adjacent properties could easily access the trail and the trail system links to other transportation and recreational trails or facilities and outside of the immediate development.

5.3.2.7 All entrances to garages shall be set back from the private street or pedestrian trail a minimum distance of 20 feet.

5.3.2.8 Utility and/or multipurpose easements may be required for a portion of, or the full width adjacent to the street section when necessary.

5.3.2.9 Hamlet at Fountain Greens Association has been established with the Secretary of State’s Office prior to the recordation of a final plat that contains a private street(s).

5.3.2.10 The Association shall establish a reserve fund for the maintenance of private streets in accordance with a maintenance schedule established by the Board. -

5.3.2.11 If required by the City, the Association shall be responsible to maintain a vegetation-free zone along the private street that is 20 feet in width (10' each side from the center of the street" and 13'-6" in height as measured from the paved surface of the street).

5.3.2.12 Each Lot accessed from a private street shall have landscaped areas of at least ten (10) feet in width between the street and the Residence except for the driveway to the garage.

5.3.2.13 An entrance design feature such as decorative paving, special signage, or other conspicuous improvement shall be incorporated into the final design of the private street such that the design clearly distinguishes the private street from the public street.

ARTICLE SIX: ASSESSMENTS

6.1 Obligation. Each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special Assessments, (c) Fines, (d) Individual Assessments, and (e) Costs of Enforcement, which shall be a continuing lien upon the Lot against which each such Assessment is levied.

The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without notice or demand and without set off or deduction. All Owners of each Lot shall be jointly and personally liable to the Association for the payment of all Assessment and Costs of Enforcement attributable to their Lot.

The personal obligation for delinquent assessment shall not pass to such Owner's successors in title unless expressly assumed by them.

6.2 Purpose of the Assessments. The Common Expense Assessment shall be used exclusively for the purpose of promoting the health, safety and welfare of the resident of the Property and the Members of the Association. Such purposes shall include but not be limited to the routine repair, and maintenance of the exterior and roofs of all Residences as provided for herein, but not including such repairs or maintenance that would otherwise be paid through an Owner's insurance policy on his or her Residence; and all improvements repairs and maintenance of the Common Areas, including the Private Streets, pressurized irrigation system and delivery of irrigation water to each Lot on the Property. The Owners of each Lot are required to pay for the domestic water supplied to such Lot.

Such Assessment shall include the establishment and maintenance of a reserve fund for routine repairs and maintenance of the exteriors and roofs of all Residences as required herein and for the maintenance, reconstruction, and repair of the Common Areas on a periodic basis.

6.3 Special Assessments. In addition to the other Assessments authorized herein, the Board of Directors, subject to the limitations set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense to include but not be limited to the cost of any construction, reconstruction, improvement, repair or replacement of a capital

improvement upon the Common Areas, including the private streets, fixtures, and personal property relating thereto, or for the funding of any operation deficit incurred by the Association, provided that any such assessment shall have the approval of Owners to whom at least sixty-seven percent of the votes in the Association are allocated, who are voting in person or by proxy at a meeting duly called for this purpose.

Any such Special Assessment shall be levied against each Lot in accordance with that Lot's Common Expense Liability determined in accordance herewith.

Written notice of any meeting called for the purpose of making a Special Assessment shall be sent to all Owners not less than fifteen days nor more than thirty days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies to which at least sixty percent of the votes in the Association are allocated shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

If the Property has been or is to be approved by the Federal Housing Administration and/or Veterans Administration, then all Special Assessments for capital improvements in addition to the approval of the Owners as required above will require the written consent of the Veterans Administration and/or the Federal Housing Administration.

6.4 Fines. The Board of Directors of the Association shall have the right to levy a Fine against an Owner or Owners for each violation of this Declaration, the Bylaws, the Articles and the Rules and Regulations of the Association. No such Fine shall be levied until such Owner or Owners have been given a Notice and Hearing as provided for in the Bylaws or Policies of the Association in accordance with Colorado law.

Fines may be levied in a reasonable amount as determined from time to time by the board of Directors in its discretion and uniformly applied. Fines shall be collected as part of the Costs of Enforcement.

6.5 Individual Assessments. The Board of Directors shall have the right to levy any Owner or Owners amounts as provided for by this Declaration, to include but not delimited to, charges levied under Paragraphs 6.3, 6.4, 6.5 and 6.9 hereof. No Individual Assessment shall be levied until the Owner or Owners to be charged has been given a Notice and opportunity for a Hearing as provided for in the Bylaws or Policies of the Association and in accordance with Colorado law. Individual Assessments shall be collected as part of the Costs of Enforcement.

6.6 Levy of Assessments. Common Expense Assessments shall be levied on all Lots based upon a budget of the Association's cash requirements to Accomplish the purposes set forth in Paragraph 6.2 hereof. The Common Expense Liability shall be prorated among the Lots.

The omission or failure of the Board of Directors to levy the Common Expense Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay in the future.

Special Assessments shall be levied in accordance with Paragraph 6.3 hereof.

Fines and Individual Assessments may be levied at any time as required in accordance with the governing documents and Colorado law.

No Owner may waive or otherwise escape liability for the Common Expense Assessment provided for herein by the non-use of the Common Areas or the abandonment of his or her Lot.

6.7 Due Date. Fines and Individual Assessments shall be due and payable as established by the Board of Directors.

Common Expense Assessments shall be levied on an annual basis and shall be due and payable in monthly installments, provided that the first Assessment levied shall be adjusted to reflect the time remaining in the first Association's fiscal year. Any Owner purchasing a Lot between annual due dates shall pay a prorated share.

Special Assessments shall be due and payable as established by the Board but may be payable on an installment basis as determined by the Board.

Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and date such Assessment is due.

6.8 Remedies for Nonpayment of Assessment. If any Assessment (to include Costs of Enforcement) is not fully paid within thirty (30) days after the same becomes due and payable, then: the payment is considered past due and delinquent; and

(a) A late fee as determined by the Board will be charged . Interest shall also accrue at the default rate set by the Board of Directors on all amounts past due and in default accruing from 30 days after the due date until the date of payment;

(b) The Board may accelerate and declare immediately due and payable all unpaid installments of the Assessment otherwise due during the fiscal year during which such default occurred;

(c) The Board may bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due, as provided for under the governing documents and Colorado law; and

(d) The Board may proceed to foreclose its lien against any Lot pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages, as provided for under the governing documents and Colorado law.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing elective remedies or in any way waiving the Association's lien for the Assessments.

6.9 Assessment Lien. The Association is hereby granted an Assessment Lien against each Lot for any Assessment levied by the Board of Directors, plus Costs of Enforcement, when the

Lot Owner fails to pay as required herein. All Costs of Enforcement incurred pursuant to this Declaration are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

The Association's lien on a Lot for Assessments shall be superior to all other liens and encumbrances except the following:

(a) 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; and

(b) Except as provided for under Colorado law, the lien of any loan evidenced by a first mortgage of record (including deed of trust) and any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not, except to the extent the Act grants priority for Assessments to the Association.

The Act does not affect the priority of mechanic's or materialmen's liens.

Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments under this Article is required. However, the Board of Directors may record a notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. The recordation cost thereof shall be considered a Cost of Enforcement.

Sale or transfer of any Lot shall not affect the lien for any Assessments except that sale or transfer of any Lot pursuant to foreclosure of any first mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall extinguish the Assessment Lien only to the extent provided by Colorado law. No such sale, deed in lieu of foreclosure, cancellation or forfeiture shall relieve any Owner from continuing personal liability for any Assessment thereafter becoming due, nor from the lien thereof.

Any First Mortgagee who acquires title to a Lot by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure will take the Lot free of any claims for unpaid Assessments and Costs of Enforcement against that Lot which may have accrued prior to the time such First Mortgagee acquires title to the Lot, except to the extent the Act grants lien priority for Assessments of the Association.

In any action by the Association to collect Assessments and Costs of Enforcement or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Common Expense Assessments and Costs of Enforcement. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust.

The Assessment Lien hereby created shall also be a lien upon all of the rents and profits of the encumbered Lot; provided, however, the lien shall be subject and subordinate to the

rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust. Without prejudice to any other right or remedy, the Association may exercise its lien rights to rents and profits by delivering a Notice of Exercise to the occupant or any payor of rents and profits, and thereafter shall be entitled to collect all such rents and profits to the extent of any delinquency.

The Association's lien on a Lot for Assessment and Costs of Enforcement shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment lien.

6.10 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for its expenses and any prepayment of or provision for reserves shall be retained by the Association as unallocated reserves and need not be credited the Owners in proportion to their Allocated Interests or credited to them to reduce their future Assessments.

6.11 Reserve Fund. The Association may establish one or more reserve funds, which may be used for unforeseen expenditures or to purchase any additional equipment or services as the Board deems necessary or appropriate for maintenance, repair or replacement of the Common Elements or other areas for which the Association is responsible.

6.12 Certificate of Assessment Status. The Association shall furnish to an Owner or such Owner's First Mortgagee upon written request delivered personally or by certified mail, return receipt requested, to the Association's Registered Agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot.

The statement shall be furnished within fourteen business days after receipt of the request and is binding upon the Association, the Board of Directors, and every Owner. If no statement is timely furnished to the Owner or First Mortgagee, then the Association shall have no right to assert a priority lien upon the Lot for unpaid Assessments which were due as of the date of the request all as provided for under Colorado law.

6.13 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

ARTICLE SEVEN: RESTRICTIVE COVENANTS AND OBLIGATIONS

7.1 Use and Occupancy of the Residences. Each Owner shall be entitled to the exclusive ownership and possession of his or her Lot. No Lot within the Association shall be used for any purpose other than single-family residential purposes, as generally defined or for a home occupation so long as (a) such occupation is allowed by applicable Zoning Codes, (b) employs no outside employees, and (c) requires no signage or parking, provided, however, that uses described as "day care" or "child care" facilities (licensed or unlicensed) are expressly prohibited unless approved by the Board of Directors.

7.2 Use of the Common Areas. Each Owner and his or her Guests may use the appurtenant Common Areas in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Board of Directors may adopt Rules and Regulations governing the use of the Common Areas, but such Rules and Regulations shall be uniform and nondiscriminatory. Each Owner, by the acceptance of his or her deed or other instrument of conveyance or assignment and such Owner's Guests agree to be bound by any such adopted Rules and Regulations.

There shall be no obstruction of the Common Areas, nor shall anything be stored on any part of the Common Areas without the prior written consent of the Board of Directors. Nothing shall be altered, constructed on, or removed from the Common Areas except upon the prior written consent of the Board of Directors of the Association.

7.3 Pets Within The Property. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on any portion of the Property; except that dogs, cats or other household animals may be allowed so long as they are not raised, bred or maintained for any commercial purpose, and are not kept in such number or in such manner as to create a nuisance or inconvenience to any residents of the Association.

The Board of Directors shall have the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Paragraph. The Directors shall take such action or actions as it deems reasonable and necessary to correct the violation to include after Notice and Hearing, as required by the governing documents and Colorado law, directing permanent removal of the pet or pets from the Property.

Household pets shall not be allowed to run at large within the Association, but shall at all times be under the control of such pet's Owner and such pets shall not be allowed to litter the Common Areas. Dogs shall be on a leash while on the Common Areas.

Reimbursement for damages caused by such pets and costs incurred by the Association, to include attorney's fees and costs, in the removal of a pet or pets from the Association or incurred by the Association in cleanup after such pets may be levied after Notice and Hearing against such pet's Owner as an Individual Assessment in accordance the governing documents and Colorado law.

The provisions of Paragraph 12.2 notwithstanding, the Board of Directors may amend this Paragraph from time to time to better serve the needs of the Association without the consent of the Owners or First Mortgagees.

7.4 Nuisances. No noxious or offensive activity shall be carried on within the Association, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance. Decks, patios, and balconies shall not be used for storage. No activity shall be conducted in any part of the Association which is or might be unsafe or hazardous to any person. Owners shall regularly remove all rubbish, trash or garbage from their Lots and shall not be allowed to accumulate rubbish, trash or garbage thereon.

7.5 Vehicular Parking, Storage and Maintenance.

(a) Any house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, motor-driven cycle, truck (larger than one ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may not be parked or stored on or within the Association unless such parking or storage is done wholly within the enclosed garage located in a Residence. Any such vehicle may be parked as a temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Property which are necessary for construction or for the maintenance of the Common Area, Lots, or any improvements located thereon.

(b) Except as herein provided, no abandoned or inoperable automobiles or vehicle of any kind shall be stored or parked on or within the Property. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle which has not been driven under its own propulsion for a period of two (2) weeks or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not constitute abandoned or inoperable vehicles. In the event the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner thereof (if such owner thereof can be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within 72 hours thereafter the Association shall have the right to remove the vehicle at the sole expense of the Owner thereof. Said expenses to be levied against the Owner of the vehicle as an Individual Assessment in accordance with Article 6.5 hereof.

(c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers, or boats may be performed or conducted on or within the Property, unless it is done within a 24-hour time period or within completely enclosed structure(s) which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restrictions shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle, together with those activities normally incident and necessary to such washing and polishing.

7.6 No Unsightliness. No activity shall be conducted in any part of the Association which is or might be unsafe, unsightly, unhealthy or hazardous to any person. No Owner shall modify,

alter, repair, decorate, redecorate, or improve the exterior of a Residence or Improvement thereon or any of the Common Areas without the express written approval of the ACC.

7.7 Prohibition of Certain Activities. Nothing shall be done or kept on any Lot or in the Common Areas or any party thereof which would result in the cancellation of the insurance on the Common Area or increase the rate of the insurance on the Common Area over what the Association, but for such activity, would pay, without the prior written consent of the Board of Directors.

Nothing shall be done or kept on any Lot or improvement thereon or in the Common Areas which would be in violation of any statute, ordinance, regulations, or other validly imposed requirement of any governmental body. No noxious, destructive or offensive activity shall be carried on any Lot or in the Common Areas, nor shall anything be done therein which may be or may become an annoyance or nuisance to others. No sound shall be emitted on any part of the Property which is unreasonably loud or annoying.

7.8 Antennas/Swamp Coolers.

(a) Except as may otherwise be permitted by the Architectural Control Committee, all antennae shall be installed inside any residence; provided, however, that satellite receivers may be installed on the exterior as allowed by state or federal law, and the placement is reviewed with the Architectural Control Committee.

(b) Swamp coolers shall be located below the ridgeline of the house and approved by the Architectural Control Committee.

7.9 Restrictions on Signs. Except as provided in C.R.S. § 38-33.3-106.5 relating to flags, patriotic and political signs, no signs or advertising of any nature shall be erected or maintained on any part of the Property without prior written consent of the Board of Directors. Owners may place one "For Rent" or "For Sale" sign of reasonable size and dignified form to identify the Property and the Lot therein. Limitation on size, placement and manner of display of flags and political signs shall be in compliance with such statute.

7.10 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any person or property within the Common Areas, or any building element which the association maintains such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees and costs, if necessary, may be collected by the Board of Directors from such Owner as an Individual Assessment against such Owner in accordance with Paragraph 6.5 hereof.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 7.10 shall be made by the Board of Directors and shall be final.

7.11 Lease of a Residence. With the exception of a First Mortgagee who has acquired title to a Residence by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure,

an Owner shall have the right to lease his or her Residence upon such terms and conditions as the Owner may feel advisable, subject to the following:

(a) An Owner may lease his or her Residence upon such terms or conditions as he or she may see fit so long as the term of the lease is for six months or more;

(b) Any lease or rental agreement is subject to the terms of this Declaration and the Bylaws, Article of Incorporation, Policies and the Rules and Regulations of the Association;

(c) The failure of the lessee or renter to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation, Policies or the Rules and Regulations of the Association shall constitute a default and such default shall be enforceable by either the Board of Directors of the lessor, or both of them;

(d) The Board of Directors shall be furnished with a copy of the lease or rental agreement upon its request.

7.12 No Temporary Structures. No structure of a temporary nature, such as a tent, garage, trailer house, barn, or the outbuilding or basement shall be used on any Residence at any time as a residence, either temporarily or permanently.

7.13 No Subdivision. No Lot may be re-subdivided.

7.14 No Dumping. No Lot shall be used or maintained as a dumping ground for rubbish or storage area for junk. Trash, garbage or other waste must be kept in sanitary containers. All equipment for the storage or disposal of refuse shall be kept in a clean and sanitary condition. No noxious or offensive activity shall be carried on in any Residence, nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, or a disturbance or annoyance to others, or which may constitute a health hazard.

7.15 Energy Efficient Measures. The Association shall not compose unreasonable restrictions on the use of any energy efficient measure or electric vehicle charging system in accordance with C.R.S. §§ 38-33.3-106.7 and 106.8.

7.16 Screening. All woodpiles or storage areas of any kind shall be kept screened by adequate vegetation to conceal them from view.

7.17 Residence Exteriors. The control of the Architectural Control Committee with regard to color, exterior materials, placement of accessory structures, patio covers, screening requirements and approval of landscaping plans and exterior lighting shall be absolute.

7.18 Tanks. No tanks of any kind, above or below ground, shall be permitted.

7.19 Lights. All exterior lights and light standards, other than ordinary low intensity lights, shall be subject to approval by the ACC for harmonious development and prevention of lighting nuisances.

7.20 Hazardous Activity. No activities shall be conducted within the Association and no improvements constructed within the Association which are or might be unsafe or hazardous to

any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged within the Association; and no open fires shall be lighted or permitted within the Association (including burning of trash or rubbish) except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

7.21 Utility Lines. All gas lines, electric lines, water lines, telephone lines and television cable shall be buried underground from their primary source at the Residence to the point where such utility company maintains ownership and control over such line. The cost of any repair or maintenance of such lines shall be - at the Owner's sole expense. If any such line crosses any Common Area owned by the Association, such Owner shall have an easement necessary to effect such repair and/or maintenance of such utility lines and may make such immediate repairs in any Common Area as necessary to restore such service, but shall be obligated to return such area to its original condition as existed before such repair or maintenance. Each Owner must contact the Association and submit plans for restoration of the Common Area and obtain approval by the Board before effecting such restoration of the Common Area.

7.22 Drainage. Except as in approved grading, drainage and erosion control, no structure shall be placed or located in such manner that will obstruct, divert, or otherwise alter the natural water drainage courses and patterns, and no landscaping or changes to the existing terrain shall be made which obstruct, divert, or otherwise alter such drainage. The ACC will approve all landscaping and site plans.

7.23 Fences. No hedges or fences shall be permitted within the Association, unless specific written permission is given therefor by the ACC. In determining whether such permission should be given, the ACC shall consider the topography and desires of the neighborhood.

7.24 No Mining. No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, unless by written approval of the ACC.

7.25 Other Buildings. Detached accessory buildings are prohibited..

7.26 Weed, Infectious Plant Disease and Insects. No Owner shall permit anything or condition to exist upon his Lot which shall induce, breed or harbor infectious plant diseases, weeds or noxious insects.

7.27 Prohibition Against Additions. No Owner shall be permitted to construct any exterior addition of any kind or nature on any Lot or to any Residence.

The Association, acting through its Board of Directors, shall have the standing and power to enforce all of the above Restrictive Covenants and Obligations.

ARTICLE EIGHT: EXTERIOR MAINTENANCE AND SPECIAL EASEMENT

8.1 Exterior Maintenance. Except as otherwise provided herein, the routine exterior maintenance and repair of each residence, including but not limited to the roof (including roof deck, underlayment, shingles and typical roof components), gutters, downspouts, siding and improvements constructed thereon, including maintaining exterior light fixtures and painting the building siding, trim and exterior doors, and the interior of any fence on the boundary line of a Common Area and a Lot, shall be the responsibility of the Association (but excluding repairing or maintaining glass surfaces, windows and window frames, building stud frame, exterior light bulbs, exterior doors, screens and hose faucets, which shall be the responsibility of the Owners. Typical exterior cleaning activities such as sweeping dust or cobwebs from siding or sweeping the patio and adjacent walkways is the responsibility of the Owners) The responsibility for such repair and/or maintenance by the Association shall not include any repair or maintenance which would ordinarily be included as a covered peril under an Owner's policy on his or her Residence. It shall be the duty and obligation of the Association to landscape and maintain the Common Area.

8.2 Association Maintenance Area. The Association shall maintain the concrete driveway, lawn and garden area within a Lot and adjacent to a Residence. The Association shall have the right to promulgate reasonable rules and regulations regarding such maintenance.

8.3 Association Maintenance of Driveways. The private driveways within the Association are Common Areas, and the Association is responsible for their repair, upkeep and maintenance.

8.4 Special Easement. Each Owner hereby grants to the Association, the Board of Directors, and their respective representatives, a nonexclusive easement to enter upon and use each Lot as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Declaration.

8.5 Maintenance Contract. Subject to Colorado law, the Association or Board of Directors may employ or contract of the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association for maintenance. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Board. Subject to Colorado law, the 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 Board.

8.6 Party Walls.

A. Each wall which is built as a connection of two or more Residences and which is constructed upon the property line between two Residences shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article 8.6, the general rules of law of the State of Colorado regarding party walls and liability for property damage due to negligent or intentional acts of omissions shall apply thereto.

B. The cost of reasonable repair and maintenance of a party wall damaged or destroyed without the fault of an Owner shall be shared equally by the Owners of all Residences of which such wall is a part. In such event, any Owner of a Residence of which such wall is a part may restore or reconstruct it, any of the other owners of Residences of which such wall is a part shall contribute and share equally with such Owner in the cost of such restoration or reconstruction.

C. The cost of reasonable repair and maintenance of a party wall damaged or destroyed through the negligent or intentional act or omission of an Owner shall be borne exclusively by such Owner. Any other Owner of a Residence of which such wall is a part may cause the repair or reconstruction of such party wall, and the Owner whose negligence or intentional acts of omissions caused such damage or destruction shall promptly reimburse the other Owner for his or her reasonable costs of such repair.

8.7 Owners Failure to Maintain or Repair. In the event that a Lot and the improvements thereupon for which the Owner is responsible to maintain are not properly maintained and repaired, or in the event that the improvements on the Lot 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 Board, shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and the buildings and other improvements thereon.

ARTICLE NINE: INSURANCE/CONDEMNATION

9.1 Authority to Purchase/General Requirements. Except as provided below, all insurance policies relating to the Common Areas shall be purchased by the Board of Directors. The Board of Directors shall promptly furnish to each Owner and/or such Owner's First Mortgagee requesting the same, written notice of the procurement of, subsequent changes in, or termination of insurance coverages obtained on behalf of the Association. The Owner of a Lot shall be responsible for insurance for his or her Lot and the improvements thereon.

THE ASSOCIATION WILL NOT PROVIDE COVERAGES FOR INDIVIDUAL RESIDENCES IN ITS INSURANCE POLICY.

The Board of Directors shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the Association, Owner or First Mortgagee, or (b) by the terms of carrier's charter, Directors, policyholders or members; or (c) the policy includes any limited clauses (other than insurance conditions) which could prevent Owners or First Mortgagees from collecting insurance proceeds.

Each such policy shall provide that:

- a) The insurer to the extent possible waives any right to claim by way of subrogation

against the Association, the Board of Directors, the Managing Agent or the Owners, and their respective agents, employees, Guests and, in the case of the Owners, the members of their households.

- b) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Owner or his or her Guests or of any Member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the board cure the defect and such defect is not cured within forty-five days after such demand;
- c) Such policy, including any fidelity insurance of the Association referred to in Paragraph 9.4 hereof may not be canceled, substantially modified or not renewed (including cancellation for nonpayment of premium) without at least 30 days prior written notice to the Board of Directors and each Owner and First Mortgagee to whom a certificate of insurance has been issued, at their last known address;
- d) Such policy must provide that no assessment may be made against a First Mortgagee and that any assessment made against others shall not become a lien on a Lot superior to the lien of a first mortgagee except as provided for in the act;

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with an A.M. Best's rating of "A" or better.

All insurance policies shall contain the standard mortgagee clause or equivalent endorsement (without contribution) in which it appropriately names the first mortgagee in the policy its beneficiary.

The Board of Directors shall review at least annually all of its insurance policies in order to ensure that the coverages contained in the policies are sufficient. The Board of Directors shall be consistent with good business practices, and at reasonable intervals obtain a written appraisal for insurance purposes, showing that the insurance represents at least ninety percent (90%) of the current replacement cost as defined above.

Policies shall also provide:

That any "no other insurance" clause expressly exclude individual Owners' policies from its operation so that the property insurance policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their First Mortgagees unless otherwise required by law.

A certificate, with proof of payment of premiums, shall be delivered by the Association to any holder of a First Mortgage requesting the same, at least thirty days prior to expiration of the then current policy.

The insurance shall be carried naming the Association as the owner and beneficiary thereof for the use and benefit of the individual Owners and shall provide a standard noncontributory mortgage clause in favor of each First Mortgagee. Any loss covered by the policies carried under this article shall be adjusted exclusively by the Board of Directors and provide that all claims are to be settled on a replacement cost basis.

The deductible, if any, on such insurance policy shall be as the Directors determine to be consistent with good business practice and which shall be consistent with the requirements of the First Mortgagees, not to exceed, however, Five Thousand dollars or one percent of the face amount of the policy whichever is less. Any loss falling within the deductible portion of the policy shall be paid by the Association. Funds to cover the deductible amount shall be included in the Association's Reserve Funds and be so designated. The Board shall have the authority to levy, after Notice and Hearing, against Owners causing such loss for the reimbursement of all deductibles paid by the Association as an Individual Assessment in accordance with paragraph 6.6 hereof.

9.2 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability including eviction, libel, slander, false arrest and invasion of privacy and property damage insurance covering all of the Common Areas.

Such coverage under this policy shall include, without limitation, the legal liability of the insured for property damage, bodily injuries and deaths of persons that resulted from the operation, maintenance or use of the Common Areas and the legal liability arising out of lawsuits relating to employment contracts in which the Association is the party.

Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be required to include protection against such other risks as are customarily covered with respect to property similar in construction, location and use, including, but not limited to, Host Liquor Liability coverage with respect to events sponsored by the Association, Workmen's Compensation and Employer's Liability Insurance, Comprehensive Automobile Liability Insurance, Severability of Interest Endorsement.

IN THE EVENT THE ASSOCIATION HOSTS A FUNCTION AND CHARGES FOR FOOD OR DRINK AND LIQUOR IS SERVED, LIQUOR LIABILITY COVERAGES SHALL BE OBTAINED TO PROVIDE COVERAGE TO THE ASSOCIATION.

The Board Of Directors shall review its limits of coverage at least once each year, but in no event shall such insurance be less than one million dollars covering all claims for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained at the discretion of the Board.

9.3 Fidelity Insurance. Subject to Colorado law, the Association shall obtain and maintain, to the extent reasonably available, fidelity insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. The insurance shall name the Association as insured, and shall contain waivers of any defense based upon the exclusion of persons who were without compensation from any definition of "employee" or similar expression.

The fidelity insurance policy should cover the maximum funds (including Reserve Funds) that will be in the custody of the Association or its management agent at any time while the policy is in force.

The policy must include a provision that calls for ten days' written notice to the Association before the policy can be canceled or substantially modified for any reason. If required by law, the same notice shall also be given to each loan servicer that services a Fannie Mae-owned or securitized mortgage in the Property.

A management agent that handles funds for the Association shall be covered by its own fidelity insurance policy which shall provide the same coverage required of the Association.

9.4 Additional Insurance.

a) The Association shall also obtain the following insurances: If the area where the Property is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard area, flood insurance for the Property shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of one hundred percent of the Property's current replacement cost or the maximum amount available.

The Association shall also maintain coverage for all Common Areas for one hundred percent of their replacement cost as defined above. A separate Association endorsement is required if not already a part of the policy.

Deductibles may not exceed the lower of Five Thousand dollars or one percent of the face amount of the coverage. Funds for such deductibles must be included in the Association's Reserve and be so designated.

If the Property at the time of the recording of this Declaration is not identified as a Special Flood Hazard area but becomes re-classified at a later date as such, the Board of Directors shall obtain flood insurance for the Property in accordance with the above. Conversely, flood insurance may be discontinued if the Property is "removed" from the "Flood Plain."

b) Adequate Directors and Officers liability insurance, if available, and if deemed consistent with good business practices, for errors and omissions on all Directors and Officers to be written in an amount which the Board of Directors deems adequate;

c) Workmen's Compensation and Employers Liability insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter acquired by law;

d) Such other insurance of a similar or dissimilar nature, as the Board of Directors shall deem appropriate with respect to the Property;

e) If it is determined by a First Mortgagee that the existing coverages do not adequately protect the Property, the Board of Directors shall obtain such additional coverages.

9.5 Premiums. Premiums for insurance carried by the Association shall be paid for by the Association as a Common Expense.

In the event there are not sufficient funds generated from the Common Expense Assessment to cover the cost of insurance provided for above, then the deficiency shall be chargeable to each Owner by an Individual Assessment in accordance with Paragraph 5.6 hereof and such assessment shall be exempt from any special voting requirements of the Membership. Such assessment shall be prorated among the Owners in the same proportion as the Common Expense Assessment.

9.6 Insurance by Owners. All Owners shall be responsible to maintain their own replacement value insurance policy as necessary to insure their individual Residences in such amounts as necessary to reconstruct such Residence. In addition thereto, the Owners of each Residence shall maintain liability insurance in such amounts as necessary to reconstruct all Residences within the building, defined by the common concrete slab or roof, of which the Residence is a part. The association reserves the right to require proof of such insurance including effective dates and amounts of coverage from each owner annually.

9.7 Separate Insurance. No Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into the contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this Paragraph.

9.8 Damage To Property. Except as provided for in the governing documents, any portion of the Property for which insurance is required under C.R.S. § 38–33.3-313 of the Act, or for which insurance is carried by the Association is damaged or destroyed, shall be repaired or reconstructed by the Association.

9.9 Condemnation. If all or any part of the Property is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the provisions on eminent domain in the Act.

ARTICLE TEN: MAINTENANCE, REPAIR AND RECONSTRUCTION

10.1 By the Association: the Association shall be responsible for the maintenance, repair and reconstruction of all of the Common Areas and Private Streets in accordance with this ARTICLE TEN.

10.2 By the Owner.

Each Owner shall keep his or her Lot and Residence, together with all improvements and appurtenances thereto, in good order, condition and repair and in a clean and neat condition.

ARTICLE ELEVEN: ELIGIBLE MORTGAGEE RIGHTS

11.1 Special FHLMC Provisions. Except as provided by statute in the case of a condemnation or a substantial loss to the Residences and/or Common Areas, unless at least two-thirds of the Eligible Mortgagees (based on one vote for each first mortgage owned) or Owners have a given their prior written approval, the Association may not:

- (a) change the method of determining the application, assessments, dues or other charges which maybe levied against an Owner;
- (b) partition or subdivide any Lot;
- (c) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas by act or omission.

The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas is not a transfer within the meaning of this Paragraph 11.1(c).

- (d) use hazard insurance proceeds for losses to any property (whether Residences or Common Areas) for other than the repair, replacement or reconstruction of the Property.

11.2 Implied Approval. Implied approval by an Eligible Mortgagee shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty days after said Eligible Mortgagee receives proper notice of the proposal, provided such notice was delivered by certified or registered mail, return receipt requested.

11.3 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the association at the office of the Association in accordance with the procedure set forth in the Association's Bylaws.

ARTICLE TWELVE: AMENDMENT AND TERMINATION OF THE DECLARATION

12.1 Duration. The covenants, restrictions and obligations of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Paragraph 12.7 below or under Colorado law.

12.2 Amendments by Owners. Except as permitted in Paragraph 12.5 hereof, and except as restricted by Paragraph 12.6 hereof, this Declaration may be amended by written agreement by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided, however, an amendment may not change the uses to which a Residence is restricted, except by unanimous consent of the Owners.

Such amendment shall be effective upon the recording of the amendment together with a notarized Certificate of the Secretary of the Association certifying that the requisite number of Owners and Eligible Mortgagees, if required, have given their written consent to the amendment. The Secretary shall further certify that originals of such written consent by Owners and Eligible Mortgagees, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

Each amendment to the Declaration must be recorded in accordance with § 38 – 33.3 – 217(3) of the Act.

Where a Lot is owned by more than one person, the execution of any amendment shall be valid if executed by any one Owner. Signatures need not be notarized. The signature need not be identical to the name of the recorded Owner, but shall be sufficiently close as to be identified as a proper signature of such person.

All signatures shall be irrevocable even upon death or conveyance of the Lot, except that if an amendment is not recorded within three years of the date of signature, then the executing Owner or their successor or assigns may revoke their signature by a written and notarized document delivered to the Secretary of the Association.

Amendments can be executed in counterparts, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole.

Action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, Articles of Incorporation or Bylaws unless it is commenced within one year from the effective date of said amendment, unless fraud or willful negligence is asserted and proven.

12.3 Amendments. The Board of Directors reserves the right to amend, without the consent of the Owners or First Mortgagees this Declaration, the Association's Articles of Incorporation or Bylaws as follows:

(a) To make non-material changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of such documents.

(b) To comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages.

(c) To comply with any requirements of the Act.

(d) The Declaration may also be amended by an order of the District Court for Mesa County, Colorado, pursuant to C.R.S. § 38-33.3-217(7), as amended.

12.4 EXPENSES. All expenses associated with preparing and recording an amendment shall be allocated in accordance with C.R.S. § 38 – 33.3 –217 (6) of the Act.

12.5 TERMINATION. Except in the case of taking of all the Lots by condemnation as set forth in paragraph 4.7 hereof, the Declaration may be terminated only by an agreement of Owners to which at least eighty percent (80%) of the votes in the Association are allocated, and the consent of Eligible Mortgagees representing at least eighty percent of all of the Eligible Mortgagees within the Property (based on one vote per mortgage owned), by an instrument(s) duly executed and recorded. Further, any such termination shall not be effective without the express written consent of the City of Grand Junction, Colorado, by an instrument(s) duly executed and recorded, if required.

ARTICLE THIRTEEN: ARCHITECTURAL CONTROL

13.1 No Construction Without Approval. No buildings or exterior improvements of any kind including (without limitation) driveways leading to the various structures within the Lots shall be constructed, remodeled or altered in any fashion on any Lot nor may any vegetation be altered or destroyed, nor any landscaping performed unless two complete sets of plans and specifications for such construction or alteration or landscaping are submitted to and approved by the Board, or, if the Board appoints an ACC, the ACC, prior to the commencement of such work. All applications shall be submitted to the Board, in writing, and all decisions of the Board and/or ACC shall be given in writing. In the event the Board or ACC fails to take any action within thirty (30) days after complete architectural plans and specifications for such work have been submitted to it, then all of such submitted plans and specifications shall be deemed to be approved; provided, however, that the Board or the ACC may extend this deadline, with or without cause, for a period not exceeding an additional thirty (30) days, by mailing a written notice to the applying Owner within the initial thirty (30) day period. The Board and/or the ACC may adopt rules and regulations for processing of such applications which shall, upon adoption, be binding upon all subsequent applications. The number and qualifications of members of the ACC, if one is appointed, shall be as determined by resolution of the Board.

13.2 Plans. All specifications submitted hereunder shall show the nature, kind, shape, height, materials, floor plans, location, exterior color scheme, alterations, grading, drainage, erosion control and all other matters necessary for the proper consideration and determination thereon. The Board or ACC shall disapprove any plans and specifications submitted to it which are not sufficient for it to exercise the judgment required of it by this Declaration.

13.3 Foundations. Plans and specifications submitted hereunder shall provide for properly engineered foundations that must be designated and stamped by a Colorado registered professional engineer. The Board or ACC shall disapprove any plans and specifications submitted to it which are not sufficient for it to exercise the judgment required of it by this Declaration.

13.4 Variances. Where circumstances such as topography, location of trees, brush, rock outcroppings, area aesthetic considerations, or other matters require or allow, the Board may, by a two-thirds vote, allow reasonable variances as to this Declaration or other governing documents of the Association, including required sizes of structures, set back or side yard requirements, on such terms and conditions as it shall require. Opinions of all adjoining property owners shall be considered in any such decisions. Further, such variance(s) shall not be

effective without the express written consent of the City of Grand Junction, Colorado, if required, by an instrument(s) duly executed and recorded.

13.5 Conformity. The Board and ACC shall exercise its best judgment to see that all improvements, structures, landscaping in all alterations on the any Lot conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siding, height, topography, grade, drainage, erosion control and finished ground elevations.

13.6 Diligence. After approval of any plan in accordance with this Article, the same shall be completed with due diligence in conformity with all conditions of approval, if any. Failure to adhere to any term of approval shall operate automatically to revoke the approval, and the Board and/or ACC may require the Lot to be restored as nearly as possible to its previous state. The time for completion of any such work may be extended by the ACC.

13.7 No Liability. The Board, the ACC, or any Owner shall not be liable in damages to any person, corporation or association submitting any plans and specifications or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any such plans and specifications. Any Owner submitting or causing to be submitted any plans and specifications to the ACC agrees and covenants that such Owner will not bring any such action or suit to recover damages against the Board or the ACC, any Owner, individually or collectively, or its members, advisors, employees or agents.

ARTICLE FOURTEEN: GENERAL PROVISIONS

14.1 Right of Action. The Association and any aggrieved Owner shall have an appropriate right of action against Owners for failure to comply with the Declaration, Bylaws of the Association, Articles of Incorporation and Rules and Regulations of the Association or with decisions of the Board of Directors of the Association which are made pursuant thereto, all in accordance with Colorado law. Owners shall have a similar right of action against the Association.

14.2 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

14.3 Severability. If any portion of this Declaration is invalidated in any manner whatsoever, such invalidation shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision has never been included herein.

14.4 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

14.5 Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association, and except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all other notices or demands

intended to be served upon an Owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed, in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent to the Registered Agent for the Association until the Registered Agent is changed by a notice duly filed with the Office of the Secretary of State of Colorado.

14.6 Conflict. This Declaration is intended to comply with the requirements of the Act and the Colorado Nonprofit Corporation Act. If there is any conflict between this Declaration and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other document this Declaration shall control.

14.7 Captions. The captions and headings in this Declaration are for convenience only, and shall not be considered in construing any provision of this Declaration.

14.8 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

The undersigned, as President and Secretary of the Hamlet at Fountain Greens Association, Inc., does hereby certify that the above and foregoing First Amended Declaration of Covenants, Conditions and Restrictions of Hamlet at Fountain Greens Association, Inc. was duly adopted and approved at a meeting of the Members on February 15, 2017, by the Owners of at least two-thirds (2/3) of the Lots within said Association entitled to vote thereon, or as an action by the Members without a meeting, all as reflected in the records of the Association, and that it constitutes the First Amended Declaration of Covenants, Conditions and Restrictions of Hamlet at Fountain Greens Association, Inc.

Dated February 15, 2017.

HAMLET AT FOUNTAIN GREENS
ASSOCIATION, INC.



President



Secretary

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing First Amended Declaration of Covenants, Conditions and Restrictions for Hamlet at Fountain Greens Association, Inc. was acknowledged before me this 15 day of February, 2017, by Sue Parks as Secretary of the Hamlet at Fountain Greens Association, Inc.

My commission expires: July 11, 2018

(Seal)

Linda M. Dake
Notary Public

LINDA M. DAKE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #19904008473
My Commission Expires July 11, 2018