

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
HALLS ESTATES TOWNHOMES SUBDIVISION**

THIS DECLARATION is made and entered into this 25th day of July, 2018 by Senergy Builders, hereinafter referred to as the "Declarant."

**RECITALS**

A. The Declarant is the owner of certain real property situated in Mesa County, Colorado, known as Halls Estates Townhomes Subdivision, Filing No. 3, according to the plat thereof recorded the 25th day of July, 2018, in Mesa County, Colorado of the real property records of Mesa County, Colorado containing 22 Units as hereinafter defined, including the easements and licenses appurtenant to, or included in the property as shown on the plat.

B. The Declarant desires to create a planned community upon the real property described on Exhibit "A" attached hereto, including the above-described property, and to subject and place upon the property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein pursuant to the provisions of the Colorado Common Interest Ownership Act, CRS 38-33.3-101, et seq. ("Common Interest Act") for the purpose of protecting the value and desirability of said property and for the purpose of furthering a plan for the improvements, sale and ownership of said property.

NOW, THEREFORE, the Declarant hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with the above-described property and be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DEFINITIONS**

Section 1. "**Agencies**" shall mean and collectively refer to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Veterans Administration (VA), and the Federal Housing Administration (FHA), or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities.

Section 2. "**Architectural Control Committee**" shall mean and refer to the committee appointed by Declarant or by the Board of Directors of the Association, as more fully provided in Article V hereof.

Section 3. "**Association**" shall mean and refer to Hall Estates Townhomes Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and assigns. The Association shall act by and through its Board of Directors and officers. The fiscal year of the Association shall end on December 31 of each calendar year.

Section 4. "**Declarant**" shall mean and be defined as shown above and also include Declarant's successors and assigns, if such successors or assigns should acquire more than one unimproved Unit from the Declarant for the purpose of development and resale, and said person or entity shall first be designated by Declarant for said purposes by a written instrument duly recorded in the real property records of Mesa County, Colorado.

Section 5. "**Declaration**" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as the same may be amended from time to time.

Section 6. "**First Mortgage**" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument encumbering a Unit recorded in the records of the office of the Clerk and Recorder of the County of Mesa, Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 7. "**First Mortgagee**" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 8. "**Common Area**" shall mean the entryways to the Property, and all property owned by the Association for the Common use and enjoyment of the Members, including a pipeline irrigation system and all property designated as Open Space.

Section 9. "**Limited Common Elements**" are those portions of the privately owned Buildings which are maintained by the Association and are described in Section 2.5 hereinbelow.

Section 10. "**Member**" shall mean and refer to each Owner of a Unit that is subject to assessment hereunder and Declarant. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit.

Section 11. "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 12. "**Property**" shall mean and refer to that certain real property described in the Recitals of this Declaration, together with such additions thereto, if any, as may hereafter be brought within the jurisdiction of the Association.

Section 13. "**Special Declarant Rights**" shall mean and refer to the development and other rights expressly reserved for the benefit of Declarant in accordance with the terms and conditions of this Declaration.

Section 14. "**Joint Maintenance Agreement**" is that contract to which the Association may become a signatory which provides for the sharing of maintenance, repair and replacement expenses for the shared roadway, entrance and other improvements common to the different neighborhoods.

Section 15. "**Planned Maintenance Program**" is that process where the Association will maintain, repair and replace the Limited Common Elements

according to a maintenance plan developed by the Board of Directors which shall provide for the uniform repair and replacement of the Limited Common Elements.

Section 16, "Units" or "Townhomes" are the residential structures built on the Units.

## ARTICLE II

### PROPERTY RIGHTS IN THE COMMON AREA

Section 1. Owner's Right of Enjoyment. Subject to the provisions of Section 2 of this Article, every Owner shall have a nonexclusive right to enjoy and use the facilities, if any, within the Common Area and such right shall be appurtenant to and shall pass with the title to every Unit.

Section 2. Extent of Owners' Right. The right of enjoyment created hereby shall be subject to the following:

a. The right of the Association to promulgate and publish rules and regulations with which each Member shall strictly comply, including but not limited to the size of all irrigation water pumps and an irrigation water use schedule;

b. The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of a Member for any period during which any assessment against his/her Unit remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations; and

c. The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside in his Unit.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS: THE ASSOCIATION

Section 1. Membership. Every Owner of a Unit which is subject to assessment hereunder shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Each Unit shall be entitled to one vote and the vote for such Unit shall be exercised by the Owner or Owners as they determine.

Section 2. Directors of the Association. The affairs of this Association shall initially be managed by a board of at least three (3) directors (the "Board"). When Declarant relinquishes control of the Board to the Owners pursuant to Section 3 below, the Board shall be managed by at least three (3) but no more than five (5) directors. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

Section 3. Management of the Association. From date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of sixty (60) days after conveyance of 75% of the Units to Owners other than Declarant, two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business, or two (2) years after any right to add new Units was last exercised. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of 25% of the Units to Owners other than Declarant, at least one member and not less than 25% of the members of the Board will be elected by Owners other than Declarant. Not later than sixty (60) days after the conveyance of 50% of the Units to Owners other than Declarant, not less than 33-1/3% of the members of the Board will be elected by Owners other than Declarant. Not later than the termination of the period of Declarant's control as provided above, the Owners (including Declarant) shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant and the Board shall elect the officers, with such Board members and officers to take office upon election. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including without limitation those items specified in Section 303(9) of the Common Interest Act.

Section 4. Officers of the Association. The officers of this Association shall be as set forth in the Bylaws of the Association.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any Unit, including Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges, (2) special assessments, and (3) reconstruction assessments, such assessments to be established and collected as hereinafter provided. The monthly, special and reconstruction assessments, together with interest, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) on demand, and without setoff or deduction. The lien may be enforced by foreclosure of the defaulting Owner's Unit by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Board of Directors or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by one of the Board of Directors or by the managing agent of the Association and may be recorded in the office of the Clerk and Recorder of the County of Mesa, Colorado. The lien for each unpaid assessment attaches to each Unit at the beginning of each assessment period and shall continue to be a lien against such Unit until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Unit against which it is filed and collected as part and parcel thereof. Each assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment became due. The Association's lien on a Unit for assessment 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 land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Property and, to the extent not performed by any applicable governmental entity, for the maintenance and insurance of the Common Area, including but not limited to, the entryways, signage, roofs, exterior walls, landscaping, and the irrigation water system.

Section 3. Maximum Annual Assessment.

a. Until commencement of the second annual assessment period, the maximum annual assessment shall be ONE HUNDRED DOLLARS (\$100.00) per Unit per month.

b. Effective with commencement of the second and each subsequent Association fiscal year, the maximum annual assessment against each Unit shall be increased effective each Association fiscal year by the lesser of: (i) five percent (5%); or (ii) in conformance with the rise, if any, of the Consumer Price Index ("CPI") published by the U.S. Department of Labor, Washington, D.C., for All Items and Major Group Figures for All Urban Consumers (1967 - 100), for the one (1) year period ending on the last day of October of the prior year. The aforesaid annual increase in the maximum annual assessment shall occur automatically upon the commencement of each Association fiscal year without the necessity of any action being taken with respect thereto by the Association. In the event the aforesaid CPI is not published, or if the Board of Directors determines that use of the CPI is inappropriate for whatever reason, then if the increase in the maximum annual assessment is to be computed by reference to the CPI, as provided herein, such calculation shall be made by using a substantially comparable index designated by the Board of Directors of the Association to be selected in its sole discretion.

c. Effective with commencement of the second and each subsequent Association fiscal year, the maximum annual assessment may be increased by a vote of the Members over the amount established by the applications of the provisions of Section 3(b) above for the next succeeding Association fiscal year and at the end of that year, for each succeeding Association fiscal year, provided that any such increase shall have the assent of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of such meeting setting forth the purpose therefore.

d. The Board of Directors of the Association may, at any time and from time to time, after consideration of the projected maintenance costs and the other financial needs of the Association, fix the actual assessment against each Unit at an amount less than the maximum assessment for any Association fiscal year.

e. Within thirty (30) days after adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget shall be ratified, whether or not a quorum of members is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

f. The limitations contained in this Section 3 shall not apply to any change in the maximum, actual and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

g. The Association shall maintain an adequate reserve fund out of the annual assessments for the repair and replacement of those elements of the Common Area that must be repaired or replaced on a periodic basis.

Section 4. Special Assessments. In addition to the annual and reconstruction assessments authorized in this Article IV, the Association may levy, in the Association fiscal year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, or for the funding of any operating deficit incurred by the Association. Any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose and shall be set equally against each Unit.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action requiring a vote of the Members authorized under Sections 3 or 4 of this Article shall be sent to all Members not less than 30 days or more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the Members 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 (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding month.

Section 6. Reconstruction Assessments. In addition to the annual and special assessments authorized in this Article IV, the Association may levy a reconstruction assessment for the purpose of repair or reconstruction of damaged or destroyed improvements. All such reconstruction assessments shall be equal to the net amount of the cost of repair or reconstruction of such improvements and shall be calculated by subtracting from the total cost of repair or reconstruction the sum of the insurance proceeds awarded for the damage or destruction thereof, if any, and shall be set equally against each Unit. Such reconstruction assessments shall be due and payable as provided by resolution of the Board of Directors, but not sooner than thirty (30) days after written notice hereof; provided, however, that, in appropriate circumstances, the Association may proceed directly against any Owner pursuant to Article VIII, Section 3 hereof for any such amount.

Section 7. Rate of Assessment. Annual and special assessments shall be fixed at a uniform rate for all Units and shall be allocated to each Unit on the basis of a fractional share per Unit, the numerator of which fraction shall be one and the denominator of which shall be the number of Units contained within the Property, and shall be in an amount sufficient to meet the expected needs of the Association.

Section 8. Date of Commencement of Annual Assessments. The initial annual assessment shall commence on the first day of the month following conveyance of the first Unit upon which a residential dwelling has been constructed and a Certificate of Occupancy issued to an Owner other than Declarant, and the second and each subsequent annual assessment period shall correspond with the fiscal year of the Association. The annual assessments shall be made due and payable with such frequency and on such dates as determined by the Board, but no more frequently than monthly, provided that the first annual assessment shall be adjusted according to the number of months in the first Association fiscal year. Any Owner purchasing a Unit between installment due dates shall pay a pro rata share of the last installment due.

Section 9. Effect of Non-payment of Assessments-Remedies of the Association. An assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Association, and the Association may also assess a monthly late charge thereon. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Unit, and in the event a judgment is obtained, such judgment shall include interest on the assessment and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

Section 10. Working Capital Fund. The Association or Declarant may require the first Owner of any Unit to make a nonrefundable payment to the Association in an amount of not to exceed THREE HUNDRED DOLLARS (\$300) per Unit, all of which sums shall be held by the Association and maintained in a segregated account for the use and benefit of the Association, including but not limited to the use to meet unforeseen expenses. Such payment shall not be deemed to be a deposit or prepayment of any assessment but shall be deemed a payment to the working capital fund and shall not relieve an Owner from making the regular payment of assessments as the same become due. The payment to the working capital fund shall be due upon deed transfer at closing, and is a non-credit.

Section 11. Lien for Assessments.

a. Under the Common Interest Act, the Association has a statutory lien on a Unit for any assessments levied against that Unit and for fines imposed against its Owner from the time each assessment or fine becomes due. In addition, fees, charges, late charges, attorneys' fees, fines and interest charged pursuant to this Declaration or the Common Interest Act 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.

b. The statutory lien for assessments is prior to all other liens and encumbrances on a Unit except: (i) liens and encumbrances recorded before the recording of this Declaration; (ii) a lien of a First Mortgage which was recorded before the date on which the assessment sought to be enforced became delinquent and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. Notwithstanding the foregoing, the statutory lien for assessments is also prior to the lien of a first mortgage to the extent of an amount equal to the assessments based on a periodic budget adopted by the Association which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this section of an action or a non-judicial foreclosure either to enforce or to extinguish the lien.

c. The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recording of any claim of lien or assessment is required, however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Owner's Unit as a default assessment.

**ARTICLE V**  
**ARCHITECTURAL CONTROL COMMITTEE; RELATED REQUIREMENTS**

Section 1. Composition of Committee. The Architectural Control Committee ("ACCO") shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that until Declarant has conveyed all Units to Owners other than the Declarant, or until three (3) years after the date of recording of this Declaration in the office of the Clerk and Recorder of Mesa County, Colorado, whichever occurs earliest, Declarant shall appoint the Architectural Control Committee. A majority of the Committee may, from time to time, designate a representative to act for it. Reasonable effort shall be made to have a licensed architect as a Committee member. The power of the Declarant to "appoint", as provided herein, shall include without limitation the power to: initially constitute the membership of the Architectural Control Committee, appoint member(s) to the Architectural Control Committee upon the occurrence of any vacancy therein, for whatever reason remove any member of the Architectural Control Committee, with or without cause, at any time, and appoint the successor thereof; and each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the Declarant. All improvements within the Property constructed by Declarant during the period in which it appoints the Architectural Control Committee shall be deemed approved by the Committee without the issuance of any writing evidencing such approval. The ACCO shall have the right to adopt Architectural Control Guidelines from time to time to assist owners in applying for ACCO approval.

Section 2. Review by Committee. No landscaping, structure or any attachment to an existing structure, any building, fences, walls, canopies, awnings, roofs, exterior lighting facilities, athletic facility, or other similar improvements or attachments, shall be constructed, erected, placed or installed upon the Property and no alteration of the material or appearance (including color) of the exterior of a residence or other structure shall be made, and no change in the final grade of any Unit shall be performed, unless copies of plans and specifications therefor (said plans and specification to show exterior design, height, colors, materials, location of the landscaping or structure or addition to the structure, as well as such other materials and information as may be required by the Committee) shall have been first submitted to and approved in writing by the Architectural Control Committee. The plans and specifications so submitted shall comply in all respects with the applicable building and zoning regulations of the [City of Grand Junction], County of Mesa and the Planned Development of Halls Estates Townhomes Subdivision. The Architectural Control Committee shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to residences, other structures, and property, within the Property, conform to and harmonize with the existing surroundings, residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the Architectural Control Committee may require that the applicant(s) pay the Committee a processing fee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, may be levied as part of the common expense assessment against the Unit for which the request for Architectural Control Committee approval was made and, as such, shall be subject to the Association's lien for assessments and subject to all other rights of the Association for the collection thereof, as more fully provided in this Declaration. Notwithstanding the foregoing, no Owner shall have the right to materially alter or modify the original fencing, landscaping or grading installed by Declarant within the Common Area; provided, however, that the foregoing prohibition shall not prevent the repair and maintenance of the same. All owners are encouraged to apply xeriscape principles to their landscaping plans in recognition of the soils, climate and source of irrigation water associated with Halls Estates Townhomes Subdivision.

Section 3. Procedures. The Architectural Control Committee shall approve or disapprove all requests for architectural control approval within fourteen (14) days after the complete submission of copies of all plans, specifications, and other materials which the Committee may require in conjunction therewith. In the event that the Architectural Control Committee fails to approve or disapprove any request within fourteen (14) days after the complete submission of all plans, specifications, materials and other information with respect thereto, approval shall not be required and this Article shall be deemed to have been fully complied with.

Section 4. Vote and Appeal. A majority vote of the Architectural Control Committee is required to approve a request for architectural approval pursuant to this Article. An Owner may appeal the decision of the Architectural Control Committee to the Board of Directors if the Board is composed of different members than the Architectural Control Committee, and, in such event, the decision of the Board shall be final.

Section 5. Records. The Architectural Control Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 6. Liability. The Architectural Control Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 7. Variance. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article IX hereof in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Article or Article IX hereof. Such variances or adjustments shall be granted only in case the granting thereof

shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 8. Waivers. The approval or consent of the Architectural Control Committee to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee as to any application or other matters whatsoever subsequently or additionally submitted for approval or consent hereunder.

Section 9. Unit Wall is Legal Boundary. Residential structures shall be constructed in buildings of four (4) or six (6) units per building according to building code standards of applicable governmental entities controlling the construction of these multi-unit structures. All buildings and the units therein shall be constructed as closely as possible to the lot lines shown on the plats. Should the wall of any Unit be determined to not lie exactly on the platted boundary line then the Owners of said Units do hereby agree the constructed wall shall serve as the actual legal boundary of the Unit and, further, shall make no claim to Developer, Association or adjoining Owner as a result of the actual wall location not lying exactly on the lot line.

Section 10. Party Wall Agreement.

(A) Ownership of Party Wall: Reciprocal Easement. The Owner shall possess, in fee simple, that portion of the party wall, if any, lying within the platted Unit. Each Owner having a party wall is hereby granted a mutual reciprocal easement for repair or replacement of said party wall. No Owner shall commit or omit any act, the result of which is an infringement of the adjoining Unit Owner's rights in the party wall absent written agreement between such Owners. In the event that any portion of any structure, including any party wall, shall protrude over an adjoining Unit, such structure shall not be deemed to be an encroachment upon the adjoining Unit, nor shall any action be maintained for the removal of or for damage because of such protrusion. It shall be deemed that said Owner has granted perpetual easements to the adjoining Owner for continuing maintenance and use of any such protrusion. The foregoing shall apply to any replacements of any party wall if the same are constructed substantially in conformity with the original party wall construction.

(B) Destruction. If a party wall is destroyed or damaged by any casualty, the Owners of Units abutting such party wall shall jointly restore it substantially to its original form, and they shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rules of law regarding liability for negligent or willful acts or omissions. Destruction or damage to any party wall shall not cause the termination of any rights of any of the adjoining Owners thereto, and such Owners will retain those rights herein set forth concerning any reconstruction or replacement of a party wall. Owners of Units abutting such a party wall are obligated hereby to restore it in its substantially original condition. Notwithstanding any other provisions of this section, an Owner who by his negligent or, willful act causes the party wall to be damaged shall bear the whole cost of repairing such damage and shall diligently prosecute all such repairs and reconstruction. If such Owner shall fail to do so, then any other Owner of a Unit abutting such party wall may do so at the sole cost and expense of the Owner causing such damage. The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 11. Plat Notes Incorporated Herein. Every Owner should be aware property restrictions are contained on the Plat of the Subject Property filed in the County Clerk's office. These property restrictions are applicable to all Lots and are incorporated herein by this reference. The Owner is responsible for obtaining a copy of the plat notes and determining if those restrictions interfere with Owner's intended use of the property.

Section 12. UNITS MAY BE OWNER OCCUPIED OR MAY BE INVESTOR-OWNED AND LEASED. Family members may also reside in the Unit with the Owner; subleases of any Unit must be approved by the Owner/Investor of the Unit and subtenants shall be informed of, and agree to abide by, this Declaration and any bylaws or other rules and regulations that the Association may generate.

(A) Without limiting the foregoing, the following specific directions shall apply, when appropriate:

(i) Any mortgage company or governmental agency taking title through foreclosure of its mortgage shall not be subject to this Declaration. Similarly, purchasers of Units from a mortgage company or governmental agency are also subject to these provisions.

(ii) Sub-tenants of a temporarily deployed active duty armed forces personnel to any other location is not a violation of this section, so long as members of the deployed Owner's family continue to reside in the Unit; otherwise, subtenants must be approved by the Owner/Investor of the Unit and must comply with the requirements of this Declaration and any bylaws or other rules and regulations that the Association may generate.

(iii) The family members of any deceased Owner may continue to reside in a Unit until such a time as title is transferred to a successor owner who shall be subject to this Declaration and any bylaws or other rules and regulations that the Association may generate.

(B) Non-Compliance Assessment. The Owner of any Unit that is determined by the Board to be occupied in violation of this Declaration shall be assessed the sum of ONE HUNDRED DOLLARS \$100.00 per day for each day of violation. The sum may be adjusted up or down as determined by the Board of Directors in the same manner as adopting or changing other Rules and Regulations. The levying of this Assessment shall follow the procedures set forth elsewhere in these CCRs.

(C) Forcible Entry & Detainer Action by Association for Rented Units. Any Owner(s) and the occupants of a Unit that is found to be in violation of this Declaration shall be subject to all legal remedies. The Association may sue for an order or judgment requiring removal of the noncompliant occupants and/or for a judgment for damages, costs and attorneys' fees.

(D) Board of Directors Special Power to Amend this Section. Should an amendment be required, for whatever reason, to preserve the intent of this section and keep the restrictions and remedies intact the Board of Directors may, by majority vote, amend this Section and all Sections necessary to bring this Declaration into compliance with any judgment, order, statute, ordinance, rule or other controlling decision that would have the force and effect of negating the requirement of these Units being restricted as described above. Any such amendment must be in written form, signed by the consenting Directors and filed of record in the County Clerk's office of Mesa County, Colorado.

(E) Vacant Units. Vacant Units are not in violation of this Section or subject to the Non-compliance Assessment.

**ARTICLE VI**  
**INSURANCE**

Section 1. Insurance on Common Area. To the extent not maintained by the applicable governmental entity, the Association shall maintain insurance covering all insurable improvements located or constructed upon the Common Area. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements specified in this Article VI, the Association may also consider in determining the types and amount of insurance it needs to obtain the then existing requirements of any of the Agencies.

a. A policy of property insurance covering all insurable improvements, if any, located on the Common Area, except for land, foundations, excavations and other matters normally excluded from coverage, in an amount no less than the full insurable replacement cost of the Common Area less deductibles. Further, said policy shall contain a "Replacement Cost Endorsement" and an "Agreed Amount Endorsement." Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and
- (2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

b. A comprehensive policy of public liability insurance covering all of the Common Area, insuring the Association in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00 covering bodily injury, including death to persons, personal injury and property damage liability arising out of a single occurrence.

c. A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than three (3) months aggregate assessments on all Units, plus such reserve funds. Such fidelity coverage or bonds shall meet the following requirements:

- (1) all such fidelity coverage or bonds shall name the Association as an obligee; and
- (2) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

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

d. If the Common Area, or any portion thereof, is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on the Common Area has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the Common Area in an amount at least equal to the less of:

- (1) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or
- (2) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

e. In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

Section 2. General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The Association's policies shall contain a standard noncontributory first Mortgagee's clause in favor of each First Mortgagee and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty (30) days prior written notice thereof is given to the insured and each First Mortgagee, insurer or guarantor of a First Mortgage. The Association or any Owner, as applicable, shall furnish a certified copy or duplicate original of the policy, or renewal thereof, which is in the name of such Owner or the Association, with proof of premium payment and a certificate identifying the interest of the Owner in question or the Association, to any party in interest, including First Mortgagees, upon request. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of any Owner where such Owner is not under the control of the Association.

Section 3. Deductibles. No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount greater than the greater of ONE THOUSAND DOLLARS \$1,000 or 1% of the face amount of the policy. Any loss falling within the deductible portion of such policy shall be borne by the person or entity who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible shall be borne by the Association. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss resulted from the act or negligence of an Owner. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any annual assessment; provided, however, that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

Section 4. Insurance Trustee. The Association may authorize a representative to act for it, including any trustee or successor thereto, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Such insurance trustee shall act as attorney-in-fact for the purpose of purchasing and maintaining insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution

of releases of liability, the execution of all documents, and the performance of all other acts necessary to accomplish such purpose. Said party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgagees as their interest may appear.

Section 5. Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any annual assessment. Any such Owner's policy shall also contain waivers of subrogation.

Section 6. Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of BNI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to transact business within the State of Colorado. The Association 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 mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 7. Insurance to be maintained by Owners. Insurance coverage on the structures located upon a Unit, as well as the furnishings and other items of personal property belonging to an Owner shall be the responsibility of such Owner. Owners shall also be responsible for obtaining such policies of public liability insurance, and title insurance related to any sale of a Unit other than the purchase by the Initial Owner from the Declarant.

Section 8. Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

## ARTICLE VII

### DAMAGE OR DESTRUCTION OF COMMON AREA

In the event of damage or destruction to any improvement installed by the Association within the Common Area due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Area, the Association may levy a reconstruction assessment in the aggregate amount of such deficiency pursuant to Article IV, Section 6 hereof and shall proceed to make such repairs or reconstruction, unless:

- a. the planned community is terminated;
- b. repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild; or prior to the conveyance of any Unit to a person other than Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Common Area rightfully demands all or a substantial part of the insurance proceeds.

No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and First Mortgagees of their respective Units, if any. The reconstruction assessment provided for herein shall be a debt of each Owner and a lien on his Unit and the improvements thereon, and may be enforced and collected in the same manner as any assessment lien provided for in this Declaration.

## ARTICLE VIII

### EXTERIOR MAINTENANCE

Section 1. General. The front landscaping and fencing for each Unit shall be completed prior to purchase. Each Unit Owner shall maintain the fenced area attached to the back of the Unit. When necessary (within the sole judgment of the Board), the Association shall remove snow from the common area sidewalks; each Unit Owner is responsible for snow removal from driveways and other walkways associated with that Unit. Except as otherwise provided herein, the maintenance and repair of each Unit, including but not limited to the interior and exterior of the residence, improvements constructed thereon, and the interior of any fence on the boundary line of a Common Area and a Unit shall be the responsibility of the Owner(s) thereof. It shall be the duty and obligation of each Unit Owner to landscape the back area of each Unit within six (6) months from issuance of a Certificate of Occupancy. The time limit contained herein may be extended in writing by the Architectural Control Committee pursuant to the provisions of Article V hereof.

Section 2. Maintenance of Common Area. To the extent not performed by the applicable governmental entity or Owner, the Association shall be responsible for

- (i) the maintenance, operation and repair of all Common Areas shown on any plat;
- (ii) any other areas shown on the plat as common right-of-way such as (i) private streets, (ii) entrances (including gated entrances whether private or public) and (iii) center medians; together with any improvements constructed on said other areas by Declarant to be used by the Lot Owners;
- (iii) any walls or other structures constructed along arterial or section line roads or entry way streets;
- (iv) fences or walls if the Board of Directors determines maintenance of said wall or fence substantially affects a common area and is in the best interest of all owners and the Association;
- (v) administrative expenses including property, casualty and liability insurance as further described herein and in the Bylaws for the Association and including all administrative costs such management and professional expenses;
- (vi) the cost of funding adequate reserves for the eventual replacement of any assets maintained by the Association.
- (vii) the costs associated with a Joint Maintenance Agreement made by the Association with Declarant, the other Associations lying within the Halls Estates Townhomes for the joint maintenance of any common roadways, entrances, improvements and other items described within said Joint Maintenance Agreement;
- (viii) the costs of the Planned Maintenance Program for the upkeep of the Limited Common Elements and to provide a common mowing and landscape maintenance service, as further defined in the Bylaws;

- (ix) the costs of providing mowing and landscape services to Owners for upkeep of the Lots, as further defined in the Bylaws.

The Association shall be responsible for the maintenance, operation and repair of the Common and Limited Common Elements stated herein. In order to carry out this repair and maintenance responsibility the Association is hereby granted an easement and access to perform routine maintenance, perform inspections or resolve emergencies. For purposes of this section, "Limited Common Elements" shall be:

(x) the exterior portion of the walls of the buildings including the framing of the exterior walls, brick and other exterior materials such as siding and stucco. The definition excludes the interior walls and materials affixed to any wall and also does not include windows, doors, garage doors and any pipes, wiring or other material included within the frame that are specific to one Unit;

(xi) fascia and soffits and other items affixed to the exterior as original construction, but not including any light fixtures contained in the soffits;

(xii) the roof and supporting roof structure including shingles but not including any wiring, pipe or duct work inside the roof structure specific to one Unit;

Section 3. Owner's Negligence. Notwithstanding anything to the contrary contained in this Article VIII, in the event that the need for maintenance or repair of the Common Area is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the assessment to which such Owner's Unit is subject and shall become a lien against such Owner's Unit as provided in Article IV of this Declaration. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

Section 4. Owner's Maintenance Responsibility of Unit; Association Right of Approval. For purposes of repairs, alteration and remodeling, which are not a covered expense described in the Planned Maintenance Program, an Owner shall be deemed to own all of the Limited Common Elements described above. The Owner shall do no act nor any work that will (i) interfere with the Associations Planned Maintenance Program, (ii) impair the structural soundness or integrity of the Unit or Building or impair any easement, nor shall Owner make any changes to those elements that are visible such as doors, windows, or garage doors, without written approval of the Association attesting to the compatibility of the proposed improvement or repair with the overall architectural design.

Section 5. Ambiguity Resolved by Board. If a reasonable dispute arises regarding interpretation of this document as to whether the repair, maintenance or replacement of any item in or on a building structure is an Owners responsibility or the Associations responsibility then the Board of Directors shall have the right, duty and authority to resolve said dispute. The decision of the Board shall be kept in the minutes of any Board meeting and shall thereafter be uniformly applied to all similar situations. All such decisions shall be placed on the agenda of the Association's annual meeting for approval by a majority of Owners in attendance at said meeting.

## ARTICLE IX RESTRICTIONS

Section 1. General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Property, in order to enhance the value, desirability, and attractiveness of the Property and to promote the sale thereof.

Section 2. Restrictions Imposed. The Declarant hereby declares that all of the Property shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon, and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements, and covenants, as well as those contained elsewhere in this Declaration.

### Section 3. Use of Common Area

a. No use shall be made of the Common Area which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Area.

b. No Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Area to all Members, nor shall any Owner place any structure or fence, except those installed by Declarant or the Declarant, whatsoever upon the Common Area.

c. The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

Section 4. Residential Use. Subject to Section 5 of this Article IX, Units shall be used for residential purposes only, including all ancillary uses permitted by applicable zoning ordinances.

Section 5. Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, contractors, and designees to perform such reasonable activities, and to maintain upon portions of the Property such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Units and development of the Property, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and equipment, signs, not more than three (3) model units which shall be located on a Unit owned by Declarant or Declarant's designee, not more than three sales offices which shall be located on a Unit owned by Declarant or Declarant's designee parking areas and lighting facilities. Sales offices shall be removed from the Property and model units shall be sold to Owners within five (5) years from the date of this Declaration. Sales offices and model units may be relocated from time to time to another Unit and shall be of a size compatible with the development of the Property. Notwithstanding the foregoing, Declarant shall not perform any activity or maintain any facility on any portion of the Property in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees of and to his Unit, the Common Area, and to public right-of-way.

Section 6. Household Pets. No animals, livestock, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on the Property; provided, however, that the Owners of each Unit may keep up to three (3) dogs, cats, or other domestic animals, and a reasonable amount of aquarium fish, which are bona fide household pets, so long as such pet(s) are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any



resident(s) of the Property. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any costs to the Association for any damages caused by such Owner's Pet(s).

Section 7. Units to be Maintained. Except during any period of construction or reconstruction, each Unit at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Unit so that the same are visible from any neighboring Unit, the Common Area, or any street.

Section 8. Temporary Structures. Except as hereinafter provided, no structure of a temporary character, including but not limited to a house trailer, tent, shack, or outbuilding shall be placed or erected upon any Unit, and no residence shall be occupied in any manner at any time prior to its being fully completed, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth; provided, however, that during the actual construction, alteration, repair or remodeling of a residence, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any residence shall be prosecuted diligently from the commencement thereof until the completion thereof.

Section 9. Miscellaneous Structures.

a. No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Unit other than (i) a name plate of the occupant and a street number; (ii) yard and/or garage sales signs that have been approved in advance by the Board; and a "For Sale" or "For Rent" sign not to exceed five (5) square feet; notwithstanding the foregoing, signs, advertising, or billboards used by the Declarant or its designees in connection with the any development of the Property, shall be permissible, provided that such use by the Declarant or its designees shall not unreasonably interfere with any Owner's use and enjoyment of his Unit, the Common Area, or with such Owner's ingress or egress from a public way to the Common Area or his Unit.

b. Except as may otherwise be permitted by the Architectural Control Committee, all antennae, including satellite receivers, shall be installed inside any residence.

c. No clotheslines, dog runs, drying yards, service yards, wood piles or storage areas shall be so located on any Unit as to be visible from a street or adjacent residences.

d. Any accessory building shall be a maximum of eight (8) feet in height and shall be of the same materials and color as the residence and shall be subject to the review of the Architectural Control Committee. No accessory building shall be allowed on Units adjacent to the open space park area except on side yard areas not adjacent to the open space park area.

Section 10. Vehicular Parking, Storage and Repairs.

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 be parked or stored on or within the Property only if such parking or storage is done wholly within the enclosed garage located on a Unit or is otherwise screened so as to prevent visibility from any street adjoining property or common area, except that no such vehicle is allowed on the rear Unit of any of the Units adjacent to the open space park area. 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, Units, or any improvements located thereon.

b. Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles 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 can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot 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.

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.

d. All garages shall be single-car garages.

Section 11. Nuisances. No nuisance shall be permitted on or within the Property, nor any use, activity or practice which is the source of annoyance or embarrassment to, or which offends or disturbs, any residents of the Property, or which interferes with the peaceful enjoyment or possession and proper use of the Property, or any portion thereof, by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant or its designees which are reasonably necessary to the development of and construction on the Property; provided, however, that such activities of the Declarant or its designees shall not unreasonably interfere with any Owner's use and enjoyment of his Unit or the Common Area, or with any Owner's ingress and egress to or from his Unit and a public way.

Section 12. Satellite Dishes. The Association intends to comply with the provisions of all federal, state and local laws regarding the installation and operation of satellite dishes, antennas, and necessary equipment and accoutrements (collectively, "Satellite Devices") including, but not limited to the Over-the-Air Reception Devices Rule (OTARD) adopted by the FCC under the 1996 Telecommunications Act. Accordingly, Owners or lessees with Owner's permission, may install reasonably-sized Satellite Devices in a tasteful manner that does not detract from the overall attractive presentation of each Unit. Installation of any Satellite Device may not cause damage to the Unit or create a safety hazard; all such Satellite Devices must be secured in a manner that will withstand the forces of weather of any kind. The Unit Owner shall be responsible for any damage to property or injury to person caused by the installation, operation or existence of a Satellite Device attached to the Unit.

Section 13. Underground Utility Lines. All electric, television, radio, and telephone line installations shall be placed underground, except that during the construction of any residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

Section 14. No Hazardous Activities. No activities shall be conducted on the Property or within improvements constructed on or within the Property which are or might be unsafe or hazardous to any person or property.

Section 15. No Annoying Light, Sounds or Odors. No light shall be emitted from any Unit which is unreasonably bright or causes unreasonable glare when viewed from the street, adjacent property or Common Area. No sound shall be emitted from any Unit which is unreasonably loud or annoying and no odor shall be permitted from any Unit which is noxious or offensive to others.

Section 16. Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, the Common Area, or any Unit, unless placed in a suitable container suitably located, solely for the purpose of garbage pickup. All containers shall be removed from the street the same day and returned to its screened area. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. All trash receptacles shall be screened as provided in the Architectural Control Committee guidelines.

Section 17. Leases. For the limited circumstances in which a lease is allowed by this Declaration, the term "lease," as used herein, shall include any agreement for the leasing or rental of a Unit, under the following conditions:

- a. All leases shall be in writing;
- b. All leases shall provide that the terms of the lease and lessee's occupancy of the Unit shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, Bylaws and rules and regulations of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease; and

c.

Section 18. Rules and Regulations. Rules and regulations concerning and governing the Property or any portion thereof may be adopted, amended or repealed, from time to time by the Board of Directors of the Association, and the Board of Directors may establish and enforce penalties for the infraction thereof, including without limitation the levying and collecting of fines for the violation of any of such rules and regulations.

Section 19. Management Agreement and Other Contracts.

a. The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business or any contract providing for the services of Declarant shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon thirty (30) days prior written notice.

b. Subject to Article IX, Section 19(a) hereof, any contracts, licenses or leases entered into by the Association while the Declarant controls the Association shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, at any time after termination of the Declarant's control or the Association, upon thirty (30) days prior written notice.

c. Notwithstanding anything to the contrary contained in this Section 19, the Association may enter into contracts, licenses and leases in violation of Section 19(b) hereof upon a waiver of any requirements contained herein by the Federal National Mortgage Association.

Section 20. No Mining or Drilling. No mining, drilling, quarrying, digging or excavating for the purpose of testing for the existence of, or extracting oil, gas, coal or minerals of any kind shall be performed upon or within the Property.

Section 21. Irrigation. Due to concerns regarding water conservation and the geologic integrity of the Subdivision, the Association shall have the exclusive right to control the irrigation system within the Subdivision. Use of the irrigation system shall be controlled by the Association under Rules and Regulations adopted by the Association.

Section 22. Drainage. Release of contaminants or hazardous materials into the Subdivision drainage is prohibited and the Association shall indemnify and hold harmless Redlands Water & Power Company from any such contamination.

Section 23. Geotechnical Requirements. Prior to commencement of the construction of any improvements on any Unit the owner of such Unit shall provide the Architectural Control Committee with plans for an engineered foundation certified by a Colorado licensed engineer. Written confirmation of compliance of any subdivision geotechnical requirements from a licensed engineer shall be submitted to the Architectural Control Committee for review and approval.

Section 24. Fencing. See Section 1 of Article VIII (page 16).

## ARTICLE X FIRST MORTGAGES

Section 1. Member and First Mortgagee Approval. The Association shall not unless it has obtained the prior written consent of at least sixty-seven percent (67%) of the Members and sixty-seven percent (67%) of the First Mortgagees (based upon one vote for each First Mortgage owned);

- a. by act or omission, change, waive, or abandon any scheme of architectural control, or enforcement thereof, as set forth in this Declaration, regarding the design or maintenance of the Units, improvements thereon or the Common Area;
- b. fail to maintain full current replacement cost fire and extended insurance coverage on the Common Area;
- c. use hazard insurance proceeds for Common Area property losses for purposes other than to repair, replace, or reconstruct such property;
- d. by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any common property owned, directly or

indirectly, by the Association for the benefit of the Owners (excluding the granting of permits, licenses and easements for public utilities, roads, or other purposes reasonably necessary or useful for the proper maintenance or operation of the Property or the Association);

e. change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

f. add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association which establish, provide for, govern or regulate any of the following, provided that any First Mortgagee who receives a written request to approve any additions or amendments to any of such documents and who does not deliver or post to the requesting party a negative response within thirty (30) days after receipt of such a request shall be deemed to have approved such request, and provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only, and further provided that this subsection (vi) shall not apply to amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Property or the improvements thereon;

- (1) voting;
- (2) assessments, assessment liens or subordination of such liens;
- (3) reserve for maintenance, repair and replacement of those elements of the Common Area which must be maintained, repaired or replaced on a periodic basis;
- (4) insurance, including but not limited to fidelity bonds;
- (5) rights to use of the Common Area;
- (6) responsibility for maintenance and repair of any portion of the Property;
- (7) expansion or contraction of the Property or the addition, annexation, or withdrawal of property to or from the Property;
- (8) interests in the Common Area;
- (9) convertibility of Units into Common Area or of Common Area into Units;
- (10) leasing of Units or dwellings constructed thereon;
- (11) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey his Unit;
- (12) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages;

g. restore or repair the Common Area, or any portion thereof, including but not limited to improvements located thereon, after a partial condemnation or damage due to any insurable hazard, other than substantially in accordance with this Declaration and the most recent plans and specifications for the Common Area and the construction of improvements thereon;

Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the First Mortgagee or insurer or guarantor of the First Mortgage and the residence address of the property which is subject to such First Mortgage, each such First Mortgage or insurer or guarantor of such a First Mortgage, shall be entitled to timely written notice of:

a. any condemnation loss or casualty loss which affects a material portion of the Property or any Unit subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor of a First Mortgage;

b. any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Unit subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association and the Board of Directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days;

c. any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

d. any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article X.

Section 3. Audit. The Association shall provide an audited financial statement for the immediately preceding fiscal year free of charge to any First Mortgagee, insurer or guarantor of a First Mortgage within a reasonable time after written request therefor.

## ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended, shall be by any proceeding at law or in equity against any person or persons, including without limitation the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of the aforesaid documents in any action instituted or maintained under this Section, the prevailing party shall be entitled to

recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 3. Easements. Easements for the installation and maintenance of utilities, irrigation and drainage facilities are reserved as shown on the recorded plat of the Property, or any portion thereof, or other duly recorded instrument(s). Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements. Declarant hereby reserves the right to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 4. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 5. Street Lighting. Unless street lighting and the cost thereof is provided by the community in which jurisdiction this subdivision is situated, all Units shall be subject to and bound to Public Service Company tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting in this subdivision, together with rates, rules and regulations therein provided and subject to all future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

Section 6. Expansion.

- a. Intentionally Omitted.
- b. Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder of Mesa County, Colorado, one or more Supplemental Declarations setting forth the Units and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.
- c. Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" shall mean the Units described in Article I, Section 8 above plus any additional Units added by a Supplemental Declaration or Declarations and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Units shall be effective to transfer rights in the Property as expanded. The recordation in the records of Mesa County, Colorado, of a supplemental parcel map or maps incident to any expansion shall operate automatically to grant, transfer, and convey to the Association any new Common Area added to the Property as the result of such expansion. The allocation for assessments shall be amended pro rata to reflect the increase in the number of Units added to the Declaration.
- d. Declaration Operative to New Units. The new Units shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon placing the supplemental parcel map(s) depicting the Expansion Property and Supplemental Declaration(s) of public record in the real estate records of Mesa County, Colorado.
- e. No Objection to Expansion. No member of the Association shall have any right of objection to the exercise of the developmental right set forth above.

Section 7. Duration, Revocation and Amendment.

- a. Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as provided in Article X hereof and in Subsections (b) and (c) of this Section 6, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by any instrument approved in writing by not less than sixty-seven percent (67%) of the Members. Such amendment shall be effective when duly recorded in Mesa County, Colorado.
- b. If Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any of the Agencies, Declarant shall have and is hereby specifically granted the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to termination of the Declarant's control or the Association.
- c. Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, Articles of Incorporation or Bylaws of the Association at any time prior to the termination of Declarant's control or the Association, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of any such document.

Section 8. Rights of Declarant Incident to Construction. An easement is hereby retained by and granted to Declarant, its successors and assigns, for access, ingress and egress over, in, upon, under, and across the Common Area, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's or its designees' construction on the Property; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests, or invitees, to or of that Owner's Unit. Declarant, for itself and its successors and assigns, hereby retains a right to store construction materials on Units owned by Declarant and to make such other use thereof as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Property, the performance of Declarant's obligations hereunder, and the sale of the Units. Any special declarant rights created or reserved under this Article or elsewhere in this Declaration for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the office of the Clerk and Recorder for the County of Mesa. The rights of Declarant reserved in this Section 7 shall expire five (5) years after the recording of this Declaration. Such instrument shall be executed by Declarant and its transferee. Any rights granted to Declarant under this Declaration shall expire on the date which is ten (10) years from the recording date of this Declaration, unless otherwise provided herein.

Section 9. Easement for Encroachments. If any portion of a structure encroaches upon the Common Area or upon any adjoining Unit, or if any portion of the Common Area encroaches upon any Unit, including any future encroachments arising or resulting from the repair or reconstruction of a structure subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist.

Section 10. Law Enforcement; Action by Municipality. In order to prevent the diminution in the enjoyment, use or property value of the development, thereby impairing the health, safety and welfare of the Owners therein, the governing municipality and law enforcement, by and through its duly authorized officers and employees, may take such action as deemed necessary to enforce the covenants, conditions or restrictions contained in this Declaration with respect to the use of the Units and parking on the Property for the purpose of ensuring the Association's and the Unit Owners' compliance with the zoning and other applicable ordinances of the City of Grand Junction.

Section 11. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. However, if any Owner fails to so notify the Association of a registered address, then any notice or demand may be sent to such Owner at the address of such Owner's Unit. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to its original address, until such address is changed by the Association.

IN WITNESS WHEREOF, the Declarant, being the Declarant herein, has hereunto set its hand and seal as of the day and year first above written.

By:

  
Declarant

STATE OF COLORADO

)

) ss.

COUNTY OF ME S A

)

The foregoing instrument was acknowledged before me this 25th day of July, 2018, by Darin Carel

Witness my hand and official seal

My commission expires: 3/25/2022

  
Notary Public

