

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
LANDMARK RESIDENCES ON MOUNTAIN AVENUE  
(A COMMON INTEREST COMMUNITY)**

Declarant: 1032 West Mountain, LLC, a Colorado limited liability company

Association: Landmark Residences on Mountain Avenue Association, a  
Colorado nonprofit corporation

Type of Common  
Interest Community: Planned Community

(JJJ 5/23/2017)

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**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
LANDMARK RESIDENCES ON MOUNTAIN AVENUE  
(A COMMON INTEREST COMMUNITY)**

This Declaration of Covenants, Conditions, Restrictions and Easements for Landmark Residence on Mountain Avenue (a Common Interest Community) (the "Declaration") is made by 1032 West Mountain, LLC, a Colorado limited liability company ("Declarant").

**RECITALS:**

A. Declarant owns that real property (the "Property") described on **Exhibit A**, attached and incorporated by reference.

B. The Property is a common interest community and planned community pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as it may be amended from time to time (the "Act"). This Declaration is intended to supplement the Act. In the event of any conflict between the provisions of this Declaration and mandatory provisions of the Act, the Act, including all amendments to the Act, shall prevail.

C. Declarant has caused or will cause Landmark Residences on Mountain Avenue Association (the "Association") to be organized as a non-profit corporation under the laws of Colorado for the purpose of performing the functions set forth in this Declaration and provided for in the Act.

**1. DEFINITIONS**

1.1. General. The following sections define words and phrases which, as used in this Declaration, have the meaning set forth below. In addition, applicable definitions contained in the Act when used herein, have the meaning set forth in the Act except to the extent the Act allows a Declaration to define the same in a different way and this Declaration does so. Other terms in this Declaration may be defined in specific provisions of the Declaration and shall have the meaning assigned by such definition. Defined words and phrases, including both those defined in this Declaration and those defined in the Act, are indicated in this Declaration by capitalizing the first letter of a defined word or of each word in a defined phrase.

1.2. Act. "Act" means the Colorado Common Interest Ownership Act as the same may be amended from time to time.

1.3. Allocated Interest. "Allocated Interest" means the Common Expense Assessment and Votes in the Association allocated to each Lot set forth on **Exhibit B**, attached and incorporated by reference.

1.4. Architectural Review Committee. “Architectural Review Committee” or “ARC” means the committee established for the purposes set forth in Article 7 below and any other applicable provisions of this Declaration.

1.5. Assessments. “Assessments” means all Common Expense Assessments, Special Assessments, and Fines levied by the Executive Board of the Association pursuant to this Declaration, the Bylaws or the Rules and Regulations. For purposes of calculating the amount of the Association’s super-priority lien under Section 38-33.3-316(2)(b)(I) (or any successor provision) of the Act, the term “Assessments” specifically includes all of the Association’s costs and attorneys fees.

1.6. Association. “Association” means Landmark Residences on Mountain Avenue Association, a Colorado non-profit corporation.

1.7. Building. “Building” means any structure on a Lot intended for occupancy as a dwelling unit for residential use, for commercial use or for use as garages.

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

1.9. City. “City” means the City of Fort Collins, Colorado.

1.10. Commercial Lot. “Commercial Lot” means the improvements constructed on Lot 1 intended for commercial use subject to the terms of this Declaration, the rules and regulations of the Association, and applicable governmental laws including by way of example the ordinances and regulations of the City.

1.11. Common Elements. “Common Elements” means any Property within the Common Interest Community now or hereafter owned or leased by the Association, other than a Lot. Common Element includes, by way of example, the Private Drive located on Tract A, and all landscaping improvements, irrigation systems, fencing, paving, lighting, trash enclosures, signage, drainage facilities, other fixtures and Improvements now or hereafter appurtenant to such Property. Common Elements also include Improvements such as (i) pavers and subdrain systems in the Common Elements, and subdrain systems that may be located on public property, according to the City’s specific requirements for pavers and subdrains including those requirements set forth in the Development Agreement and Exhibit B to the Development Agreement, (ii) water lines, secondary curb stops, meter pits and service lines from beyond the City curb stop, (iii) sanitary sewer service including all clean outs and service lines beginning at the point of connection with the City’s sanitary sewer main, and (iv) storm drainage facilities constructed outside of public right-of-way.

1.12. Clerk and Recorder. “Clerk and Recorder” means the Clerk and Recorder of Larimer County, Colorado.

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



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

1.15. Common Interest Community. “Common Interest Community” means the Property (including the Lots and the Common Elements) submitted to this Declaration.

1.16. Declarant. “Declarant” means 1032 West Mountain, LLC, a Colorado limited liability company, its successor and assigns, or any Person or group of Persons acting in concert with 1032 West Mountain, LLC, a Colorado limited liability company, who:

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

1.16.2. Reserves or succeeds to any Special Declarant Right.

1.17. Declaration. “Declaration” means this Declaration of Covenants, Conditions, Restrictions and Easements for Landmark Residences on Mountain Avenue, and any recorded instruments however denominated that create this Common Interest Community and also including, without limitation, the Plat(s) of the Property recorded with the Clerk and Recorder of Larimer County, Colorado, together with any amendments, supplements and replats to such documents.

1.18. Executive Board. “Executive Board” means the Association’s Board of Directors.

1.19. Fines. “Fines” means any monetary penalty imposed by the Executive Board against a Lot Owner because of a violation of this Declaration, the Articles of Incorporation of the Association, its Bylaws or the Rules and Regulations by such Lot Owner, a tenant, licensee, invitee or guest of the Lot Owner.

1.20. Garage. “Garage” means an Improvement intended for the parking of vehicles and the storage of personal property items with use limited to Owners, occupants and guests of the Lot on which the Garage is located. Garages are located on Lot 2, Lot 3, Lot 4, Lot 5, Lot 6 and Lot 7 (“Garage”), on which Lot a residential dwelling is also constructed. The ownership and use of these Garages is restricted to the Owners, occupants and guests of the residential dwelling unit upon which such Garage is located.

Garages are also constructed on Lot 8, Lot 9 and Lot 10 (“Garage Lots.”) Each Garage Lot is located on an individual Lot and shares a Party Wall with an adjoining Garage Lot. The ownership and use of a Garage Lot is restricted to the Owners, occupants and guests of Lot 2, Lot 3, Lot 4, Lot 5 and Lot 6, inclusive, provided, that such Persons may not own or use more than one (1) Garage Lot each.

No Garage may be occupied, leased or otherwise used by any Person other than the Owner or occupant of a Lot.

1.21. Improvements. “Improvements” means all of the following located or occurring on any Lot: Townhomes, Buildings, all landscaping, irrigation systems, fencing, paving, signage,

stormwater detention facilities, drainage facilities, other fixtures, structures, walls, hedges, plantings, lighting, driveways, parking areas, sidewalks, patios, changes in any exterior color or shape, excavation and site work, removal of trees or plantings, and any new exterior construction or exterior improvement on a Lot which may not be included in the foregoing. "Improvement(s)" does include both original Improvements and all later changes and Improvements on a Lot.

1.22. Landscaping. "Landscaping" means all trees, shrubs, grasses, flowers and other plants and plant materials, together with hardscape materials such as timbers, pavers, decorative rocks and other materials associated with plant materials on the Property, and the landscape irrigation system. Landscaping installed in the front yards of all Lots, side yards of all corner Lots, and public rights-of-way adjacent to Lots, together with the landscape irrigation system installed in the front yards, side yards and rights-of-ways adjacent to the Lots is maintained by the Association as provided in Article 5. Landscaping located within the enclosed patio portion of a Lot is maintained by the Owner as provided in Article 5.

1.23. Lot or Lots. "Lot" or "Lots" means a physical portion of the Property which is designated for separate ownership, and the boundaries and identifying number of which are described in or determined from a declaration and a plat. "Lot" or "Lots" have the same meaning as the words "Unit" and "Units" used in the Act.

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

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

1.26. Owner or Lot Owner. "Owner" or "Lot Owner" means the Declarant or other Person who owns a Lot but does not include a Person having an interest in a Lot solely as security for an obligation. The Declarant is the Owner of any Lot created in any declaration and plat until that Lot is conveyed to another Person. "Owner" or "Lot Owner" have the same meaning as the words "Unit Owner" used in the Act.

1.27. Parking. "Parking" means a striped parking space located on the Property. All Parking spaces are subject to rules and regulations of the Association as may be adopted or amended from time to time. The initial Plans for the Property as approved by the City include five (5) Parking spaces as numbered on the Plans submitted and approved by the City. The Association anticipates maintaining one (1) Parking space as a designated handicap space located immediately north of Lot 1, the Commercial Lot. Parking space number 2 also located immediately north of Lot 1, the Commercial Lot, is reserved for the Owner, occupant, guests and invitees of Lot 1, the Commercial Lot. Parking spaces numbers 3, 4 and 5 as noted on the Plans are reserved for the Owners, occupants, guests and invitees of the Residential improvements subject to rules and regulations of the Association as maybe adopted or amended from time to time.

Parking spaces numbers 1 and 2 located immediately north of Lot 1, the Commercial Lot, and along the south side of the drive aisle off of Shields Street, as shown in the Plans, are not in conformance with the off-street parking setback distance requirements at such time that Shields Street is widened (as specified in Figure 19-6 of the Larimer County Urban Area Street Standards) but were conditionally approved by the City through a variance approval letter dated February 5, 2015. If the east side of Shields Street is widened in the future, and if it is determined by the City that the frequency of ingress and egress from the first two (2) parking spaces nearest Shields Street (immediately north of the Commercial Lot) negatively impacts the flow of traffic along the widened Shields Street, the Association, hereby agrees to remove these two (2) parking spaces at the direction of the City, with all costs associated with the removal of said parking spaces to be borne by the Association.

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

1.29. Plans. "Plans" means the Development Agreement dated December 9, 2015 between the City and Declarant (the "Development Agreement"), recorded with the Clerk and Recorder, as well as the Site Plan, Landscape Plan and any other plans for the Common Interest Community on file with the City ("Plans"). The Plans contain various restrictions, requirements and terms which are in addition to those set forth in this Declaration.

1.30. Plat. "Plat" or "Plats" mean collectively the plats of the Property recorded with the Clerk and Recorder, and all recorded amendments, corrections and replats.

1.31. Property. "Property" means the real property described on **Exhibit A**.

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

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

1.32.2. A Security Interest.

1.33. Residential Lot. "Residential Lot" means the improvements constructed on Lot 2, Lot 3, Lot 4, Lot 5, Lot 6 and Lot 7, inclusive, intended for use as residential dwelling units subject to the terms of this Declaration, the rules and regulations of the Association, and applicable governmental laws including by way of example the ordinances and regulations of the City and as defined in the Act.

1.34. Roof-Top Patio. "Roof-Top Patio" means a portion of Lot 1, including a portion of the roof-top of the Building located on Lot 1, for the nonexclusive use and occupancy of the Roof-Top Patio under the terms and conditions of such Roof-Top Patio Lease & Easement Agreement, as may be amended and extended from time to time, by and between the Declarant and the Association, subject to the Declaration and the Rules and Regulations.

1.35. Rules and Regulations. “Rules and Regulations” means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Property, including any amendment to those instruments. “Rules and Regulations” specifically include the Association’s Design Guidelines described in Article 7 below.

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

1.37. Special Assessments. “Special Assessments” means the Special Assessments as described in Article 6 of this Declaration.

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

1.39. Townhome. “Townhome” means a structure which is part of a Building constructed on a Lot which shares a common wall with an adjacent Townhome. A Townhome maybe used for commercial purposes (the Commercial Lot only), a residential dwelling, or as a garage. A Townhome shares a common party wall with an adjacent Townhome unit.

1.40. Utilities. “Utilities” means all pipes, wires, conduits, systems, and other fixtures and equipment running through a Townhome or a Lot to provide heating, cooling, ventilation, water, sewer, gas, electric, telephone, television, radio, cable, broadband communication, computer, or other utilities to one or more other Townhomes. Utilities may be located in the subfloor, basement, or attic of each Townhome, or underground or otherwise located on the Property.

## **2. SUBMISSION OF PROPERTY**

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

Act is repealed, the Act as it was in effect on the effective date of such repeal shall remain applicable.

2.2. Plat and Plans. In addition, the Property shall be subject to any restrictions appearing on the Plat, and those contained in the Plans for the Property on file with the City and as described in Article 14 below.

### 3. COMMON INTEREST COMMUNITY

3.1. Name. The name of this Common Interest Community is Landmark Residences on Mountain Avenue.

3.2. Association. The name of the Association is Landmark Residences on Mountain Avenue Association. The Association shall be organized no later than the date the first Lot is conveyed to an Owner other than Declarant.

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

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

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

3.6. Maximum Number of Lots. The maximum number of Lots that the Declarant reserves the right to create within this Common Interest Community is that number allowed by the City.

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

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

3.9. Garage or Parking. No Garage or parking space may be sold, conveyed, leased, occupied or otherwise used by any Person other than the Owner, occupant or guest of a Lot Owner or occupant. The Garages and Parking spaces are subject to the rules and regulations of the Association that may be adopted or amended from time to time.

### 4. ASSOCIATION

4.1. Powers and Authority. The Association shall manage the business and affairs of the Common Interest Community. To manage the Common Interest Community business and affairs, the Association shall have and may exercise with regard to the Common Interest Community all powers and authority of an owner's association under the Act (specifically

including without limitation (i) the power to adopt and amend budgets for revenues, expenditures, and reserves and collect Assessments for Common Expenses from the Owners; and (ii) the power to assign its right to future income, including the right to receive Assessments, provided the Association determines that such assignment will not impair the ability of the Association to perform its duties under this Declaration). The Association may adopt Rules and Regulations. Additionally, the Association, acting through its Executive Board, shall have the power, after notice and an opportunity to be heard, to levy reasonable Fines for violations of any provision of this Declaration, the Bylaws and Rules and Regulations. The remedies for collection of any such Fines and penalties shall be as provided in Article 6 below.

4.2. Membership. All Lot Owners shall be members of the Association. The Association shall have one class of membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. Lots are allocated votes in the Association as set forth on Exhibit B. When more than one Person holds a membership interest in any Lot, all such Persons shall be members. The votes for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

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

## 5. MAINTENANCE

5.1. Common Elements. The Association shall be responsible for the maintenance, repair and replacement of the Common Elements so that the Common Elements are aesthetically attractive, serve their intended purposes and comply with any requirements imposed by the City, including but not limited to the requirements in the Development Agreement between the Declarant and the City. The Association's maintenance responsibilities specifically include, without limitation, snow removal from any sidewalks, walkways and driveways located on the Common Elements (except that Lot Owners shall be responsible for snow removal from the patio areas). The Executive Board shall determine the minimum snow depth level which will require snow removal to be performed by the Association. The cost of said maintenance and repair shall be a Common Expense assessed against the Lots as set forth on Exhibit B. The Association shall establish a reserve fund for such maintenance, repairs and replacements that are reasonably necessary as determined by the Executive Board.

The obligations of the Association also specifically includes, without limitation, the maintenance, repair and replacement of Common Elements such as (i) pavers and subdrain systems in the Common Elements, and subdrain systems that may be located on public property, according to the City's specific requirements for pavers and subdrains including those requirements set forth in the Development Agreement and Exhibit B to the Development Agreement, (ii) water lines, secondary curb stops, meter pits and service lines from beyond the City curb stop, (iii) sanitary sewer service including all clean outs and service lines beginning at the point of connection with the City's sanitary sewer main, (iv) storm drainage facilities

constructed outside of public right-of-way, and (v) any other maintenance, repair and replacement responsibility of Property owners under the Development Agreement.

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

5.2.1. Exterior of Townhomes. The Association shall maintain, repair and replace the exterior siding, roofs, soffit, fascia, exterior trim and patio areas, gutters and downspouts for each Townhome in a manner that meets the Guidelines. The Owners shall maintain, repair and replace all windows, doors (including garage doors), screens and skylights, if any, on, in or about their Lots in a manner that meets the Guidelines.

5.2.2. Fencing. The Association shall maintain, repair and replace all fencing on the Lots in a manner that meets the Guidelines.

5.2.3. Landscaping. The Association shall maintain, repair and replace all exterior Landscaping and irrigation systems in the Landscape areas on each Lot in a manner that meets the Guidelines. The Executive Board shall determine the irrigation schedule and amount of quantity irrigation water to apply to Landscape areas. The Owners shall maintain, repair and replace all Landscaping and irrigation systems (hose big) in their respective patio areas.

5.2.4. Snow Removal. The Association shall remove from any sidewalks, walkways and driveways located on a Lot (except that Lot Owners shall be responsible for snow removal from the patio areas). The Executive Board shall determine the minimum snow depth level which will require snow removal to be performed by the Association.

5.2.5. Utilities. The Association shall maintain, repair and replace all utility lines to the point where such lines enter a Townhome.

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

5.4. Damage by Owner. Notwithstanding anything to the contrary contained in this Declaration, in the event the need for the Association to maintain, repair or replace an Improvement located on a Lot is caused by the willful act, negligence or other misconduct of an Owner or a member of such Owner's family or a guest, invitee or tenant of an Owner or a member of such tenant's family, the cost of such repair, replacement or maintenance shall be the

personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for the same shall be assessed to such Owner under Article 6.6 below.

5.5. Association's Right to Perform Work. In the event any Lot Owner shall fail to satisfactorily perform any maintenance, repair or replacement obligations of such Lot Owner, the Association may give written notice to the Lot Owner of the work required to be performed, and, if such failure to perform the work continues for a period of thirty (30) days after such notice has been given, the Association may enter upon the Lot and perform the necessary maintenance, repairs or replacements. The cost of any such maintenance, repair or replacement shall be the obligation of the Lot Owner as provided in Article 6.6 below.

5.6. Association's Easement to Perform Work. The Association shall have an easement over, across and upon each Lot permitting the Association, its agents, employees and independent contractors to enter upon the Lot as reasonably necessary and with reasonable notice in order to perform the work to be performed on the Lot by the Association pursuant to the Declaration. All Persons performing such work shall use their best efforts to minimize interference with the Lot Owners' use and enjoyment of the Lot when performing such work. Additionally, the Association shall have an easement across all Lots to perform any work pursuant to this Declaration. Owners shall not impair or impede the Association's ability to perform its maintenance, repair and replacement obligations.

## 6. ASSESSMENTS

6.1. Purposes of Assessments. The Assessments levied by the Association through its Executive Board shall be used for (a) promoting the recreation, health, safety and welfare of the Lot Owners, (b) the management, improvement, maintenance, repair and replacement of the Common Elements, Buildings, Landscaping and Utilities, (c) the maintenance, repair and replacement of those portions of the Lots and Buildings for which the Association is responsible under this Declaration, (d) payment of any utilities billed to the Association, (e) trash removal, (f) any other maintenance obligations or common services deemed necessary or advisable by the Association, (g) insurance as may be required by this Declaration, (h) providing an adequate reserve fund for improvement, maintenance, repair, and replacement of the Common Elements, Buildings, Landscaping and Utilities, and any portions of the Lots, Buildings and Improvements for which the Association is responsible under this Declaration, (i) such reasonable administrative costs and overhead charges incurred by the Association, as well as enforcement and collection costs, and any management fee paid by the Association, related to the performance of the obligations and provisions of services referenced in this Declaration; (j) such other purposes as may be described in this Declaration, and (k) the payment of any other Common Expenses incurred by the Association in performing its duties under this Declaration and the Act.

6.2. Common Expense Assessments. The Common Expense Assessments shall be levied against Lots as set forth on Exhibit B, and shall consist of those Common Expenses relating to the Common Elements, Buildings, Landscaping, Utilities and Improvements, and any services (such as trash removal) provided to all Lots or their Owners, including reserves relating to any of the foregoing.



6.3. Budget Process. The assessment year shall be January 1 to December 31, unless a different fiscal year is chosen by the Association's Executive Board. The Common Expense Assessments shall be made annually based upon the Association's advance budget cash requirements needed to perform its duties. The Common Expense Assessments shall be collected in periodic installments as determined by the Executive Board. Within 90 days after adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail or otherwise deliver in the manner provided in Article 17 below, a summary of the budget to all Owners, and shall set a date for a meeting of the Owners to consider the budgets. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Executive Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Executive Board does not require approval from the Owners. The budget for the Common Expense Assessments will be deemed approved in the absence of a veto at the noticed meeting by a majority of all Owners. In the event any proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed will be continued until a subsequent budget proposed by the Executive Board is not vetoed. The omission or failure of the Association to fix Assessments for any assessment period shall not be deemed a waiver, modification or release of the obligation to pay the same.

6.4. Special Assessments. In addition to the annual Common Expense Assessments authorized above, the Association may levy, in any fiscal year, one or more Special Assessments, payable over such period of the time as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any Common Elements or any Improvements for which the Association is responsible. Special Assessments may include, by way of example and not limitation, amounts needed to pay any insurance deductible on a policy maintained by the Association for items such roof repair, maintenance or replacement.

6.5. Individual Assessments. The costs referenced in Articles 5.3 and 5.4 above shall be added to and become part of the Common Expense Assessment against the subject Owner's Lot. Similarly, Fines levied pursuant to this Declaration or the Rules and Regulations of the Association shall be added to the Common Expense Assessment against the Lot of the Owner subject to the same.

6.6. Allocation of Assessments. Assessments shall be allocated as follows:

6.6.1. Common Expense Assessments. Common Expense Assessments and any related Special Assessments shall be allocated among the Lots as set forth on Exhibit B.

6.6.2. Individual Assessments. Individual Assessments shall be allocated solely against the subject Owner's Lot as provided in Article 6.5 above.

6.7. Commencement of Assessments. The obligation to pay Assessments shall commence on the day following issuance of a certificate of occupancy for a Townhome on a Lot. Assessments for any partial payment period shall be pro-rated. Assessments will not commence simultaneously for all Lots.

6.8. Statement of Assessments. The Association shall, during business hours and for a reasonable fee as determined by the Executive Board, furnish a statement setting forth the amount of unpaid Assessments upon the request of the Owner, the Mortgagee, or the designee of either. The request and the Association's response shall be hand delivered, sent by facsimile or other electronic transmission, or mailed by first class mail, postage prepaid. The Association's failure to furnish such statement of Assessments within 14 days of receipt of a request shall cause the forfeiture of the Association's right to assert a priority lien as provided by Section 38-33.3-316(2)(b)(I) of the Act upon the Lot for unpaid Assessments due as of the date of the request.

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

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

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

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

## 7. ARCHITECTURAL CONTROL

7.1. Guidelines and Architectural Review Committee. Separate Design Guidelines (the "Guidelines") will be established for the Common Interest Community. The Guidelines will be administered by the Architectural Review Committee ("ARC"). The Executive Board may promulgate, amend, vary, repeal and augment the Guidelines from time to time, in its sole discretion (with the input of the ARC) based on concerns for good planning and design, the aesthetic, architectural and environmental harmony of the Common Interest Community, or other factors considered necessary or desirable to fulfill the intent of the Guidelines. The Guidelines may contain both objective and subjective elements, and may evolve as the needs and desires within the Common Interest Community change. Notwithstanding the foregoing, promulgation, amendment or repeal of the Guidelines requires the prior written approval of the Declarant for so long as Declarant owns any of the Property. The Guidelines shall be binding on all Owners and other Persons governed by this Declaration. In the event of any conflict between the Guidelines and this Declaration, the Declaration shall control.

7.2. ARC Membership and Organization. The ARC shall be composed of not less than two nor more than five Persons. The ARC may include one or more professional design consultants, but need not include any Member of the Association. All members of the ARC shall be appointed, removed and replaced by Declarant, in its sole discretion, until the period of Declarant control described in Article 4.3 expires. At that time, the Executive Board shall succeed to Declarant's right to designate the number of and to appoint, remove or replace the members of the ARC. ARC members may also be Executive Board members.

### 7.3. Purpose and General Authority.

7.3.1. ARC Approval. The ARC shall review, study and either approve or reject proposed Improvements on the Lots, all in compliance with this Declaration and as further set forth in the Guidelines and such Rules and Regulations as the Executive Board may establish from time to time to govern its proceedings. No Improvement shall be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor shall any construction, repair or reconstruction be commenced until plans for the Improvements shall have been approved by the ARC; provided, however, that Improvements that are completely within a previously completed Building may be undertaken without such approval. All Improvements shall be constructed only in accordance with approved plans.

7.3.2. ARC Discretion. The ARC shall exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Lot, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Guidelines and this Declaration. The ARC, in its sole discretion based on concerns for good planning and design,

the aesthetic, architectural and environmental interests of the Common Interest Community, or other factors as necessary or desirable to fulfill the intent of the Guidelines, may excuse compliance with such requirements in specific situations and may permit compliance with different or alternative requirements.

7.3.3. Binding Effect. The actions of the ARC in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

7.4. Organization and Operation of ARC.

7.4.1. Term. The term of office of each member of the ARC, subject to Article 7.2, shall be one year, commencing January 1 of each year, and continuing until his or her successor shall have been appointed. Should an ARC member die, retire or become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed by the Executive Board (or by the Declarant during the period of Declarant control).

7.4.2. Chair. So long as Declarant appoints the ARC, Declarant shall appoint the chair. At such time as the ARC is appointed by the Executive Board, the chair shall be elected annually from among the members of the ARC by a majority vote of the members. In the absence of a chair, the party responsible for appointing or electing the chair may appoint or elect a successor, or if the absence is temporary, an interim chair.

7.4.3. Operations. The ARC chair shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the ARC prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member.

7.4.4. Voting. The affirmative vote of a majority of the members of the ARC shall govern its actions and be the act of the ARC.

7.4.5. Expert Consultation. The ARC may avail itself of other technical and professional advice and consultants as it deems appropriate, and the ARC may delegate its plan review responsibilities, except final review and approval, to one or more of its members or to consultants retained by the ARC. Upon that delegation, the approval or disapproval of plans and specifications by such member or consultant shall be equivalent to approval or disapproval by the entire ARC.

7.5. Expenses and Fees. Except as provided in the next sentence, all expenses of the ARC shall be paid by the Association and shall constitute a Common Expense collected through the Assessments. The ARC shall have the right to charge fees and deposits for each application submitted to it for review, in an amount which may be established by the ARC from time to time, and such fees shall be collected by the ARC and remitted to the Association to help defray the expenses of the ARC's operation.

7.6. Other Requirements. Compliance with the design review process is not a substitute for compliance with the City and other governmental building, zoning and subdivision

regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction of Improvements.

7.7. Limitation of Liability. The ARC shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the ARC nor any individual ARC member shall be liable to any Person for any official act of the ARC in connection with submitted Plans and specifications, except to the extent the ARC or any individual ARC member acted with malice or wrongful intent. Approval by the ARC does not necessarily assure approval by the appropriate governmental entity. More specifically, ARC approval does not approve or guarantee engineering design or compliance with applicable laws and governmental ordinances or regulations (such as zoning, building, health and fire ordinances and codes), and does not reflect any representation by the ARC as to such matters. The Owner is solely responsible for all such compliance. By approving plans and specifications, neither the ARC, its members, the Association nor the Declarant assumes any liability or responsibility for engineering design or compliance with applicable laws and governmental ordinances or regulations. The ARC, its members and the Association shall not be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of plan approval or disapproval, or the construction of Improvements whether or not pursuant to any approved plans. Neither the Executive Board, the ARC, nor any agent thereof, nor Declarant, nor any of its managers, members, employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved, nor for any structural or other defects in any work done according to such Plans and specifications. In all events the ARC shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the ARC's decision. The Association, however, shall not be obligated to indemnify each member of the ARC to the extent any such member of the ARC is adjudged to be liable for negligence or misconduct in the performance of his duty as a member of the ARC, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such Person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

7.8. Enforcement.

7.8.1. Inspection. Any member or authorized consultant of the ARC, or any authorized officer, director, employee or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect Improvements constructed or under construction on the Lot to determine whether the Improvements have been or are being built in compliance with the Guidelines, the Declaration and the plans and specifications approved by the ARC.

7.8.2. Construction and Certificate of Compliance. All Improvements constructed upon a Lot shall be constructed in strict accordance with the plans approved by the ARC. Upon written request of any Owner or his agent, an existing or prospective Mortgagee, or a prospective grantee, and upon payment of a reasonable fee established from time to time by the ARC, the ARC shall issue a certificate setting forth generally whether, to the best of the ARC's

knowledge, the Improvements on a particular Lot are in compliance with the terms and conditions of the Guidelines and this Declaration.

7.8.3. Deemed Nuisances. Every violation of this Declaration and the Guidelines is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against the violating Owner shall be applicable. Without limiting the generality of the foregoing, these remedies include the following:

7.8.3.1. Fines for Violations. The Executive Board may levy reasonable Fines for such violations.

7.8.3.2. Removal of Nonconforming Improvements. The Association, upon request of the ARC, shall have the right to obtain a court order from a Colorado court of competent jurisdiction to remove any Improvement constructed, reconstructed, refinished, altered or maintained upon a Lot in violation of these Covenants.

## 8. USE RESTRICTIONS

8.1. Commercial and Residential. With the exception of Lot 1, the Commercial Lot, and subject only to the provisions of Article 8.2 below, each Lot may be used only for residential use.

8.2. Home Occupations. The conduct of a home occupation on a Residential Lot shall be considered accessory to the residential use and shall not be deemed a commercial use. All home occupations permitted by the City shall be allowed.

8.3. Nuisance and Waste. No noxious or offensive activity shall be permitted in or on any Lot nor shall anything be done therein which may be or become an annoyance or nuisance to any Owner. No waste shall be committed on any Lot.

8.4. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion consisting of less than all of any such Lot, nor any easement or other interest herein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar corrective instruments.

8.5. Appearance. Each Lot shall be kept in a clean, safe, and attractive condition.

8.6. Clotheslines/Basketball Goals. No fixed clothes lines are to be installed on any Lot. One retractable clothes line per Lot may be allowed subject to the term of the Act. No fixed or temporary (or movable) basketball goal shall be constructed or placed anywhere on a Lot.

8.7. Signs. No signs, billboards, poster boards or advertising structures of any kind (including those located within a Townhome but which are visible from outside the Townhome) shall be displayed, erected or maintained for any purpose whatsoever except: (a) Building number signs, (b) customary sized signage advertising a Lot for sale or rent, (c) such commercial

signage as has been approved in writing by the Association, which approval shall not be unreasonable withheld, conditioned or delayed, and (d) any other signage which may be approved in writing by the Association. Any allowed signage shall be subject to reasonable Rules and Regulations governing such signage to ensure that the design, color, location and general appearance of such signs conform to the aesthetic and architectural standards of the community.

8.8. Storage and Parking. Boats, trailers, campers, trucks (other than pickup trucks), motor homes, recreational vehicles, snowmobiles, all-terrain vehicles, and inoperable vehicles of any type shall not be stored or parked on any Lot, Common Elements, or the streets adjacent to any Lot except within a fully enclosed garage. Parking on the alleys and roads is subject to any restrictions imposed by the City in the final approvals for this Common Interest Community, as well as such other restrictions as may be adopted in writing by the Association.

8.9. Repair Work. 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 on any Lot unless it is done within a fully enclosed garage which screens the sight and sound of the activity from the street and from adjoining Lots, nor shall any such activity be performed upon a street adjacent to a Lot. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motorcycle together with those activities normally incident and necessary to such washing and polishing.

8.10. Pets. Household pets may be kept on Lots subject to applicable ordinances. It shall be the obligation of each Owner owning a pet to control it in accordance with such ordinances, and to pick up and properly dispose of pet waste. It shall be the responsibility of each Owner to maintain any Lot used in any manner by any pet to avoid any noise, odor or nuisance to any other Owner.

8.11. Hazardous Activities. No activities shall be conducted within the Common Interest Community which are or might be unsafe or hazardous to any Person or property.

8.12. Annoying Light, Sound or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Lot which is noxious or offensive to others.

8.13. Trash Restrictions. Trash, refuse, garbage, and other solid, semi-solid, and liquid waste shall be kept within sealed containers, shall not be allowed to accumulate on any Lot, and shall be disposed of in a sanitary manner. No Lot shall be used or maintained as a dumping ground for such materials. All containers shall be kept in a neat, clean, and sanitary condition and shall be stored inside a garage or other approved structure. No trash, litter, or junk shall be permitted to remain exposed upon any Lot and visible from adjacent streets or other Lots. Burning of trash on any Lot is prohibited. Trash dumpsters located on any Tracts shall be totally screened from public view. In order to minimize damage to the streets within the Common Interest Community, excessive noise and unsightliness, the Association, acting through its Executive Board, shall have the right to require trash collection from all Lots to be performed by

a single company and that the trash be collected from all Lots by such company on the same day of each week. If the Executive Board so requires trash collection by a single company, the trash collection company shall be selected based on competitive bids. The cost of trash removal by the Association-selected company from an Owner's Lot may be paid by each Owner directly to the trash collection company, or the Association may assess the cost of trash collection as a Common Expense.

8.14. Leasing Restrictions. All leases for any Lot must include provisions requiring the lessee and any guest to comply with all provisions of this Declaration, any Rules and Regulations and any other restrictions imposed by the Association.

8.15. Rules and Regulations. Rules and Regulations concerning and governing the use of Lots may be adopted, amended or repealed from time to time by the Executive Board. Such Rules and Regulations may address matters and impose additional restrictions not appearing in this Declaration as well as matters appearing in this Declaration, provided that the Rules and Regulations shall not contradict the provisions of this Declaration. The Executive Board may establish and enforce penalties for the infraction of such Rules and Regulations including, without limitation, the levying and collecting of Fines.

## 9. DRAINAGE AND SOILS CONDITIONS

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

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

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

9.4. Grading. Each Owner of a Lot shall maintain the elevation, grading, and drainage patterns of the Lot as indicated in the subdivision Plans on file with the City.

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



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

9.6.1. Not to install Improvements, including, but not limited to, landscaping, items related to landscaping, walls, walks, driveways, parking pads, patios, fences, Buildings, additions to a Building, outbuildings, or any other item or improvement which will change the grading of the Lot.

9.6.2. To fill with additional soil any back-filled areas adjacent to the foundation of a Building and in or about the utility trenches on the Lot in which settling occurs to the extent necessary from time to time to maintain the grading and drainage patterns of the Lot.

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

9.6.4. Not to plant any flower gardens or vegetable gardens, which may have been first approved by the Architectural Control Committee, adjacent to or within four (4) feet of the foundation and slabs of a Building.

9.6.5. To install any gravel beds in a manner which will assure that water will not pond in the gravel areas.

9.6.6. To install a moisture barrier (such as polyethylene) under any gravel.

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

9.6.8. If evergreen shrubbery and grass are planted within five feet of the foundation walls, to water the shrubbery and grass and controlled watering to avoid excessive watering.

9.6.9. To maintain the gutters and downspouts which discharge water into extensions or splash blocks by assuring that (i) the gutters and downspouts remain free and clear of all obstructions and debris; (ii) the water that flows from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (iii) the splash blocks are maintained under sill cocks.

9.6.10. To re-caulk construction joints opening up between portions of the exterior slabs and garage slabs in order to thereby seal out moisture.

9.7. Radon Gas. Elevated levels of naturally occurring radon gas may be present in some structures in Colorado. Governmental authorities have voiced concerns about the possible adverse effects on human health from long term exposure to high levels of radon gas. Each Owner is responsible to conduct such Owner's own investigation and consult with such experts as such Owner deems appropriate with respect to the presence or absence of radon gas in the soil on that Owner's Lot. Furthermore, each Owner shall be solely responsible for the mitigation of radon gas on such Owner's Lot. The Declarant, its managers and members, and the builder of

the initial Building on a Lot shall not be liable for the existence of radon gas in any Building, for any loss or damage to any Building or other structure, or for any injury to any Person caused by, or resulting from, or in any way connected with the existence of radon gas on any Lot.

## 10. SPECIAL DECLARANT RIGHTS

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

10.1.1. Completion of Improvements. The right to construct and complete Improvements within the Common Interest Community.

10.1.2. Sales, Management and Marketing. The right within the Common Interest Community to maintain sales offices, construction offices, management offices, model homes, and signs, flags and other on-site marketing and sales promotion materials advertising the Common Interest Community. The Declarant shall have the right to determine the number of model homes and the size and location of any sales offices, management office, and model homes. The Declarant shall also have the right to relocate any sales offices, management offices, and model homes from time to time at its discretion. After the Declarant ceases to be the Owner of a Lot, the Declarant shall have the right to remove any sales offices and management offices.

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

10.1.4. Master Association. The right to make the Common Interest Community subject to a master association.

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

10.1.6. Control of Association and Executive Board. The right to appoint or remove any officer of the Association or any Executive Board member, subject to the time limits specified in C.R.S. § 38-33.3-303(5).

10.2. Additional Reserved Rights. In addition to the Special Declarant Rights set forth above, Declarant reserves the following additional rights ("Additional Reserved Rights");

10.2.1. Amendment of Declaration. The right to amend the Declaration in connection with the qualification or continued qualification for FHA or VA loan guarantees, and for compliance with FNMA, GNMA, FHLMC requirements or any other available financing programs. Declarant shall also have the right to amend this Declaration to comply with the requirements of the Act in the event any provision contained in this Declaration does not comply with the Act.

10.2.2. Amendment of Plat. The right to supplement or amend the Plat in connection with the exercise of any Special Declarant Rights.

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

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

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

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

## 11. INSURANCE

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

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

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

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

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

11.2. Association Public Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Property, insuring the Association in an amount not less than one million dollars (\$1,000,000) covering bodily injury,

including death of persons, personal injury and property damage liability arising out of a single occurrence, and not less than two million dollars (\$2,000,000) in the aggregate. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the ownership, management, operation, maintenance or use of the Common Elements. Such coverage may also include, if applicable, liability for property of others, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to similar projects. The public liability insurance policy shall insure the Association, the Executive Board, the managing agent, and their respective employees, agents, and all Persons acting as agents. In addition, the Declarant shall be included as an additional insured in the Declarant's capacity as a Lot Owner and Executive Board member. The Lot Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

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

11.4. Association Fidelity Coverage. The Association may elect to obtain and maintain a policy providing adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle or are responsible for handling funds of the Association at the discretion of the Executive Board, or as required by the Act.

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

11.6. Lots and Buildings.

11.6.1. Association Insurance. The Association shall obtain and maintain "bare walls" all risk casualty and property insurance for all Buildings in the amount of the full replacement cost of the Buildings subject to this Declaration. "Bare walls" coverage means the Association's policy covers all portions of the Buildings from the interior drywall out. Such coverage includes exterior improvements such as patio/deck areas and fencing. Such coverage does not include floor coverings, wall coverings, interior paint, window coverings, cabinets, appliances and fixtures within each Building, as well as the other items which the Owner is responsible to insure under Article 11.6.2 below. The all-risk coverage or the nearest equivalent available identified in this paragraph shall be carried in blanket policy form naming the Association as the insured, shall identify each Owner and the address of each Owner's Lot, shall provide a standard non-contributory mortgage clause in favor of each First Mortgagee, and shall provide that it cannot be canceled by either the insured or the insurance company until after at

least thirty (30) days' prior written notice is given to each Owner and each First Mortgagee. Such insurance shall be inflation coverage insurance if such insurance is available, which insurance represents the full replacement value of those improvements.

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

11.6.2.1. Casualty and property insurance covering all portions of the Owner's Building and Lot not covered by the Association's insurance including, without limitation, (a) all items on the interior side of the drywall such as wall coverings, interior paint, floor coverings, window coverings, cabinets, appliances and fixtures within each Building, (b) all furnishings (such as furniture and household goods) and other personal property owned by the Owner within such Owner's Building or otherwise located on the Owner's Lot, and (c) all other property and improvements located on the Owner's Lot including, without limitation, outdoor furniture and landscaping improvements.

11.6.2.2. Liability insurance regarding the Owner's Lot, including the Building and any other improvements located on the Lot. Each Owner will obtain and maintain Loss Assessment Coverage on an HO-6 Policy (other reasonable substitute policy) of at least Fifteen Thousand Dollars (\$15,000.00) provided that such policy, or substitute policy, may be obtained on reasonable terms and conditions. Upon written request, an Owner will provide the Association proof of insurance and full copies of all insurance maintained under this Declaration.

11.7. Other Insurance. The Association may obtain insurance against such other risks of a similar or dissimilar nature as it may deem appropriate, or as required by the Act, to the extent that such coverage is reasonably available.

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

## 12. PARTY WALLS

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

12.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Lot Owners who make use of the Party Wall in proportion to such use. Neither Owner sharing the Party Wall shall undertake any work on such Owner's Lot which would jeopardize the integrity or soundness of the Party Wall.

12.3. Mutual Easements. The Owners who share a Party Wall shall have reciprocal easements to jointly utilize the Party Walls for support of their Improvements, subject to the other provisions of this Article.

12.4. No Alteration. No Owner shall alter or change the Party Wall without the prior written consent of the other Owner who was sharing the Party Wall; provided, however, that either Owner sharing the Party Wall may decorate the interior surface of the Party Wall without affecting its structural integrity.

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

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

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

12.8. Arbitration. In the event of a dispute arising concerning the provisions of this Article, each Owner shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all arbitrators. Costs of the arbitration shall be equally divided among the Owners. Any arbitration will be conducted consistent with the requirements of the Colorado Uniform Arbitration Act, Part 2 of Article 22 of Title 13, C.R.S. The decision and judgment of the arbitrators shall be enforceable according to the Colorado rules pertaining to arbitration.

### **13. EASEMENTS**

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

Interest Community. Declarant's easement also includes the right to grant easements to public utility companies and to convey Improvements within those easements.

13.2. Easement Rights. The Owners, their guests, invitees and employees, shall have a mutual, non-exclusive right and easement of enjoyment over and across all sidewalks, surface parking (except enclosed garages) for the purpose of pedestrian, vehicular and any other access to their Lots, for vehicle parking and for all other purposes.

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

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

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

13.4.2. The right of the Association to consent to or otherwise cause the construction of additional Improvements or the alteration or removal of any existing Improvements for the benefit of the Owners.

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

13.5. Association Easement. The Association shall have the easement to perform the obligations of the Association under this Declaration.

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

13.7. Easement for Encroachments. A valid easement shall exist for the following encroachments and for the maintenance of the same: (a) in the event that any portion of a Townhome encroaches upon an adjacent Lot; or (b) in the event any encroachment shall occur in the future as a result of settling of a Building or repair or restoration of a Building after damage by fire or other casualty or condemnation or eminent domain proceedings. In the event that any one or more of the Buildings are partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding, any portion

thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall exist. Such encroachments and easements shall not be considered or determined to be encumbrances on adjacent Lots for purposes of marketability of title or other purposes.

13.8. Utility Easement. There is hereby created a blanket easement upon, across, over, and under the Lots for installing, replacing, repairing, and maintaining all Buildings, and all utilities such as, and including by way of example and not limitation, water, sewer, gas, telephone, electricity, and television, and any broadband communication services. By virtue of this easement, it shall be expressly permissible for providing any and all equipment necessary or useful for the aforementioned purposes, including, but not limited to, electrical, telephone and/or television wires, circuits, and conduits on, above, across, and under the roof and exterior walls of the Townhomes. Such utility easements shall burden each Lot for the use and benefit of: (1) the Owners of each Lot served by such lines, (2) the Declarant, and (3) the Association.

13.9. Roof-Top Patio Easement. Declarant reserves and establishes for the benefit of the Association and the Lot Owners, a nonexclusive easement on, over and across a portion of Lot 1, including a portion of the roof-top of the Building located on Lot 1, as reasonably necessary for the installation of improvements related to the Roof-Top Patio and for the use and occupancy of the Roof-Top Patio under the terms and conditions of such Roof-Top Patio Lease, as may be amended and extended from time to time (the "Roof-Top Patio Easement"). Use of the Rooftop Patio Easement shall not unreasonably interfere with the use and occupancy of Lot 1, and is subject to the terms and conditions of the Roof-Top Patio Lease.

#### **14. CITY DEVELOPMENT AGREEMENT AND PLANS**

In addition to this Declaration, the Lots are subject to the Plans. The Owners, for themselves and their successor(s) in interest, hereby agree and acknowledge that the full movement drive aisle out to Shields Street shown on the Plans is not guaranteed to remain a full movement access onto Shields Street and may be limited by the City to right-in, right-out access in the future.

The Plans also provide that parking spaces numbers 1 and 2 located immediately north of Lot 1, the Commercial Lot, and along the south side of the drive aisle off of Shields Street, as shown in the Plans, are not in conformance with the off-street parking setback distance requirements at such time that Shields Street is widened (as specified in Figure 19-6 of the Larimer County Urban Area Street Standards) but were conditionally approved by the City through a variance approval letter dated February 5, 2015. If the east side of Shields Street is widened in the future, and if it is determined by the City that the frequency of ingress and egress from the first two (2) parking spaces nearest Shields Street (immediately north of the Commercial Lot) negatively impacts the flow of traffic along the widened Shields Street, the Association, hereby agrees to remove these two (2) parking spaces at the direction of the City, with all costs associated with the removal of said parking spaces to be borne by the Association.



## 15. MORTGAGEE PROTECTION

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

15.2. Notice. Each First Mortgagee, upon written request to the Association, shall be entitled to:

15.2.1. Receive copies of budgets, notices of Assessments or any other notice or statement provided under this Declaration by the Association to the Lot Owner covered by such Security Interest.

15.2.2. Receive any audited or unaudited financial statement of the Association within 90 days following the end of any fiscal year which is prepared for distribution to the Owners.

15.2.3. Receive copies of notices of meetings of the Owners.

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

- 15.2.4.1. Assessment basis or assessment liens;
- 15.2.4.2. Any method of imposing or determining any charges to be levied against Lot Owners;
- 15.2.4.3. Maintenance obligations;
- 15.2.4.4. Any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Lots;
- 15.2.4.5. Reduction of insurance requirements;
- 15.2.4.6. The addition, annexation or withdrawal of land or from the Common Interest Community;
- 15.2.4.7. Voting rights;
- 15.2.4.8. Restrictions affecting leasing or sale of a Lot; or
- 15.2.4.9. Any provision which is for the express benefit of First Mortgagees.

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

15.2.5.1. Merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to the Association);

15.2.5.2. Determining not to require professional management if that management has been required by a majority of First Mortgagees;

15.2.5.3. Expanding the Association to include land not within the Common Interest Community which increases the overall Common Interest Community or number of Lots by more than 10%;

15.2.5.4. Using insurance proceeds for purposes other than construction or repair of the insured improvements; or

15.2.5.5. Making capital expenditures (other than for repair or replacement of existing improvements) during any period of 12 consecutive months costing more than 20% of the annual operating budget.

15.2.6. Receive notice of any default under this Declaration of the Owner of a Lot in which the First Mortgagee holds a First Security Interest.

15.2.7. Examine the books and records of the Association on the same terms as any Owner.

15.2.8. Receive notice of any termination, lapse or material modification of an insurance policy held by the Association.

15.2.9. Receive notice of any proposal to terminate this Declaration or dissolve the Association at least 30 days before any action is taken.

15.2.10. Receive any other notice or copy provided for elsewhere in this Declaration.

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

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

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

15.4.2. The granting of access easements, utility easements, drainage easements, water facilities easements or any other easements which the Association is empowered to grant under this Declaration or under Colorado law shall not be deemed a conveyance within the meaning of this provision.

15.4.3. Use hazard insurance proceeds for losses to any Lots other than to repair, replace, or reconstruct the damaged property.

Additionally, a majority of the First Mortgagees shall have the right to demand professional management and to demand an audit of the Association's financial records.

15.5. Failure to Respond. The failure of any First Mortgagee to respond within thirty (30) days to any written request of the Association delivered by certified mail, return receipt requested, for approval of any matter set forth in Article 15.4 above shall constitute an approval of such matter.

## **16. CONSTRUCTION DEFECT CLAIMS**

### **16.1. Mandatory Arbitration of Construction Defect Claims.**

16.1.1. Subject to the prior notice requirement set forth in this Article 16 and under Colorado law, including the Construction Defect Action Reform Act, Colorado Revised Statutes Section 13-20-801 *et. seq.*, if any claimant wishes to pursue a Construction Defect Claim against a Development Party that has not otherwise been resolved, then claimant is entitled to initiate, and the claim shall be resolved by final binding mandatory arbitration as provided in this Article 16.

16.1.2. No Person shall attempt to modify or eliminate this mandatory arbitration requirement for Construction Defect Claims, whether such claim is asserted by the Association, by the Executive Board or by the Lot Owners, without the consent of the Declarant, and this Declaration expressly prohibits any future amendment to the Declaration that would modify or eliminate the requirement for arbitration without the consent of the Declarant. Any attempt to modify or eliminate this requirement for Arbitration shall be deemed ineffective, an abrogation of a contractual obligation, and void as against public policy.

16.1.3. These terms and provisions in this Declaration requiring Arbitration of Construction Defect Claims inure to the benefit of Declarant, are enforceable by Declarant, and shall not ever be amended without the written consent of Declarant and without regard to whether Declarant owns any portion of the Property at the time of such amendment. BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THE DECLARATION REQUIRING ARBITRATION OF CONSTRUCTION DEFECT CLAIMS ARE A SIGNIFICANT INDUCEMENT TO THE DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE LOTS AND

THAT IN THE ABSENCE OF THE ARBITRATION PROVISIONS CONTAINED IN THE DECLARATION, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE LOTS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS.

16.1.4. The provisions of this Declaration requiring arbitration for Construction Defect Claims inure to the benefit of other Development Parties in addition to the Declarant.

16.1.5. Any arbitration of a Construction Defect Claim will be conducted consistent with the requirements of the Colorado Uniform Arbitration Act, Part 2 of Article 22 of Title 13, C.R.S., including but not limited to the requirement that the arbitrator selected to preside over a Construction Defect Claim must be a neutral third party as required by § 13-22-211 (2), C.R.S., and that the arbitrator shall make the disclosures required by § 13-22-212, C.R.S.

16.1.6. Any arbitration of a Construction Defect Claim will be held at a mutually agreeable location within the City of Fort Collins, Colorado.

16.1.7. Any arbitration of a Construction Defect Claim will be governed by the substantive law of Colorado with regard to any remedy granted, and if the remedy is substantially affected by the arbitrator's failure to follow the substantive law of Colorado, a court may vacate or refuse to confirm the arbitrator's award on that basis.

16.2. Informed Consent for Construction Defect Claims.

16.2.1. Information Required in Notice to Lot Owners. Before the Association, or the its Executive Board, institutes any arbitration, or other permissible legal action, if any, involving a Construction Defect Claim, the Executive Board shall provide notice to Lot Owners, to more fully advise Lot Owners of the nature of the action and the relief sought, in the substantially following form:

16.2.1.1. The nature of the action and the relief sought;

16.2.1.2. The expenses and fees that the Executive Board anticipates will be incurred in prosecuting the action;

16.2.1.3. If the Association does not file a claim by \_\_\_\_\_ (DATE), the claim cannot be filed at all under the applicable statute of limitations, statute of repose, or both;

16.2.1.4. If the Association prevails, the Executive Board expects the Association may recover from the defendant(s) an amount between \$ \_\_\_\_\_ and \$ \_\_\_\_\_;

16.2.1.5. If the Executive Board intends to enter into a contingency fee arrangement with the attorneys representing the association, under which, of the amount the Association recovers from the defendant(s), the attorneys will be paid a contingency fee equal to

\_\_\_\_\_ percent of the (net) (gross) recovery. The Executive Board estimates that, in addition to the attorney fees, the association will incur costs totaling approximately \$ \_\_\_\_\_ for consultants, expert witnesses, depositions, filing fees, and other expenses of litigation;

16.2.1.6. If the Association makes a claim and does not win, the Executive Board expects the Association will have to pay for its own attorney fees, consultant fees, expert witness fees, and other costs (the amount listed above) plus defendant's consultant fees, expert witness fees, and court costs;

16.2.1.7. If the Association does not recover from the defendant(s), it may have to pay to repair or replace the claimed defective construction work;

16.2.1.8. Until the claimed defective construction work is repaired or replaced, or until the construction defect claim is concluded, the market value of the affected Lots may be adversely affected; and,

16.2.1.9. Until the claimed defective construction work is repaired or replaced, or until the claim is concluded, owners of the affected Lots may have difficulty refinancing and prospective buyers of the affected Lots may have difficulty obtaining financing. In addition, certain federal underwriting standards or regulations prevent refinancing or obtaining a new loan in projects where a construction defect is claimed. In addition, certain lenders as a matter of policy will not refinance or provide a new loan in projects where a construction defect is claimed.

16.2.2. Timing of Notice to Lot Owners. The notice to Lot Owners required by Section 38-33.3-303.5 of the Act, including the additional information as required by the City of Fort Collins, Colorado Municipal Code, Article VIII, Chapter 5, as may be amended from time to time, must be sent to affected Lot Owners at least sixty (60) days before the required notice of a construction defect claim is provided under the Colorado Construction Defect Action Reform Act, Section 13-20-803.5, C.R.S., as may be amended from time to time.

16.2.3. Majority Consent of Lot Owners Required. A Construction Defect Claim is not authorized unless the Executive Board first obtains the signed, written consent from Lot Owners, other than the Declarant, of Lots to which at least a majority of the total votes, excluding votes allocated to Lots owned by the Declarant, in the Association are allocated, which written consent acknowledges that the Owner has received the notice required under Section 38-33.3-303.5, C.R.S., as amended, including the additional information set forth in Section 16.2.1 above, and approves of the Executive Board's proposed action. Consistent with the Act, nothing in this section shall be construed to: (a) Require the disclosure in the notice or the disclosure to a Lot owner of attorney-client communications or other privileged communications; (b) Permit the notice to serve as a basis for any Person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or (c) Limit or impair the authority of the Executive Board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

16.3. Definitions. For purposes of this Article:

16.3.1. "Construction Defect Claim" shall mean a civil action or an arbitration proceeding for damages, indemnity, or contribution brought against a Development Party to assert a claim, counterclaim, cross-claim, or third-party claim for damages or loss to, or the loss of the use of, real or personal property or personal injury caused by a defect in the design or construction of an improvement to real property that is part of a Common Interest Community.

16.3.2. "Development Party" shall mean an architect, contractor, subcontractor, developer, Declarant or affiliates of a Declarant, builder, builder vendor, engineer, or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property that is part of the common interest community or any other party responsible for any part of the design or construction of any portion of the common interest community, or any of such parties' affiliates, or the officers, directors, partners, shareholders, members, managers, employees or servants of any of them.

**17. MISCELLANEOUS PROVISIONS**

17.1. Incorporation of Recitals. The Recitals at the beginning of this Declaration are incorporated as substantive provisions of this Declaration.

17.2. Enforcement. Enforcement of any provision of this Declaration, the Guidelines, the Act, the Bylaws, and any Rules and Regulations shall be by appropriate proceedings at law or in equity against those Persons violating or attempting to violate any such provision. Such proceedings may be for the purpose of removing a violation, restraining or enjoining a future violation, recovering damages for any violation, foreclosing a lien, obtaining such other and further relief as may be available, or any combination thereof. Such proceedings may be instituted by a Lot Owner, or by the Association. In any such proceedings the prevailing party shall recover the costs and reasonable attorney's fees incurred in connection with such proceedings. In addition, the Association may levy Fines against a Lot Owner, or such Owner's lessee, because of a violation of the terms of this Declaration. Reasonable notice and the opportunity for a hearing shall be provided to the affected Lot Owner, or such Owner's lessee, before any such Fines are assessed. The unpaid Fines shall be added to the Assessments against the Lot of such Lot Owner. The failure to enforce any provision of this Declaration, the Guidelines, the Act, the Bylaws and the Rules and Regulations shall not preclude or prevent the enforcement thereof for a further or continued violation, whether such violation shall be of the same or of a different provision. The Association shall not be liable to reimburse any Lot Owner for attorney's fees or costs incurred in any suit brought by a Lot Owner to enforce or attempt to enforce this Declaration.

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

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

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

17.6. Amendment. Except as otherwise provided in this Declaration or the Act, this Declaration may be amended (by (a) either modifying or deleting any existing provisions or (b) adding new provisions) or terminated at any time by a written and recorded instrument containing the consents of the then record Owners of at least 67% of the Lots subject to this Declaration. During the period of Declarant control, all amendments to this Declaration must have the approval of the FHA or VA, if FHA or VA has guaranteed any loans secured by Lots. Additionally, during any period of Declarant control, Declarant shall provide a copy of all Declaration amendments to the FHA or VA, if FHA or VA has guaranteed any loans secured by Lots.

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

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

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

17.10. Disclaimer Regarding Security. Neither the Association nor Declarant shall be considered in any way insurers or guarantors of security within the Common Interest Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of any security measures undertaken. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, its Executive Board and the Declarant are not insurers of safety within the Common Interest Community and that each Person using the Common Interest Community


assumes all risk of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

*[Signature page follows.]*



Dated this 25<sup>th</sup> day of May, 2017.


1032 West Mountain, LLC,  
a Colorado limited liability company

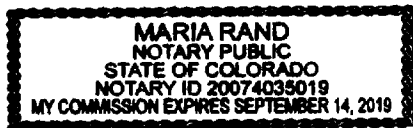
By:   
Alan Strope, Manager

STATE OF COLORADO    )  
                                      ) ss.  
COUNTY OF LARIMER    )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of May, 2017, by Alan Strope, Manager of 1032 West Mountain, LLC, a Colorado limited liability company.

Witness my hand and official seal.

  
Notary Public  
My commission expires: 9-14-2019



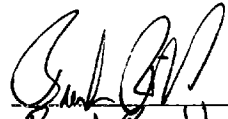
**LENDER RATIFICATION**

The undersigned, having a Security Interest in all or any part of the Property, approves, ratifies, confirms and consents to the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Landmark Residences on Mountain Avenue (A Common Interest Community), for the purpose of subordinating such Security Interest to the Declaration.

Dated this 24<sup>th</sup> day of May, 2017.

Great Western Bank

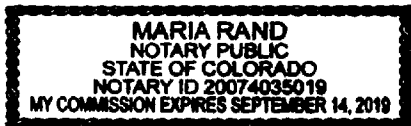
By:

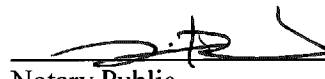
  
Brent Beichle Business Banker

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF Larimer )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of May, 2017, by Brent Beichle, as Business Banker of Great Western Bank.

Witness my hand and official seal.



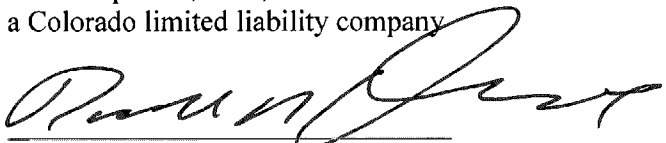
  
\_\_\_\_\_  
Notary Public  
My commission expires: 9-14-2019

**LENDER RATIFICATION**

The undersigned, having a Security Interest in all or any part of the Property, approves, ratifies, confirms and consents to the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Landmark Residences on Mountain Avenue (A Common Interest Community), for the purpose of subordinating such Security Interest to the Declaration.

Dated this 26<sup>th</sup> day of May, 2017.


ROF Properties, LLC,  
a Colorado limited liability company

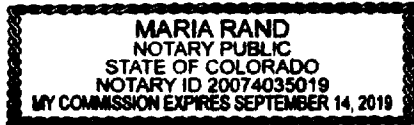
By:   
Richard D. Oneslager, Jr., Manager

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF Larimer)

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of May, 2017, by Richard D. Oneslager, Jr., as Manager of ROF Properties, LLC, a Colorado limited liability company.

Witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 9-14-2019



**EXHIBIT A  
TO  
DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
LANDMARK RESIDENCES ON MOUNTAIN AVENUE  
(A COMMON INTEREST COMMUNITY)**

**Property Description**

Lot 1 through Lot 10, inclusive, and,  
Tract A,  
Landmark Residences on Mountain Avenue,  
City of Fort Collins,  
County of Larimer,  
State of Colorado

**EXHIBIT B  
TO  
DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
LANDMARK RESIDENCES ON MOUNTAIN AVENUE  
(A COMMON INTEREST COMMUNITY)**

**ALLOCATED INTERESTS**

Allocation of Common Expense Assessments and Votes

| <u>Lot</u> | <u>Common Expense Assessments</u> | <u>Votes</u> | <u>Lot Type</u> |
|------------|-----------------------------------|--------------|-----------------|
| Lot 1      | 1/7                               | 1            | Commercial Lot  |
| Lot 2      | 1/7                               | 1            | Residential Lot |
| Lot 3      | 1/7                               | 1            | Residential Lot |
| Lot 4      | 1/7                               | 1            | Residential Lot |
| Lot 5      | 1/7                               | 1            | Residential Lot |
| Lot 6      | 1/7                               | 1            | Residential Lot |
| Lot 7      | 1/7                               | 1            | Residential Lot |
| Lot 8      | 0/7                               | 0            | Garage Lot      |
| Lot 9      | 0/7                               | 0            | Garage Lot      |
| Lot 10     | 0/7                               | 0            | Garage Lot      |
| Total      | 7/7 (100%)                        | 7            |                 |

**EXHIBIT C  
TO  
DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
LANDMARK RESIDENCES ON MOUNTAIN AVENUE  
(A COMMON INTEREST COMMUNITY)**

**Easements and Licenses**

1. RESERVATIONS, RESTRICTIONS AND EXCEPTIONS AS SET FORTH IN DEED RECORDED FEBRUARY 3, 2006 AT RECEPTION NO. 20060008727.
2. TERMS, CONDITIONS AND PROVISIONS OF ACCESS AGREEMENT GRANTING RIGHT OF ENTRY RECORDED FEBRUARY 03, 2006 AT RECEPTION NO. 20060008728.
3. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF LANDMARK RESIDENCES ON MOUNTAIN AVENUE RECORDED DECEMBER 9, 2015 AT RECEPTION NO. 20150082715.
4. TERMS, CONDITIONS AND PROVISIONS OF DEVELOPMENT AGREEMENT RECORDED JANUARY 20, 2016 AT RECEPTION NO. 20160003729.