

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR TOWNHOMES AT LIBRARY PARK OWNERS
ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR TOWNHOMES AT LIBRARY PARK OWNERS ASSOCIATION (this "Declaration") dated as of February 27, 2017, shall be effective upon recordation and is made by NoCo Townhomes, Inc., a Colorado corporation, 3855 Precision Drive, Suite 180, Loveland, Colorado 80538 ("Declarant"). Declarant is the owner of that certain real property located in Larimer County, Colorado, more particularly described on the attached Exhibit A (the "Property"), as described on the Plat described below. Declarant hereby makes the following grants, submissions, and declarations:

**ARTICLE 1
IMPOSITION OF COVENANTS**

Section 1.1 Purpose. The purpose of this Declaration is to create a residential small planned community (the "Project") pursuant to Section 116(2) of the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, upon the Property (as hereinafter defined). Since the Property will not contain more than twenty (20) Units as described in Section 1.3 and no development rights (as such term is defined in the Act) are reserved for Declarant under this Declaration, the Project shall qualify for the small planned community exemption under Section 116(2) of the Act. The Project shall not be subject to the Act except to the extent required in Section 116(2) of the Act and to the extent that this Declaration, the Articles or the Bylaws expressly makes the Project subject to a specific provision of the Act. Any express provision of this Declaration, the Articles or the Bylaws which subjects a portion of the Project to a specific provision of the Act shall be strictly construed and shall not be interpreted to mean that the Project is intended to be subject to any other provision of the Act except to the extent expressly set forth in another provision of this Declaration, the Articles or the Bylaws.

Section 1.2 Intention of Declarant. Declarant desires to protect the value and desirability of the Project, further a plan for the improvement, sale and planned community ownership of the Project, create a harmonious and attractive development within the Project, and promote and safeguard the health, comfort, safety, convenience, and welfare of the Owners of Units in the Project.

Section 1.3 Development and Use. The Declarant hereby submits 10 Units (hereinafter defined) to this Declaration. The maximum number of Units that may be created pursuant to this Declaration is 10.

Section 1.4 Declaration. To accomplish the purposes and intentions recited above, Declarant hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved subject to the provisions of this Declaration.

Section 1.5 Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land or equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

ARTICLE 2 DEFINITIONS

The following words when used in this Declaration or any supplemental declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

Section 2.1 “Act” means the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as such act exists on the date hereof, except to the extent that the applicability of future amendments to the Act are mandatory.

Section 2.2 “Annual Assessment” means the Assessment levied annually.

Section 2.3 “Articles” mean the Articles of Incorporation for the Association, currently on file with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.

Section 2.4 “Assessments” means the Annual, Special, and Default Assessments levied pursuant to Article 10 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

Section 2.5 “Association” means Townhomes at Library Park Owners Association, a Colorado nonprofit corporation, and its successors and assigns. The Association acts through its Executive Board unless a vote of the Owners is otherwise specifically required by this Declaration or by the Articles or Bylaws.

Section 2.6 "Association Access Easement" means any access easement granted to the Association in a Deed recorded in the Larimer County records, including the 10' easement on the Northern portion of the Property.

Section 2.8 "Association Documents" means this Declaration, the Articles and the Bylaws, and any procedures, rules, regulations, or policies adopted under such documents by the Association.

Section 2.9 "Building" means any building structure containing or including Units and located on the Property and made subject to this Declaration.

Section 2.10 "Bylaws" means the Bylaws adopted by the Association, as amended from time to time.

Section 2.11 "Common Area" means: (i) the Association Access Easement; (ii) the easements for access to the Exterior Maintenance Area, the easements for the maintenance and repair of the Buildings, and other commonly-maintained improvements on or within Units provided for in this Declaration, including all access, ingress and egress easements appurtenant to this Project or any part thereof; (iii) all utility easements, utility lines and appurtenances, including, but not limited to, electricity, gas, telephone, water, internet, sewer, and cable television, which serve the Common Area, Exterior Maintenance Area or more than one Unit; (iv) all ground-level exterior landscaping at the Project; (v) all exterior door and driveway lighting fixtures; (vi) all drainage facilities and improvements serving the Project or any portion thereof; (vii) the gate which controls access to the Common Drive Aisle and all utilities, improvements and facilities necessary for the operation thereof; and (viii) the Project's fire sprinkler system and fire riser room and all improvements, equipment and facilities contained therein or necessary for the operation thereof. The Common Area shall be owned by the Association.

Section 2.12 "Common Drive Aisle" means the central drive aisle which provides vehicular and pedestrian access to the Units. Each portion of the Common Drive Aisle is part of the Unit on which it is located and owned by the Owner of that Unit. The Association and Owners have an easement to use the Common Drive Aisle as set forth in Section 5.3 and Section 8.1.

Section 2.13 "Common Expenses" means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, operating, improving, repairing, or replacing the Common Area and the Exterior Maintenance Area; (iii) insurance premiums for the insurance carried by the Association under Article 9; and (iv) all expenses lawfully determined to be common expenses by the Executive Board.

Section 2.14 “Declarant” means NoCo Townhomes, Inc., a Colorado corporation, and its successors and assigns. No party other than NoCo Townhomes, Inc. shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the Office of the Clerk and Recorder of Larimer County, Colorado, a written assignment from NoCo Townhomes, Inc., of all or a portion of such rights and privileges.

Section 2.15 “Declaration” means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements for Townhomes at Library Park Owners Association, together with any supplement or amendment to this Declaration, recorded in the Office of the Clerk and Recorder of Larimer County, Colorado.

Section 2.16 “Default Assessment” means the Assessments levied by the Association pursuant to Section 10.8 below.

Section 2.17 “Director” means a member of the Executive Board.

Section 2.18 “Executive Board” means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Project and all improvements on the Property.

Section 2.19 “Exterior Maintenance Area” means the exterior of any townhome and that part of the land upon the Unit surrounding the townhome, as more fully described in Section 5.1 below, including, without limitation, the Common Drive Aisle, but specifically excluding repair or replacement of doors and window panes.

Section 2.20 “First Mortgage” means an unpaid and outstanding first Mortgage which secures financing for the construction and development of the Project or which encumbers a Unit, and which, in any case, has priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.21 “First Mortgagee” means any person named as a mortgagee or beneficiary in any first Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 2.22 “Management Agreement” means any contract or arrangement entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance, and management of the Project.

Section 2.23 “Managing Agent” means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Project.

Section 2.24 "Member" shall mean every person or entity who holds membership in the Association.

Section 2.25 "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

Section 2.26 "Mortgagee" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.27 "Owner" means any record owner (including Declarant, and including a contract seller, but excluding a contract purchaser), whether a natural person or persons, or an entity, of a fee simple title interest in and to any Unit; excluding, however, any record owner with an interest therein merely as a Mortgagee (unless such Mortgagee has acquired fee simple title interest in the Unit pursuant to foreclosure or any proceedings in lieu of foreclosure).

Section 2.28 "Party Wall" means any common wall adjoining two Units and shall be deemed to include the footings underlying, the portion of the roof over, and the utility lines within, a common wall.

Section 2.29 "Person" means a natural person, a corporation, a partnership, a trustee or any other legal entity.

Section 2.30 "Plat" means the subdivision plat of Townhomes at Library Park recorded in the Office of the Clerk and Recorder of Larimer County, Colorado, at Reception No. 20150065732, and all supplements and amendments thereto.

Section 2.31 "Project" shall mean the small planned community created by this Declaration, the Units, and any other improvements constructed on the Property and as shown on the Plat.

Section 2.32 "Property" means and refers to that certain real property described on Exhibit A attached to this Declaration.

Section 2.33 "Special Assessment" means an assessment levied pursuant to Section 10.7 below on an irregular basis.

Section 2.34 "Successor Declarant" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee

and recorded in the Office of the Clerk and Recorder of Larimer County, Colorado, designating such party as a Successor Declarant.

Section 2.35 "Unit" means a plot of land subject to this declaration and designated as a "Unit" on any subdivision plat of the Property recorded by Declarant in the Office of the Clerk and Recorder of Larimer County, Colorado and the townhome and other improvements constructed thereon, together with the allocated interest in the Common Expenses and votes in the Association allocated to such Unit.

Each capitalized term not otherwise defined in this Declaration or in the Plat shall have the same meanings specified or used in the Act.

ARTICLE 3 UNITS

Section 3.1 Name. The name of the Project is Townhomes at Library Park. The Project is a small planned community pursuant to Section 116(2) of the Act.

Section 3.2 Association. The name of the Association is Townhomes at Library Park Owners Association. Declarant has caused the Association to be incorporated under the laws of the State of Colorado as a nonprofit corporation with the purpose of exercising the functions as herein set forth.

Section 3.3 Number of Units. The number of Units submitted to this Declaration is ten (10).

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

Section 3.5 Description of Units.

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

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

duties and obligations of an Owner hereunder with respect to the Unit in which they own an interest.

3.5.3 Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Unit may describe it by its Unit number, County of Larimer, State of Colorado, according to the Plat and Declaration.

3.5.4 Each Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed. Accordingly, the Common Area shall not be assessed separately but shall be assessed with the Units as provided pursuant to Colorado Revised Statutes Subsections 39-1-103(10) and 38-33.3-105(2).

Section 3.6 Permitted-Uses.

3.6.1 All Units shall be used solely for lawful residential purposes only in conformity with all zoning laws, ordinances, and regulations and restrictions of record. Owners will be subject to the Rules of the Association.

3.6.2 Notwithstanding Section 3.6.1 above, Declarant, for itself and its successors and assigns, hereby retains a right to maintain any one or more Units as sales offices, management offices, rental management offices, storage facilities, model residences and such other uses as may be permitted under the Act. The use by Declarant of any Unit as a model residence, office or other use shall not affect the Unit's designation on the Plat as a separate Unit.

3.6.3 An Owner shall have the right to lease his Unit upon such terms and conditions as the Owner may deem advisable; provided, however, that: (i) any such lease shall be for a minimum term of one (1) month in duration, (ii) all lease terms shall be in writing and shall provide that the lease is subject to the terms of this Declaration, (iii) a Unit may be leased only for the uses provided hereinabove, and (iv) any failure of a lessee to comply with the terms of this Declaration, the Articles, the Bylaws or the Rules of the Association shall be a default under the lease enforceable by the Association against either the Owner or the lessee.

ARTICLE 4 MEMBERSHIP AND VOTING RIGHTS

Section 4.1 The Association. Every Owner of a Unit shall be a Member of the Association. All of the persons owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

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

Section 4.3 Membership; Voting. The Association shall have one (1) category of membership consisting of all Owners, including the Declarant, so long as Declarant continues to own an interest in a Unit. Each Unit shall be allocated one (1) vote on Association matters. The Association shall not have a vote with respect to any Unit which may be owned by it. Declarant shall be entitled to vote with respect to Units owned by it. Members of the Association may exercise such voting rights subject to and in accordance with the provisions of the Bylaws.

Section 4.4 Declarant Control. Declarant shall be entitled to appoint and remove members of the Executive Board as provided in Section 2.1 of the Bylaws.

Section 4.5 Compliance with Association Documents. Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Unit for the benefit of all other Units.

Section 4.6 Owner's and Association's Address for Notices. All Owners of each Unit shall have one and the same mailing address to be registered with the Association and used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Unit shall furnish such address to the Secretary of the Association within five (5) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners of the Unit. Notwithstanding the foregoing, the Association shall be entitled to rely upon any such registration or other notice of a change in address of the Owners of the Unit which is signed by less than all of the Owners of such Unit.

If no address is registered or if all of the Owners cannot agree, then the address set forth in the deed to the Unit shall be deemed their registered address until another registered address is furnished as required under this Section. Any notice delivered to a First Mortgagee in accordance with the terms of this Declaration shall be sent to the address for such party specified in the First Mortgage unless the First Mortgagee notifies the Association in writing of a different address. All notices and demands intended to be served upon the Executive Board shall be sent to the following address or such other address as the Executive Board may designate from time to time by notice to all of the Owners:

Executive Board
Townhomes at Library Park Owners Association
115 Riverside Avenue
Fort Collins, CO 80524

All notices given in accordance with this Section shall be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one (1) business day following timely deposit with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. Mail.

ARTICLE 5
MAINTENANCE, PARTY WALLS, LANDSCAPING AND SPECIAL EASEMENT

Section 5.1 Maintenance. In order to maintain a uniform appearance and a high standard of maintenance within the Project, the Association shall maintain the Exterior Maintenance Area, as more fully set forth below.

5.1.1 Unit Exteriors. The Association shall maintain the Exterior Maintenance Area, which shall include but shall not be limited to, all repair and maintenance of the exterior surfaces, with the exception of the rooftop decks, painting or staining of the exterior and roof repair, except for repair of the rooftop decks. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used to maintain the Units. The rooftop decks shall be maintained by the Unit Owner in accordance with this Declaration and the Bylaws of the Association.

5.1.2 Landscaping, Sidewalks, Association Access Easement. The Association shall own and maintain all exterior landscaping of the Units within the Exterior Maintenance Area and within the Association Access Easement, including, but not limited to, lawns, trees, shrubs and related irrigation systems, and the Association shall also maintain all exterior walls, gates, sidewalks and the Common Drive Aisle. The Association shall provide all irrigation to landscaping within the Exterior Maintenance Area, Common Area and, if applicable, the Association Access Easement, and shall provide all other utilities necessary for the maintenance and upkeep of such landscaping. Landscape irrigation may be provided by a common system, and the Association shall have the right to locate facilities related to any irrigation system for the Common Area and the Exterior Maintenance Area on any Unit. The maintenance provided under this Section shall be performed at such time and in such a manner as the Association shall determine.

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

Section 5.2 Party Walls.

5.2.1 The cost of reasonable repair and maintenance of a Party Wall shall be a joint expense of the Owners of the two Units sharing such Party Wall and each such Owner shall have a perpetual easement in and to that part of the Property on which the Party Wall is located, for Party Wall purposes, including maintenance, repair and inspection. No Owner shall alter or change the Party Wall in any manner, interior decorations excepted, and the Party Wall shall always remain in the same location as when erected.

5.2.2 In the event of damage or destruction of a Party Wall from any cause, other than the negligence or willful misconduct of an Owner, the then Owners of the two Units sharing such Party Wall shall bear equally the expense to repair or rebuild said wall to its previous condition, which specifically includes the previous sound transmission coefficient, and such Owners, their successors and assigns, shall have the right to the full use of said wall so repaired and rebuilt. If an Owner's negligence or willful misconduct shall cause damage to or destruction of said wall, such negligent party shall bear the cost of repair and reconstruction to the extent such Owner's negligence caused such damage.

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

5.2.4 Declarant hereby grants to the Association and the Executive Board and their respective representatives a nonexclusive easement to enter upon and use the Property on which a Party Wall is located as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform under this Declaration.

Section 5.3 Special Easement. The Association and the Executive Board and their respective representatives are hereby granted a nonexclusive easement to enter upon and

use the Exterior Maintenance Area as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article 5.

Section 5.4 Maintenance Contract. The Association or Executive Board may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Area and Exterior Maintenance Area. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

Section 5.5 Owner's Responsibility. The Owner shall be responsible for maintaining all portions of the Owner's Unit other than the portion of the Exterior Maintenance Area maintained by the Association. The Owner's responsibility includes, but is not limited to the cost, maintenance, repair and replacement of the interiors of all Units, all utilities exclusively serving the Owner's Unit, trash removal, repair or replacement of broken window panes and doors and all other maintenance and repairs not the responsibility of the Association, including the operation, maintenance, repair, replacement and metered utility costs for the hot water, heating, cooling, and HVAC exclusively serving an Owner's Unit.

The cost of reasonable repair and maintenance of (1) all sewer services facilities from the main sewer system up to and including the sewer service stub, and (2) all water service lines from the tap at the main to the master curb stop, shall be owned by, and be the joint expense of the Owner or Owners of the Unit or Units for which the services are being provided. The ownership of the water and sewer lines and cost of reasonable repair and maintenance of the sewer line from the sewer service stub to a Unit and the water line from the master curb stop to each Unit, shall be the responsibility of the Owner or Owners of the Unit or Units that these facilities benefit.

The Association shall have the right and power to prohibit storage, parking and other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit, the street or the Common Area. No Owner shall make any addition or other alteration to any portion of the Exterior Maintenance Area without the express consent of the Executive Board, as more fully discussed in Section 15.1 and Section 15.2.

Section 5.6 Owner's Failure to Maintain or Repair. In the event that a Unit and the improvements thereupon are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner

of the Unit, or in the event that the improvements on the Unit that are insured by the Owner are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board, shall have the right, but not the obligation, to enter upon the Unit to perform such work as is reasonably required to restore the Unit and the buildings and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

ARTICLE 6 ASSOCIATION DUTIES

Section 6.1 Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Area and the Exterior Maintenance Area as described in Section 5.1 hereinabove, and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments, and, subject to the budget approval procedures of Section 10.3 below, prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees.

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

Section 6.3 Owner's Negligence. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Area, the Exterior Maintenance Area or the Party Walls is caused through or by the negligent or willful act or omission of an Owner or by any member of an Owner's family, or by an Owner's guests, invitees, or tenants, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If the Owner fails to repay the expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by

the Owner or under the provisions of this Section, and such expenses shall automatically become a Default Assessment determined and levied against such Unit; enforceable by the Association in accordance with Sections 10.8, 10.9, and 10.10 below.

Section 6.4 Delegation of Management and Maintenance Duties. The Executive Board may delegate all or any part of its powers and duties to a Managing Agent, including Declarant; however, the Executive Board, when so delegating, shall not be relieved of its responsibilities under this Declaration. The Managing Agent shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by a Managing Agent of any duty, power or function so delegated by written instrument executed by or on behalf of the Executive Board.

Section 6.5 Acquiring and Disposing of Personal Property. The Association may acquire, own, and hold for the use and benefit of all Owners, tangible and intangible personal property, and may dispose of the same by sale or otherwise. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners.

Section 6.6 Issuance of Rules and Regulations. The Executive Board may make and amend reasonable rules and regulations governing the use and rental of the Units, the use of the Common Area and the use of the Exterior Maintenance Area, which rules and regulations shall be consistent with the rights and duties established in this Declaration (the "Rules").

Section 6.7 Enforcement of Association Documents. The Association may take judicial action against any Owner to enforce compliance with the Rules and with the other provisions of the Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law.

Section 6.8 Identity of Executive Board and Managing Agent. From time to time, but no less than annually, the Association may mail to each Owner a notice containing the names and addresses of the members of the Executive Board and the Managing Agent, if any.

Section 6.9 Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association shall collect, at the time of the initial sale and each resale of a Unit to a party unaffiliated with Declarant, an amount equal to one year of Annual Assessments with respect to such Unit at the rate in effect at the time of the sale. The Association shall maintain the working capital funds to meet unforeseen expenditures or to acquire additional equipment or services in connection with the Common Area and the Exterior Maintenance Area for the benefit of the members of the Association, subject to the budget approval procedures of Section

10.3 below. Such payments to this fund shall not be considered advance payments of Annual Assessments. Upon each resale, the amount so deposited shall be retained by the Association, and the amount previously paid by the seller of such Unit at the time of the seller's purchase shall be refunded to the seller by the buyer at closing.

Section 6.10 Implied Rights. The Association may exercise any and all other rights or privileges given to it by this Declaration, or by the other Association Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association in the Association Documents or reasonably necessary to effectuate any such right or privilege.

Section 6.11 Books and Records of the Association. The Executive Board or the Managing Agent, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the Common Area and the Exterior Maintenance Area and shall maintain such other books and records as may be required under the Act. Owners and Mortgagees may inspect the records of receipts and expenditures of the Managing Agent or the Executive Board at convenient weekday business hours. In addition, the other books, records, and papers of the Association, including this Declaration, the Articles and Bylaws, as well as any Management Agreement and any Rules of the Association, shall be available for inspection by any Owner or Mortgagee at all times during convenient weekday business hours.

Section 6.12 LIMITATION OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR THE COMMON AREA AND THE EXTERIOR MAINTENANCE AREA, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE 9, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THE COMMON AREA OR THE EXTERIOR MAINTENANCE AREA TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

Section 6.13 Indemnification. Each Owner will be liable to and will protect, defend, indemnify and hold harmless the Association and the other Owners from and against any and all damages, claims, demands, liens (including, without limitation, mechanics' and materialmen's liens and claims), losses, costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and other expenses of litigation) and liabilities of any kind or nature whatsoever (collectively referred to as "Indemnity Claims") suffered or incurred by, or threatened or asserted against, the Association or any other Owner as a result of or in connection with: (a) the willful misconduct, negligence or breach of this Declaration, the Articles, the Bylaws, or the Rules by the indemnifying Owner or a member of the indemnifying Owner's family,

guests, invitees, or tenants (collectively "Permittees"); (b) any repair, restoration, replacement, alteration or other construction, demolition, installation or removal work on or about the Project contracted for, or performed by, the indemnifying Owner or its Permittees; or (c) the operation, use, ownership or maintenance of the indemnifying Owner's Unit by the indemnifying Owner or its Permittees. Notwithstanding the foregoing, no Person will be entitled to indemnification from an Owner pursuant to this Section 6.13 to the extent of any negligence or willful misconduct of such Person. The indemnifying Owner will pay for all Indemnity Claims suffered or incurred by the Association for which the indemnifying Owner is responsible promptly upon receipt of a demand for payment from the Association. The amount of the Indemnity Claims will constitute Special Assessments against the indemnifying Owner's Unit. If the indemnifying Owner fails to make such payment within thirty (30) days after receipt of the Association's demand for it, the Association may take whatever lawful action it deems necessary to collect the payment including, without limitation, foreclosing its lien or instituting an action at law or in equity. Nothing in this Declaration relieves any Permittee from liability for its own acts or violation of this Declaration. Nothing contained in this Section 6.13 will be construed to provide for any indemnification which violates applicable laws, voids any or all of the provisions of this Section 6.13 or negates, abridges, eliminates or otherwise reduces any other indemnification or right which the Association or the Owners have by law.

ARTICLE 7 MECHANIC'S LIENS

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

Section 7.2 Association Action. Labor performed or materials furnished for the Common Area, if duly authorized by the Association in writing in accordance with this Declaration or the Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the sole and exclusive basis for the filing of a lien

pursuant to law against the Common Area. Any such lien shall be limited to the Common Area and no such lien may be effected against an individual Unit or Units.

**ARTICLE 8
PROPERTY RIGHTS OF OWNERS
AND RESERVATIONS BY DECLARANT**

Section 8.1 Owners' Easements. Every Owner has a right and easement of use, access and enjoyment in and to the Association Access Easement and Common Drive Aisle, which easement shall be appurtenant to and shall pass with the title to every Unit subject to the provisions contained herein. Every Owner shall have a right of vehicular access to and from such Owner's Unit over and across the Common Drive Aisle and a right of pedestrian access to and from such Owner's Unit over and across sidewalks at the Project. No Owner shall hinder nor permit such Owner's guest to hinder reasonable access by any other Owner and such Owner's guests to the Units. Each Owner's easement of use, access, and enjoyment in and to the Association Access Easement and Common Drive Aisle are and shall be subject to:

8.1.1 This Declaration, any other applicable covenants, and other matters of record;

8.1.2 Any restriction or limitations contained in any deed, or other conveyance, conveying such property to the Association;

8.1.3 The right of the Executive Board to adopt rules regulating the use and enjoyment of the Association Access Easement and Common Drive Aisle, including rules regarding guests, storage of items, trash and recycling handling and parking;

8.1.4 The right of the Executive Board to suspend the right of an Owner to use facilities (i) for any period during which any charge or Assessment against such Owner remains delinquent, and (ii) for a period not to exceed ninety (90) days for a single violation or for a longer period in the case of any continuing violation of the Declaration, any applicable supplemental declaration, the Bylaws or the Rules of the Association;

8.1.5 Any governmental or quasi-governmental rules, regulations or statutes. Any Owner may extend his or her right to use and enjoyment to the members of his or her immediate family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Executive Board. An Owner who leases his or her Unit shall be deemed to assign all such rights to the lessee of such Unit.

Section 8.2 Recorded Easements. The Property shall be subject to all easements as shown on any recorded plat affecting the Property, as heretofore or hereafter modified or vacated, and to any other easements and licenses of record or of use as of the date of

recordation of this Declaration, which easements and licenses of record are set forth on the attached Exhibit B. In addition, the Property is subject to those easements set forth in this Article 8.

Section 8.3 Declarant's Rights Incident to Construction; No Development Rights Reserved. Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Area, together with the right to store materials on the Common Area, to build and maintain temporary walls, and to make such other use of the Common Area as may be reasonably necessary or incident to any construction of the Units or improvements on the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Project by the Owners. Nothing in this Section 8.3 or any other provision of this Declaration shall be interpreted to reserve "development rights" for Declarant as such term is defined in the Act.

Section 8.4 Other Easements.

8.4.1 Each Unit, the Common Area and any Association Access Easement shall be subject to an easement for encroachments created by construction, settling and overhang, previously existing or as designed and constructed by Declarant or as a result of any addition or improvement pursuant to this Declaration. A valid easement for such encroachments and for the maintenance of same, so long as they exist, shall and does exist. In the event any improvement is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of the adjacent Unit or the Common area due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the improvements shall stand.

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

8.4.3 There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Units and the structures and improvements situated thereon, including the Party Walls, for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable television, internet, and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a

manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to location.

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

Section 8.6 Delegation of Use. Any Owner may delegate his right of enjoyment of the Association Access Easement to the members of his family, his tenants, guests, licensees, and invitees, but only in accordance with and subject to the limitations of the Association Documents.

Section 8.7 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, or licenses over the Common Area, for purposes including, but not limited to: drainage and utility lines and facilities, ducts, shafts, flues, and conduit installation areas, for the best interest of the Owners and the Association, and to assign its right to future income, including the right to receive Assessments.

Section 8.8 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

Section 8.9 Governmental Requirements. Declarant hereby reserves the right to grant such easements, from time to time, as may be required by any government agency. Such easements shall specifically include, but not be limited to, any public rights-of-way, for so long as the Declarant holds an interest in any Unit subject to this Declaration.

Section 8.10 Drainage Easement. An easement is hereby reserved by Declarant and its successors and assigns and granted to the Association and its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Project for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.

Section 8.11 Declarant Easements. Declarant reserves unto itself, its successors, assigns, lessees, guests, licensees and invitees, for so long as it holds any interest in any

Unit or the Project, the same easement rights granted to Owners under this Declaration and specific easement rights over and across the Property as it may deem necessary for its use from time to time.

ARTICLE 9 INSURANCE AND FIDELITY BONDS

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

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

9.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the use, or management of the Common Area, the Exterior Maintenance Area and the Association, in an amount deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Association, the Managing Agent, and their respective employees, agents, and all persons acting as agents. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be included as additional insured but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area and the Exterior Maintenance Area. The insurance shall cover claims of one or more insured parties against other insured parties.

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

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

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

9.3.2 The insurer waives its rights to subrogation under the policy against any Owner or member of his household, including Declarant, if Declarant is the Owner of any Unit;

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

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

Section 9.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 9.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 9.7 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

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

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

Section 9.7 Repair and Replacement.

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

9.7.1.1 The regime created by this Declaration is terminated;

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

9.7.1.3 Seventy percent (70%) of the Owners and all directly adversely affected Owners agree in writing not to rebuild; or

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

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

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

Section 9.9 Fidelity Insurance. Fidelity bonds may be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than two (2) months' current Assessments plus reserves as calculated from the then-current budget of the Association. The Association must also secure and maintain, or require to be secured or maintained by any parties handling the collection, deposit, transfer, or disbursement of Association funds, fidelity insurance with aggregate coverage of not less than two (2) months' assessments plus reserves as calculated from the then-current budget of the Association; provided, however, in no event shall the coverage for third parties handling the collection, deposit, transfer, or disbursement of Association funds be less than \$50,000. In addition, all funds and accounts of the Association being held by a Managing Agent or other third persons shall be kept in an account separate from the funds of other parties held by such Managing Agent or third party, and all reserves of the Association shall be kept in an account separate from the operational account of the Association. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

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

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

Section 9.12 Insurance Obtained by Owners. Each Owner shall obtain and at all times maintain physical damage insurance at such Owner's expense, covering the full replacement value of the Unit owned or managed by such Owner. The beneficiaries under such policy shall be that Owner and the Association.

Each Owner shall obtain and at all times maintain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering the full replacement value of the Owner's Unit and personal property and personal liability insurance with a limit of not less than \$1,000,000.00, or such other amount as determined by the Executive Board, with respect to bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to personal property, and if higher limits shall at any time be customary to protect against tort liability then such higher limits shall be carried. In addition, an Owner may obtain such other and additional insurance coverage on the Unit as such Owner in the Owner's sole discretion shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Executive Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Unit. No Owner shall obtain separate insurance policies on the Common Area.

All policies obtained by Owners shall, to the extent possible, name the Association as an additional insured and shall, to the extent possible, provide that the insurer issuing the policy may not cancel or refuse to renew such policy until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association. All Owners are required to maintain on file copies of all such current policies with the Association to evidence their obligations hereunder and to facilitate recovery of all appropriate awards or proceeds by the Association.

ARTICLE 10 ASSESSMENTS

Section 10.1 Obligation. Each Owner, including Declarant, by accepting a deed for a Unit, is deemed to covenant to pay to the Association (1) the Annual Assessments imposed by the Executive Board as necessary to meet the Common Expenses of insurance, operation, management and other costs to maintain the Common Area and the Exterior Maintenance Area and to perform the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (3) Default Assessments which may be assessed against a Unit for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Area or the facilities contained in the Common Area or by abandoning or leasing such Owner's Unit.

Section 10.2 Purpose of Assessments. The Assessments shall be used to promote the health, safety and welfare of the Owners and occupants of the Project, and for the improvement, maintenance, repair and replacement of the Common Area and the Exterior Maintenance Area, and other areas of Association responsibility referred to herein, as more fully set forth in this Article 10.

Section 10.3 Budget. Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting seventy percent (70%) or more of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 10.4 Annual Assessments. Annual Assessments for Common Expenses made shall be based upon the estimated cash requirements of the Association as the Executive Board shall from time to time determine are reasonable and necessary, and shall be paid by all of the Owners, subject to Section 10.3 above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Area and Exterior Maintenance Area; expenses of management; insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping of the Common Area and the Exterior

Maintenance Area; care of grounds within the Common Area and Exterior Maintenance Area; routine repairs and renovations within the Common Area and Exterior Maintenance Area; wages; common water and utility charges for the Common Area and Exterior Maintenance Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements to and within the Common Area and Exterior Maintenance Area on a periodic basis, as needed.

Section 10.5 Due Dates for Assessment Payments. Unless otherwise determined by the Executive Board, the Annual Assessments and any Special Assessments which are to be paid in installments shall be paid in advance and shall be due and payable to the Association at its office or as the Executive Board may otherwise direct in any Management Agreement, without notice (except for the notices required by this Article 10), on the first day of each quarter. If any such installment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Executive Board may assess a "late charge" on the installment in an amount of fifteen percent (15%) of the amount outstanding or such other charge as the Executive Board may fix by rule from time to time as provided in the Bylaws or Executive Board rules to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of a quarter or other applicable payment period.

Section 10.6 Apportionment of Annual Assessments. Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided among the Units pro rata per Unit.

Section 10.7 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association, subject to the requirements of Section 10.3 above, may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Area or Exterior Maintenance Area or for any other expense incurred or to be incurred as provided in this Declaration. This Section 10.7 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments in Section 10.6, subject to the requirements that any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by

the Owners of those affected Units only; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Special Assessments shall be based on a budget adopted in accordance with Section 10.3 above provided that, if necessary, the Association may adopt a new budget pursuant to Section 10.3 prior to levying a Special Assessment. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

Section 10.8 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

Section 10.9 Lien for Assessments. The Annual, Special, and Default Assessments (including installments of the Assessments) arising under the provisions of this Declaration (together with any and all interest, costs, late charges, expenses, and reasonable attorneys' fees, including legal assistant/paralegal fees, and legal costs, which may arise under the provisions of Section 10.10 below, shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Unit to which such Assessments apply. To further evidence such lien upon a specific Unit, the Association may, but shall not be obligated to, prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the Bylaws and Section 10.10 below, the name of the Owner or Owners of the Unit, and any and all other information that the Association may deem proper. Any such lien notice shall be signed by a member of the Executive Board, an officer of the Association, or a Managing Agent and shall be recorded in the Office of the Clerk and Recorder of Larimer County, Colorado. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied

Section 10.10 Effect of Nonpayment of Assessments. If any Annual, Special, or Default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (i) interest shall accrue at the yearly rate of six points above the prime rate charged by the Association's bank or such other lawful rate as the Executive Board may establish, on any amount of the Assessment which was not paid within such 30-day period or on the

amount of Assessment in default, whichever shall be applicable, accruing from the due date until date of payment, (ii) the Association may declare due and payable all unpaid quarterly or other installments of the Annual Assessment or any Special Assessment otherwise due during the fiscal year during which such default occurred, (iii) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, and (iv) the Association may proceed to foreclose its lien against the particular Unit in the manner and form provided by Section 316 of the Act.

An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. If any such Assessment (or installment thereof) is not fully paid when due and if the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against any Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Unit, then all unpaid installments of Annual and Special Assessments and all Default Assessments (including any such installments or Assessments arising during the proceedings of such action or foreclosure proceedings), any late charges under Section 10.5 above, any accrued interest under this Section 10.10, and the Association's costs, expenses, and reasonable attorneys' fees (including legal assistant/paralegal fees) incurred for any such action or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Unit in satisfaction of the Association's lien.

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

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

Section 10.11 Successor's Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Unit to pay all Assessments on the Unit, and notwithstanding the Association's perpetual lien upon a Unit for such Assessments, all successors in interest to the fee simple title of a Unit, except as provided in Section 10.12

and Section 10.13 below, shall be jointly and severally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. However, such successor in interest shall be entitled to rely upon the existence and status of unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest pursuant to the provisions of Section 10.13 below.

Section 10.12 Waiver of Homestead Exemption: Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

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

10.12.2 Except as otherwise specified in the Act, including C.R.S. § 38-33.3-316, the lien of any First Mortgage, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens. Except for the super-priority lien provided by C.R.S. § 38-33.3-316(2)(b), which remains due and owing pursuant to the terms of that statute, any First Mortgagee who acquires title to a Unit by virtue of foreclosing a First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Association Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Unit. The amount of any lien so extinguished may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

All other persons not holding liens described in this Section 10.12 above and obtaining a lien or encumbrance on any Unit after the recording of this Declaration in the real property records of Larimer County shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for Assessments, interest, late charges, costs, expenses, and attorneys' fees as provided in this Article 10, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of any Unit, including but not limited to a foreclosure sale, except as provided in Section 10.11 above and except as provided in Section 10.13 below, shall not affect the Association's lien on such Unit for Assessments, interest, late charges, costs, expenses, and attorneys' fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 10.13 Statement of Status of Assessments. Upon fourteen (14) calendar days written request (furnished in the manner described below for the response to such request) to a Managing Agent, the Executive Board, or the Association's registered agent and payment of a reasonable fee set from time to time by the Executive Board, any Owner, prospective purchaser of a Unit, or Mortgagee, shall be furnished, by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) a statement of the Owner's account setting forth:

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

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

10.13.3 The date of the payment of any installments of any Special Assessments then existing against the Unit; and

10.13.4 Any other information deemed proper by the Association.

Upon the issuance of such a certificate signed by a member of the Executive Board, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith.

ARTICLE 11 ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9 upon their damage or destruction as provided in Article 12, or a complete or partial taking as provided in Article 13 below. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute

appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE 12 DAMAGE OR DESTRUCTION

Section 12.1 The Role of the Executive Board. Except as provided in Section 12.6, in the event of damage to or destruction of all or part of any Common Area improvement, or other property covered by insurance written in the name of the Association under Article 9, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 9 is sometimes referred to as the "Association-Insured Property").

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

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

Section 12.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement, and reconstruction of the Association-Insured Property.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the

Association may, pursuant to Section 10.7, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

Section 12.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then pro rata to the Owners of each Unit.

Section 12.6 Decision Not to Rebuild Common Area. If Owners representing at least seventy percent (70%) of the total allocated votes in the Association and all directly adversely affected Owners agree in writing not to repair and reconstruct improvements within the Common Area and if no alternative improvements are authorized, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with the Act.

Section 12.7 Repairs. All repairs and reconstruction contemplated by this Article shall be performed substantially in accordance with this Declaration, the Plat and the original plans and specifications for the Project, unless other action is approved by the Association in accordance with the requirements of this Declaration and the other Association Documents.

Section 12.8 Notice of Damage or Destruction. In the event that any portion of the Project encompassing more than one Unit is substantially damaged or destroyed by fire or other casualty, then written notice of the damage or destruction shall be given by the Association to each Owner and First Mortgagee of the affected Units within a reasonable time following the event of casualty damage.

ARTICLE 13 CONDEMNATION

Section 13.1 Rights of Owners. Whenever all or any part of the Common Area shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Area is conveyed in lieu of a taking under threat

of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

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

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least seventy percent (70%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in Article 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed; then such award or net funds shall be distributed in equal shares per Unit among the Owners, first to the Mortgagees and then to the Owners, as their interests appear.

Section 13.3 Complete Condemnation. If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Section 12.5 above.

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

ARTICLE 14 USE RESTRICTIONS

Section 14.1 Conveyance of Units. All Units, whether or not the instrument of conveyance or assignment, shall refer to this Declaration, shall be subject to the

covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, as the same may be amended from time to time.

Section 14.2 Use of Common Area. There shall be no obstruction of the Common Area, nor shall anything be kept or stored on any part of the Common Area by any Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Area by any Owner without the prior written approval of the Association.

Section 14.3 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Area, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Area which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the Property. No damage to or waste of the Common Area shall be committed by any Owner, or by any member of the Owner's family, or by any guest, lessee, invitee, or contract purchaser of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him, the members of his family, or his guests, lessees, invitees, or contract purchasers. Failure to so indemnify shall be a default by such Owner under this Section, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Owner's Unit. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a Default Assessment as provided in Sections 10.8, 10.9, and 10.10 above.

ARTICLE 15 OTHER ASSOCIATION MATTERS

Section 15.1 Architectural Control.

(a) No alteration or improvement of a Unit, Common Area, or Exterior Maintenance Area (including the construction of any additional skylight, window, awning, or door) which does not constitute a Permitted Unit Alteration (as defined in Section 15.2), including, without limitation, staking, clearing, excavating, grading and other site work, exterior alteration of existing improvements (including painting), placement or posting of any object or thing on the exterior of any Unit (e.g. fences, signs, antennae, clotheslines, playground equipment, lighting, temporary structures, and artificial vegetation), planting or removal of landscaping materials, or installation or

removal of an irrigation system, shall take place except in compliance with this Section 15.1. The alterations and changes described in this Section shall also be in compliance with and have received all approvals required by any applicable zoning and other laws, rules, and regulations, including the Rules promulgated by the Association.

(b) Responsibility for administration and review of all applications for construction and modifications under this Section 15.1 shall be handled by the Executive Board. The Executive Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

(c) Submission of Plans and Specifications.

(i) No alterations or improvements which do not constitute Permitted Unit Alterations shall commence until the plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor shall have been submitted to and approved in writing by the Executive Board.

(ii) In reviewing each submission, the Executive Board may consider visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, whether any improvements or alterations will interfere with the views from another Unit and location in relation to surrounding structures and plant life.

(iii) The Executive Board shall, within a reasonable period, advise the Owner submitting the same, in writing, at an address specified by such Owner at the time of submission, of: (A) the approval of the Plans, or (B) the segments or features of the Plans which are deemed by the Executive Board to be inconsistent or not in conformity with this Declaration, the reasons for such finding, and suggestions for the curing of such objections. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party. In the event the Executive Board fails to advise the submitting Owner by written notice within a reasonable period of either the approval or disapproval and suggestions for curing the objections of the Executive Board of the Plans, approval shall be deemed to have been denied.

(iv) If construction does not commence on alterations or improvements for which Plans have been approved within one hundred twenty (120) days of such approval, such approval may be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Executive Board for reconsideration. If construction is not completed on alterations or improvements for which plans have been approved

within the period in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Section 15.1.

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

(e) Each Owner acknowledges that the members of the Executive Board will change from time to time and that interpretation, application and enforcement of this Section 15.1 may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 15.2 Permitted Unit Alterations. An Owner of a Unit may, subject to the terms and provisions of Section 5.2, construct any alteration or improvement to its Unit (a "Permitted Unit Alteration") that:

(a) Does not, either during construction or after completion, impair the structural stability of the Project, including, without limitation, impairment of the easements described in Article 8 or impairment of any acoustical or fire separation assemblies that are part of a Party Wall, or diminish the subjacent or lateral support of any portion of the Project;

(b) Does not, during construction, substantially and unreasonably impair the use of any Common Area, Exterior Maintenance Area or the Party Walls by any Owner or Permittee entitled to use Common Area, Exterior Maintenance Area or the Party Walls;

(c) Does not, either during construction or after completion, affect Common Area or Exterior Maintenance Area; and

(d) Does not, after completion, affect the appearance of the Project, when viewed from any area outside the altered Unit. This Section 15.2(d) is intended to include the repainting and refinishing of the exterior of a structure in accordance with the color scheme and materials originally used by Declarant or previously approved in accordance with Section 15.1 and the rebuilding and restoration of improvements on a Unit in accordance with the plans and specifications used by Declarant or previously approved in accordance with Section 15.1.

At least thirty (30) days prior to commencement of construction, an Owner of a Unit intending to perform a Permitted Unit Alteration must provide plans and specifications for the Permitted Unit Alteration to the Executive Board, so that the

Executive Board may verify that such proposed Permitted Unit Alteration will not impair the structural stability or diminish the support of any portion of the Project as required by this Section 15.2. If the Executive Board determines that a proposed Permitted Unit Alteration will violate the provision of this Section 15.2, the Executive Board must give written notice to the Owner of its objection within ten (10) business days of receipt of the plans and specifications. The Executive Board's determination that a particular alteration violates this Section 15.2 will be final and the Owner may not proceed with the proposed work. In addition to the foregoing, any change, addition, alteration or improvement of any Unit that does not constitute a Permitted Unit Alteration is prohibited (unless otherwise permitted pursuant to Section 15.1) and may be enjoined by the Association or any aggrieved Owner, subject to the provisions of Section 17.7.

Notwithstanding anything to the contrary in this Article 15, any alterations or improvements within the Project performed by or at the request of Declarant shall constitute Permitted Unit Alterations.

Section 15.3. Variance. The Executive Board may authorize variances in writing from Section 15.1 and Section 15.2, but only: (i) when unique circumstances dictate such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations require, and (ii) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 15.4. Limitation of Liability. Review and approval of any application pursuant to Section 15.1 and Section 15.2 is made on the basis of aesthetic considerations only and the Executive Board shall not bear any responsibility for ensuring the structural integrity or soundness of approved alterations or improvements, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Executive Board, any committee, nor member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved alterations or improvements on any Unit. All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Section 15.1 may be excluded by the Executive Board from the Project, subject to the notice and hearing procedures contained in the Bylaws or Rules. In such event, neither the Association, nor its officers, or directors shall be held liable to any Person for exercising the rights granted pursuant to Section 15.1 or Section 15.2. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of Section 15.1 and Section 15.2.

Section 15.5 Construction. Any Owner(s) performing or causing to be performed any alterations or improvements within the Project, whether constituting a Permitted Unit Alteration or approved in accordance with Section 15.1 (each, an "Alteration") will comply with the following additional provisions:

(a) Such Owner(s) will obtain all necessary permits and governmental authorizations for the Alteration;

(b) Such Owner(s) will comply with the Rules when constructing the Alteration;

(c) The Alteration and the construction of it will comply with all applicable zoning and building codes and other applicable laws, ordinances and restrictive covenants;

(d) Prior to commencing any construction, such Owner(s) will provide the Executive Board with evidence sufficient to demonstrate that the insurance required to be maintained by such Owner(s) pursuant to Article 9 is in full force and effect and that the contractor performing the work maintains worker's compensation insurance in the amount required by law and contractor's liability insurance with the limits the Executive Board reasonably requires;

(e) Such Owner(s) will cause the Alteration to be constructed and completed diligently, in a good and workmanlike manner, and free and clear of all mechanics' and materialmen's liens and other claims or liens; provided, however, that if any mechanics' lien claim is recorded against the Project because of or relating to the Alteration, such Owner will have the lien released (by payment, bonding or other available process) within thirty (30) days after recordation of the claim;

(f) During the construction process, such Owner(s) will, to the extent consistent with good construction practice, keep the area affected in a safe, neat and clean condition;

(g) Such Owner(s) will minimize any impact from the construction process on other Units, Common Area, or Exterior Maintenance Area and the Executive Board, in its discretion, may require such Owner to post a bond or other security in an amount reasonably determined by the Executive Board in order to protect Common Area during the pendency of and immediately after the Alteration work;

(h) Such Owner(s) will perform the Alteration work, or cause the work to be performed, in a manner that maintains harmonious labor relations and does not interfere unreasonably with or delay the work of any other contractors then working anywhere on the Project;

(i) Such Owner(s) will reimburse the Association for all costs incurred by the Association in connection with the Alteration, such as the increase in costs of trash removal due to the performance of the Alteration work; and

(j) Such Owner(s) will pay or cause to be paid all costs of design and construction of the Alteration and upon completion of any Alteration, such Owner will provide the Executive Board with as-built drawings of the altered Unit(s).

Section 15.6. Limit on Timesharing. No Owner of any Unit shall offer or sell any interest in such Unit under a “timesharing” or “interval ownership” plan, or any similar plan.

Section 15.7. Use of the Words “Townhomes at Library Park” or Logo. No Owner shall use the words “Townhomes at Library Park” or any derivative of any of them, or any other name given to the Property by the Declarant, or the logo of the development in any printed or promotional material without Declarant’s prior written consent. Any breach of this agreement by an Owner shall entitle the Declarant to immediate injunctive relief and reasonable attorneys’ fees as determined by the court. However, Owners may use the terms “Townhomes at Library Park” in printed or promotional matter where such term is used solely to specify that particular property is located within the Project, and the Association shall be entitled to use the words “Townhomes at Library Park” in its name.

ARTICLE 16 DECLARANT’S RIGHTS REGARDING TRANSFER

Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, in accordance with Section 304 of the Act.

ARTICLE 17 CONSTRUCTION DEFECTS, DISPUTES DISPUTE RESOLUTION AND LITIGATION

Section 17.1 Roles Defined. The Association shall have no right or standing to undertake or authorize any testing or investigations of any kind or initiate or pursue any claim, grievance or dispute related to any design or construction defects within any area of the Property other than Common Area and Exterior Maintenance Area, as Common Area and Exterior Maintenance Area are defined in the original recorded versions of this Declaration and the corresponding map (“Claim”). Each Owner shall have the sole and exclusive authority and responsibility to undertake and authorize testing and investigations and initiate and pursue any Claims for any construction defects located in such Owner’s Unit, as such Units are defined in the original recorded versions of this Declaration and the Plat.

Section 17.2 Consensus for Association Litigation. Except as provided in the last paragraph of this Section 17.2, the Association shall not commence any judicial or administrative proceeding, including, without limitation, any proceeding required under Section 17.5 below, without first satisfying the following conditions:

(a) Prior to the Association commencing any judicial or administrative proceeding which arises out of an alleged design or construction defect in Common Area or Exterior Maintenance Area, Declarant and others responsible for the construction of the Property shall have been given the right to be heard by the Association and a reasonable amount of time to access, inspect, correct the condition of, and redesign any portion of Common Area or Exterior Maintenance Area as to which a defect is alleged.

(b) At least sixty (60) days prior to giving of any notice under Section 17.5(a) of this Declaration or under 13-20-803.5, C.R.S, whichever is required earlier, the Executive Board shall have delivered to each Owner a written notice which has been prepared and signed by the Executive Board and not prepared or signed by any other person, containing a general description of the following:

(i) The relief sought by the Association and the expected claims and actions which may be reasonably necessary to obtain such relief;

(ii) Any alleged design or construction defects, the expected impact, financial and physical, of the alleged defects associated with Common Area or Exterior Maintenance Area and the parties believed to be responsible for the alleged defects;

(iii) The expenses and fees that the Executive Board reasonably anticipates will be incurred, directly or indirectly, in prosecuting the claims and actions, including, without limitation, all attorney fees, consultant fees, expert witness fees and arbitration and court costs, whether incurred by the Association directly or for which it may be liable if it is not the prevailing party, or that the Association will be required, pursuant to an agreement with its attorneys or otherwise, to pay if it elects not to proceed with the claims and actions;

(iv) The potential impact of the proceeding on the value of the Property and the Units, both during the pendency of the dispute and after its resolution;

(v) The potential impact of the proceeding on the marketability of the Units, including the impact on the Owners' ability to refinance and potential buyers to obtain financing, during the pendency of the dispute and after its resolution;

(vi) The manner in which the Association proposes to fund the cost of the proceeding, including any potential Assessments or use of reserve funds; and

(vii) The anticipated duration of the proceeding and the likelihood of success.

(c) The Association shall obtain the approval of at least sixty-seven percent (67%) of the total votes of Owners cast at a meeting duly called and held for such purpose in accordance with the Bylaws, which approval shall be by the affirmative vote of the requisite threshold of Owners and not by proxy; and

(d) The Association shall obtain the affirmative approval of Declarant so long as Declarant owns any Unit.

This Section 17.2 will not apply, however, to: (i) actions brought by the Association to enforce the terms of this Declaration, the Articles, the Bylaws, or the Rules (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of Assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

Section 17.3 Alternative Method for Resolving Disputes. Each Bound Party agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit all Claims to the procedures set forth in Section 17.5 of this Declaration. For the purposes of this Declaration, "Bound Party" means Declarant, the Association, and their respective officers, directors, managers and members, any Owner, any Person who is subject to this Declaration and any Person not otherwise subject to this Declaration who agrees to submit to Section 17.4.

Section 17.4 Claims.

(a) Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of this Declaration, or the rights, obligations and duties of any Bound Party under this Declaration, or relating to the design or construction of the Project (including, without limitation, any soils related issues) will be subject to the provisions of Section 17.5 of this Declaration.

(b) Notwithstanding the above, unless all parties thereto otherwise agree, the following will not be Claims and will not be subject to the provisions of Section 17.5 of this Declaration:

(i) Any suit by the Association against any Bound Party to enforce the provisions of Article 10 of this Declaration;

(ii) Any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as a court may deem necessary in order to maintain the status

quo and preserve the Association's ability to act under and enforce provisions of this Declaration other than this Article 17;

(iii) Any suit between or among Owners, to the extent such suit asserts a Claim which would constitute a cause of action independent of this Declaration.

With the consent of all parties thereto, any of the above (i) through (iii) may be submitted to the alternative dispute resolution procedures set forth in Section 17.5.

Section 17.5 Mandatory Procedures.

(a) Each Claimant will notify each Respondent in writing stating plainly and concisely: (i) the nature of the Claim, including the persons and entities involved and Respondent's role in the Claim; (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim. For purposes of this Declaration, "Claimant" means any Bound Party having a Claim, "Respondent" means any Bound Party against whom a Claimant has a Claim, and "Party(ies)" means a Claimant and/or a Respondent, as the context requires.

(b) Negotiation and Mediation.

(i) The Parties will meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the written notice given by a Claimant to a Respondent in accordance with this Section 17.5 ("Notice"), the Executive Board may appoint a representative to assist the Parties in negotiation. As to any dispute which arises out of an alleged design or construction defect of any Claimant's Unit, Declarant and others responsible for the construction shall have been given the right to be heard by the Claimant and a reasonable amount of time to access, inspect, correct the condition of, or redesign any portion of the Unit as to which a defect is alleged.

(ii) If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant will have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Parties, or, if the Parties cannot agree, then as designated jointly by each of the Parties' desired mediation service, and providing dispute resolution services in Fort Collins, Colorado.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant will be deemed to have permanently and irrevocably waived the Claim for all purposes, and Respondent will be released and discharged from any and all liability to Claimant on account

of such Claim; provided, however, that nothing herein will release or discharge Respondent from any liability to any person or entity other than Claimant.

(iv) Any settlement of the Claim through mediation will be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator will issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice will set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Within five (5) business days of the Termination of Mediation, Claimant will make a final written settlement demand ("Settlement Demand") to Respondent, and Respondent will make a final written settlement offer ("Settlement Offer") to Claimant. If Claimant fails to make a Settlement Demand, Claimant's original Notice will constitute the Settlement Demand. If Respondent fails to make a Settlement Offer, Respondent will be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, Claimant will have fifteen (15) additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit C or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if Claimant fails to appear for the arbitration proceeding, the Claim will be deemed permanently and irrevocably abandoned for all purposes, and Respondent will be permanently and irrevocably released and discharged from any and all liability to Claimant arising out of such Claim; *provided, however*, that nothing herein will release or discharge Respondent from any liability to any persons or entities other than Claimant.

(ii) This Section 17.5(c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. The Award will be final and binding with no right to appeal, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(d) Allocation of Costs of Resolving Claims.

(i) Except as provided for below, each Party, including, without limitation, any Owner and the Association, will share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration

proceeding ("Post Mediation Costs"). Under no circumstances will either Party be entitled to recover its any attorneys' fees from the other party (except as specifically provided under Section 123 of the Act). BY ACQUIRING AN INTEREST IN THE PROPERTY AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND WILL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS' FEES (EXCEPT AS SPECIFICALLY PROVIDED UNDER SECTION 123 OF THE ACT) IN CONNECTION WITH THE ARBITRATION OF A DISPUTE UNDER THIS SECTION 17.5.

(ii) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand will cause Claimant's Post Mediation Costs to be added to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer will award to such Respondent its Post Mediation Costs. With respect to any Award which is less favorable to Claimant than Claimant's Settlement Demand yet more favorable to Claimant than Respondent's Settlement Offer, each Party will bear its own Post Mediation Costs.

(e) No Party, including, without limitation, any Owner and the Association, will be entitled to receive any award of damages in connection with the arbitration of a Claim other than such Party's actual damages, and Declarant, the Association and any Owner will be deemed to have waived their right to receive any damages in a dispute other than actual damages, including, without limitation, attorneys' fees (except as specifically provided under Section 123 of the Act), special damages, consequential damages, and punitive or exemplary damages. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME, INCLUDING, WITHOUT LIMITATION, C.R.S 13-20-806(7) AND 13-20-807, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, BY ACQUIRING AN INTEREST IN THE PROPERTY AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND WILL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY DISPUTE UNDER SECTION 17.5, THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE

OR FEDERAL), DESIGN OR CONSTRUCTION DEFECTS (INCLUDING SOILS RELATED ISSUES), MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.

(f) Multiple Party Claims not consolidated or administered as a class action pursuant to the following sentence will be arbitrated individually. Only with the written request of all Parties involved, but not otherwise, the arbitrator may: (i) consolidate in a single arbitration proceeding any multiple Party Claims that are substantially identical; and (ii) arbitrate multiple Party Claims as a class action in accordance with the rules and procedures adopted by Construction Arbitration Services, Inc.

(g) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 17.5(b) above and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this Section 17.5. In such event, the Party taking action to enforce an agreement or Award will be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs to the extent specifically provided under Section 123 of the Act.

(h) Any court or other tribunal presented with any Claim which was initiated or filed in violation of the requirements of this Section 17.5 shall dismiss such Claim with prejudice and award the Party which was subjected to such Claim all of its reasonable attorney's fees and costs in responding to and otherwise addressing such Claim.

Section 17.6 Legal Proceedings. Subject to the provisions of Sections 17.1 through 17.5 of this Declaration, the Association will have the right, but not the obligation, to institute legal proceedings to enforce all rights under this Declaration, the Articles, the Bylaws, and the Rules. The decision to institute legal proceedings by seeking the approval of at least sixty seven percent (67%) of the total votes cast by Owners at a meeting duly called and held for such purpose pursuant to Section 17.2 of this Declaration will be in the sole discretion of the Executive Board. Failure to commence such legal proceedings will not constitute a waiver of any such rights. ANY LIMITATIONS ON DAMAGES AND ALL WAIVERS OF LIABILITY AND RIGHTS TO AWARDS OF DAMAGES SET FORTH IN ANY SECTION OF THIS DECLARATION WITH RESPECT TO OWNERS, INCLUDING, WITHOUT LIMITATION, SECTIONS 17.5(c), 17.5(e) AND 17.5(f), WILL APPLY WITH EQUAL FORCE AND EFFECT WITH RESPECT TO THE ASSOCIATION IN ANY LEGAL PROCEEDINGS INSTITUTED BY THE ASSOCIATION UNDER THIS SECTION 17.6. THE PROVISIONS OF SECTIONS 17.1 THROUGH 17.6 WILL BE BINDING UPON THE OWNERS AND THE ASSOCIATION TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME.

Section 17.7 Enforcement of Declaration, Articles, Bylaws, and Rules.

(i) After notice and an opportunity to be heard as provided in the Bylaws or Rules, the Association, acting through the Executive Board or any authorized agent, may: (i) impose sanctions (including, without limitation, reasonable monetary fines and suspension of the Owner's right to vote in Association matters) for violations of this Declaration, the Articles, the Bylaws, or the Rules; (ii) exercise self-help to cure any violations of this Declaration, the Articles, the Bylaws, or the Rules that an Owner fails or refuses to cure; and (iii) suspend any services it provides to any Owner who is more than fifteen (15) days delinquent in paying any Assessment or other charge due to the Association. All of the remedies set forth in this Declaration, the Articles, the Bylaws, and the Rules will be cumulative of each other. If the Association prevails in any action to enforce the provisions of this Declaration, the Articles, the Bylaws, or the Rules, it will be entitled to recover all costs, including, without limitation, attorneys' fees and court costs to the extent specifically provided under Section 123 of the Act reasonably incurred by it in such action.

(j) In no event will the Association's failure to enforce any covenant, restriction or rule provided for in this Declaration, the Articles, the Bylaws, or the Rules constitute a waiver of the Association's right to later enforce such provision or any other covenant, restriction or rule.

Section 17.8 Amendment of this Article. This Article 17 shall not be amended unless such amendment is approved:

(i) by at least sixty-seven percent (67%) of the total votes cast by Owners at a meeting duly called and held for such purpose, which approval shall be by the affirmative vote of the requisite threshold of Owners and not by proxy;

(ii) for a period of ten (10) years commencing on the date on which this Declaration is recorded, by Declarant; and

(iii) pursuant to the same procedures necessary to institute proceedings, as provided in Sections 17.2(b), 17.2(c) and 17.2(d), except that the written notice required by Section 17.2(b) shall be delivered at least sixty (60) days prior to the vote on the proposed amendment and shall contain a written summary of the proposed amendment and the purpose for such amendment.

Section 17.9 Conflicts; Waivers. In the event of any conflict between the terms of this Article 17 and the terms of other Articles of this Declaration, the terms of this Article 17 shall control. In no event shall a Party be deemed to have waived its rights under this Article 17, including, without limitation, by responding to, acknowledging or otherwise participating in any litigation filed in any court or other tribunal in violation of this Article 17. All such waivers shall be contained in a writing executed by the waiving

Party, in the absence of which any Party alleged to have waived any rights under this Article 17 shall have the right to enforce this Article 17 in accordance with its terms at any time.

**ARTICLE 18
AMENDMENT**

Section 18.1 Required Votes. Subject to Section 20.2,

(a) Declarant, without the vote or consent of the Executive Board or the Owners, may amend this Declaration or the Plat correct clerical, typographical or technical errors.

(b) Declarant, without the vote or consent of the Executive Board or the Owners, may amend the Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the U.S. Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association.

(c) Amendments to this Declaration contemplated by Article 12 or Article 13 may be made by the Executive Board on behalf of the Association and do not require the approval of the Owners.

(d) Amendments to Article 17 shall only be made in accordance with Section 17.8.

(e) Any amendment to this Declaration that changes a specific clause or provision prescribing a certain percentage of affirmative votes or written consents for action to be taken under that clause or provision requires the affirmative vote or written consent of those Owners of Units to which at least that percentage (as prescribed in that clause or provision) of the votes in the Association are allocated.

(f) No amendment to this Declaration may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

(g) No amendment to this Declaration may remove, revoke or modify any of the Easements described in Article 8 without the written consent of any Owners of the Units which will be materially and adversely affected by such amendment.

(h) Except as provided in Sections 18.1(a) through Section 18.1(g), this Declaration (including the corresponding map) may be amended by the affirmative vote or written consent of the Owners of Units to which more than 70% of the votes in the Association are allocated.

Section 18.2 Amending Documents. Except for any amendment that by the terms of this Declaration may be and is duly executed, acknowledged and recorded by or on behalf of the Executive Board, an amendment to this Declaration is effective only when all of the following events occur:

(a) **Approved Writing.** The amendment is reduced to a writing that is approved (by affirmative vote or written consent) by the Owners of Units to which at least the applicable required percentage of votes in the Association are allocated.

(b) **Certificate by Association.** A written certificate, executed and acknowledged by the president or any other authorized officer of the Association, is attached to the written amendment which states that the amendment was approved by the applicable required percentage of votes in the Association pursuant to Section 18.1.

(c) **Recording.** The approved written amendment described in Section 18.2(a) and the certificate described in Section 18.2(b) are recorded.

(d) **Presumption of Validity.** After an amendment to this Declaration is recorded, a presumption exists that all votes and approvals regarding the amendment were duly obtained and satisfy the requirements of this Declaration. The presumption may be rebutted by an action commenced within one (1) year from the date the amendment is recorded; in the absence of an action commenced within the one (1)-year period, the presumption is deemed conclusive.

ARTICLE 19 OWNER'S ACKNOWLEDGMENTS AND WAIVERS

Section 19.1 Owner's Acknowledgments.

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

(b) **Commercial Activities.** A variety of commercial activities (the "Commercial Activities") are and may be conducted within the Project and nearby and adjacent to the Project (the "Commercial Activity Areas"). The Commercial Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts

and disturbances. The Commercial Activities may include, without limitation: (i) operation of a residential housing project with associated indoor and outdoor amenities; (ii) operation of various commercial businesses, including without limitation banks and other financial service providers, real estate and mortgage brokers, grocery stores and other general office uses; (iii) indoor and outdoor restaurant and bar operations (including, without limitation, the sale of food and alcoholic and non-alcoholic beverages for on-site and off-site consumption) and preparation of hot and cold food (through the use of barbecue grills, fire pits and other smoke and/or odor producing means) and beverages at indoor and outdoor facilities on and immediately adjacent to or near the Property which may include outdoor music, smoking and deliveries; (iv) parking activities, including, without limitation, special event parking and after hours parking; (v) the installation, operation and maintenance of illuminated and non-illuminated signage; (viii) concerts, sporting events and other outdoor and indoor entertainment, performances and special events; and (ix) any other uses or activities permitted by law. The Commercial Activities may occur during daytime and nighttime.

(c) Noise Disturbances. The Units and the Project are located in a urban location and are part of a multiple-unit development. Each Owner acknowledges that its Unit may share common walls, ceilings or floors with another Unit. Due to these factors, there may be a certain amount of unpredictable noise disturbances within the Project (the "Noise Disturbances"). The Noise Disturbances may include, without limitation: (i) street noise from pedestrians and automobiles, and general traffic noise from nearby interstates or other major arterial roads and railways and rail stations; (ii) noise from other adjacent Units, Common Area, and Exterior Maintenance Area, including, but not limited to, voices, music, televisions, appliances, walking, running, opening and closing of doors, falling objects, cabinet and furniture operation, plumbing and HVAC operation, fitness equipment operation and elevator operation; (iii) noise from outdoor or indoor art, food, music or other types of festivals in the vicinity of the Project; (iv) noise from concerts, sporting events and other outdoor and indoor entertainment, performances and special events in the vicinity of the Project; (v) noise from public and private transit, including buses, taxis and shuttles; (vi) noise related to sirens from fire trucks, police cars, ambulances and other emergency service providers; (vii) noise generated from nearby public gathering areas and children and adults utilizing such areas; and (viii) noise from any other of the Commercial Activities. The Units and other components of the Project may contain certain acoustical separation assemblies and other components deemed appropriate by Declarant to assist with mitigating the transmission of sound through walls and other physical separations. However, it is impossible to completely sound proof any Unit or other portion of the Project.

(d) Waiver and Release. Each Owner, by acquiring a Unit, acknowledges that the Construction Activities, the Commercial Activities and the Noise Disturbances, and the impacts and disturbances generated by the Construction Activities, the Commercial Activities and the Noise Disturbances, may occur in and around the Project, and may

occur during daytime and nighttime and may be temporarily or permanently interrupted, discontinued or modified, in whole or in part, from time to time. Each Owner, by acquiring a Unit, forever waives and releases any actions or claims the Owner and its successors and assigns may have against Declarant, the other Owners and their Permittees and each of their successors and assigns which in any way arise out of the existence, occurrence, or the temporary or permanent interruption, discontinuance or modification of the Construction Activities, the Commercial Activities or the Noise Disturbances and such impacts and disturbances, or the reconfiguration of the Commercial Activities Areas; provided, however, that the foregoing waiver and release shall in no event include any actions or claims that each Owner may have for violations of this Declaration, the Articles, the Bylaws, or the Rules.

Section 19.2 No View Easement. Notwithstanding anything contained in this Declaration to the contrary, each Owner, by acquiring a Unit, acknowledges and agrees that there is no Easement or other right, express or implied, for the benefit of any Owner or its Unit for light, view or air included in or created by this Declaration or as a result of ownership of the Unit. Likewise, each Owner, by acquiring a Unit, acknowledges and agrees that any view, sight lines, or openings for light or air available from the Unit, or anywhere else on the Project, may be blocked or altered in whole or in part in the future by virtue of natural or unnatural causes, including but not limited to future construction or expansion of commercial or residential buildings or facilities. EACH OWNER, BY ACQUIRING A UNIT, HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING EASEMENTS OR OTHER RIGHTS, WHETHER EXPRESS OR IMPLIED, FOR LIGHT, AIR, OR VIEW IN SUCH OWNER'S UNIT AND/OR THE PROJECT; EACH OWNER, BY ACQUIRING A UNIT, HEREBY ACCEPTS SUCH DISCLAIMER, AND AGREES THAT DECLARANT AND ITS AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT, ITS AFFILIATES, CONTRACTORS OR AGENTS, RELATED TO ANY LOSS OF LIGHT, AIR, OR VIEW THAT MAY AFFECT THE UNIT OR THE PROJECT.

Section 19.3 Security. NEITHER THE ASSOCIATION NOR DECLARANT NOR THEIR RESPECTIVE AFFILIATES WILL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROJECT, AND NEITHER THE ASSOCIATION NOR DECLARANT NOR THEIR RESPECTIVE AFFILIATES, WILL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY, INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, OR ACTS OF THIRD PARTIES. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, DECLARANT AND THEIR RESPECTIVE AFFILIATES, AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES,

ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS, AND FURTHER ACKNOWLEDGE THAT DECLARANT, ITS AFFILIATES AND THE ASSOCIATION'S BOARD OF DIRECTORS AND COMMITTEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

Section 19.4 Other Properties. Each Owner, by acquiring a Unit, acknowledges that other properties are located adjacent to and in the general vicinity of the Project (the "Other Properties") and that the Other Properties may be developed pursuant to the land uses permitted by the City of Fort Collin's zoning ordinances, as well as any other governmental rules, regulations, or policies in effect now or in the future which are applicable to the Other Properties (collectively, the "Ordinances"). Neither Declarant nor any of its employees, agents, officers, directors and affiliates make any representations concerning the planned uses of the Other Properties. Each Owner, by acquiring a Unit, further acknowledges that the zoning for the Project and the Other Properties is established and governed by the Ordinances. Any amendment of those Ordinances requires approval of the City of Fort Collins. By acquiring a Unit, each Owner acknowledges that it has not relied upon any statements or representations regarding the Project or the Other Properties, including, without limitation, any representations made by Declarant or its agents or employees or any real estate agency or any agent, except for those statements and representations expressly set forth in this Declaration and the Ordinances.

Section 19.5 Drainage and Soils Condition.

(a) **Acknowledgment.** THE SOILS WITHIN COLORADO CONSIST OF BOTH EXPANSIVE SOILS AND LOW-DENSITY SOILS WHICH MAY ADVERSELY AFFECT THE INTEGRITY OF A UNIT OR COMMON AREA IF SUCH UNIT OR COMMON AREA IS 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 RE-ALIGNMENT OF SOIL GRAINS, THEREBY RESULTING IN CONSOLIDATION AND/OR COLLAPSE OF THE SOILS.

(b) **Waiver of Liability of Declarant.** BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES SUCH OWNER HAS WAIVED AND WILL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF

DAMAGES AGAINST DECLARANT AND ITS MANAGERS, MEMBERS, EMPLOYEES OR AGENTS FOR ANY LOSS OR DAMAGE TO ANY PORTION OF THE UNIT OR THE COMMON AREAS CAUSED BY, RESULTING FROM OR IN ANY WAY CONNECTED WITH SOIL CONDITIONS ON OR UNDER ANY COMMON AREAS, INCLUDING SPECIFICALLY THE PRESENCE OF EXPANSIVE SOILS AND RADON GAS.

Section 19.6 Inspection by Others; Waiver of Post Inspection Liability. It is hereby expressly understood and agreed by Declarant and by any Owner upon acquiring a Unit that Declarant relies upon governmental inspectors and other qualified subcontractors and tradesmen to inspect the construction of the Units and Common Area in order to verify compliance with construction plans and with any and all building code requirements applicable to residential construction. Declarant and each Owner further expressly understand and agree that, with respect to the Units and the Common Areas, upon compliance with the inspections required by the local building department and the issuance of a certificate of occupancy by the responsible governmental agency, Declarant will be deemed to have used its best efforts to construct such Units and Common Areas in substantial compliance with the construction plans and all applicable building code requirements. EACH OWNER, BY ACQUIRING A UNIT, HEREBY KNOWINGLY AND WILLINGLY WAIVES AS AGAINST DECLARANT AND ITS AFFILIATES ANY AND ALL DEMANDS, CLAIMS, ACTIONS AND CAUSES OF ACTION, AND ALL LIABILITY, LOSSES, DAMAGES, COSTS OR EXPENSES THAT HAVE BEEN OR MAY BE INCURRED IN ASSOCIATION THEREWITH, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXEMPLARY DAMAGES, WHICH ARISE FROM OR ARE RELATED TO ANY NONCOMPLIANCE OF THE UNITS OR THE COMMON AREAS WITH CONSTRUCTION PLANS OR BUILDING CODE REQUIREMENTS, WHICH NONCOMPLIANCE IS NEITHER SUBSTANTIAL NOR MATERIAL IN NATURE AND WHICH NONCOMPLIANCE IS DISCOVERED AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR, RESPECTIVELY, SUCH UNITS OR COMMON AREAS; AND ANY SUCH NONCOMPLIANCE WILL BE DEEMED UNINTENTIONAL WITH RESPECT TO DECLARANT.

Section 19.7 Conflicts with Applicable Law. IN THE EVENT THAT ANY PROVISION IN THIS ARTICLE 19 CONFLICTS WITH ANY APPLICABLE FEDERAL OR COLORADO STATUTES WHICH PROVIDE NON-WAIVABLE LEGAL RIGHTS, INCLUDING, WITHOUT LIMITATION, THE COLORADO CONSTRUCTION DEFECT ACTION REFORM ACT OR THE COLORADO CONSUMER PROTECTION ACT, THEN THE NON-WAIVABLE TERMS OF SUCH STATUTE SHALL CONTROL.

**ARTICLE 20
RIGHTS OF FIRST MORTGAGEES**

Section 20.1 Notices to First Mortgagees; Right to Cure. Any First Mortgagee may notify the Association that such First Mortgagee requests copies of any notices sent by the Association to the Owner whose Unit is encumbered by such First Mortgagee's First Mortgage concerning any default by such Owner of its obligations under this Declaration, including, without limitation, any notice of a delinquent Assessment under Article 10. Any First Mortgagee who has filed such a notice with the Association will be entitled to receive a copy of any such notice from the Association to such Owner, which copy will be given simultaneously with the Association's notice to the defaulting Owner. Such a First Mortgagee will have the right to cure any monetary default by such Owner within the same period of time given to the Owner. In addition, any First Mortgagee that by notice to the Association requests: (a) notice of any condemnation or casualty loss that affects the Unit securing its First Mortgage and (b) notice of any proposed action subject to Section 20.2, will be entitled to such notices from the Association.

Section 20.2 Restrictions on Amendments. Notwithstanding any other provision of this Declaration to the contrary, the vote or written consent of an Owner in favor of an action specified in paragraphs (a) through (i) below will be counted as a "NO" vote, regardless of whether the Owner votes in favor of a particular item unless the First Mortgagee of such Owner's Unit has consented thereto in writing, which notice and consent shall be in accordance with Section 217(1)(b) of the Act. The action restricted by this Section 20.2 is any vote to amend this Declaration to:

- (a) Terminate this Declaration or the Project;
- (b) Change the interest of an Owner in the allocation or distribution of insurance proceeds or condemnation awards;
- (c) Change the provisions of any part of this Article 20;
- (d) Convert any portion of any Common Area into a Unit, or convert an portion of any Unit into a Common Area;
- (e) Create any new rights solely in favor of Declarant;
- (f) Change or relocate the boundaries of any Unit;
- (g) Reallocate any rights to use any of Common Area;
- (h) Change any voting percentages required to take any action, as set forth in this Declaration; or
- (i) Add any real estate or Units to the Project.

**ARTICLE 21
MISCELLANEOUS**

Section 21.1 Restriction on Declarant Powers. Any provision in this Declaration in conflict with the mandatory requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 21.2 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 21.3 Enforcement.

(a) **General Scheme.** This Declaration, the Articles and the Bylaws constitute a general scheme benefiting each Unit and the Property as a whole and may be enforced by Declarant (for so long as Declarant is the Owner of one or more Units (or any portion thereof)), the Association or an aggrieved Owner. A violation of any of the provisions of this Declaration causes irreparable damage to the Property. Therefore, subject to the terms and conditions of this Section 20.3 and except as otherwise expressly provided elsewhere in this Declaration, Declarant (for so long as Declarant is the Owner of one or more Units (or any portion thereof)), the Association and any aggrieved Owner may prosecute a proceeding at law or in equity against any Person violating or attempting to violate the provisions of this Declaration, the Articles, the Bylaws, or the Rules, including, without limitation, an action for a temporary restraining order, preliminary injunction and permanent injunction.

(b) **Enforcement Costs and Penalties.** Any Person attempting to enforce a provision of this Declaration, the Articles or the Bylaws, including, without limitation, attempting to collect delinquent Assessments, regardless of whether a suit is initiated, may recover reasonable attorneys' fees and other legal costs incurred in successfully enforcing the provision to the extent provided in Article 10 or Section 123 of the Act. Any Owner who is successful in defending such a claim raised against it is also entitled to reasonable attorneys' fees and other legal costs it incurs in successfully defending such a claim to the extent provided in Section 123 of the Act. In addition, if any Owner fails to comply with this Declaration, the Articles, the Bylaws, or the Rules, the Association may impose monetary penalties and other appropriate measures; provided, however, that before imposing any of those measures (other than late charges, interest and reasonable collection costs relating to delinquent payments), the defaulting Owner is provided prior notice of the claimed default and an opportunity to be heard by the Executive Board prior to the imposition of the disciplinary measure in accordance with the provisions of the Bylaws.

(c) **Notification of Association Before Owner Enforcement Action.** Before an aggrieved Owner may prosecute any proceeding at law or in equity enforcing the

provisions of this Declaration or seeking other relief relating to a violation or attempted violation of the provisions of this Declaration, the Owner will first give written notice to the Executive Board specifying the violation or attempted violation of the provisions of this Declaration, the facts and circumstances surrounding the violation, and the name of the Person alleged to have violated or attempted to violate the provisions of this Declaration. Subject to Section 17.2, the Association may initiate a proceeding at law or in equity to enforce the provisions of this Declaration, to prevent a violation or to obtain damages for damage to Common Area resulting from the violation, or may otherwise enforce the provisions of this Declaration. Subject to Sections 17.3 through 17.6, the aggrieved Owner may exercise any of its rights under Section 18.3(a) if: (i) the violation or attempted violation results or would result in direct and immediate physical damage to the Unit to which Owner's Unit relates; or (ii) the Association fails to enforce or cause enforcement of the violated provisions of this Declaration within sixty (60) days after the Executive Board receives the Owner's notice.

(d) No Waiver. In no event will the Association's or Declarant's failure to enforce any covenant, restriction or rule provided for in this Declaration, the Articles, the Bylaws, or the Rules constitute a waiver of the Association's or Declarant's right to later enforce such provision or any other covenant, restriction or rule.

Section 21.4 Conflicts with the Act; Severability. The Project and this Declaration will not be subject to the provisions of any amendment to or replacement of the Act which becomes effective after the date of recording of this Declaration in the real property records of Larimer County, unless the provisions of the amendment or replacement are expressly made binding upon existing small planned communities such as the Project. Notwithstanding the foregoing, the Association may elect to subject the Project to any amendment or replacement by the affirmative vote of all Owners who would be required to approve an amendment to this Declaration pursuant to Section 18.1 concerning the subject matter contained in the amendment to or replacement of the Act. If any of the terms, conditions, provisions, sections or clauses of this Declaration conflict with any provision of the Act which is either made applicable to the Project pursuant to Section 116(2) of the Act or incorporated into this Declaration by an express provision of this Declaration, the provisions of the Act control unless the Act permits this Declaration to override the Act, in which event this Declaration controls. The invalidity of any covenant, restriction, condition, limitation or provision of this Declaration or the application of any of them to any person or circumstance will not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, or the application of any covenant, restriction, condition, limitation or provision to any other person or circumstances.

Section 21.5 Conflict of Provisions. In case of any conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In case of any conflict between the Articles and the Bylaws, the Articles shall control.

Section 21.6 Nonwaiver. Failure by Declarant, the Association, or any Owner or First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

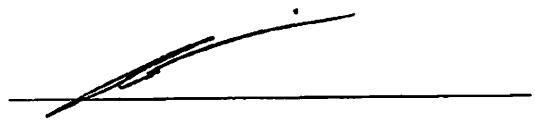
Section 21.7 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular and the use of any gender shall include all genders.

Section 21.8 Captions. The captions to the Articles and Sections of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 21.9 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

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Executed this 27th day of February 2017.



STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing was acknowledged before me this 27th day of February, 2017, by Bradley J. Florin as President of NoCo Townhomes, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires 10/20/20.

Notary Public



[SEAL]

Laila Lambourne
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20044035686
MY COMMISSION EXPIRES 10/20/20

EXHIBIT A
Property Description

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, Townhomes at Library Park, FTC.

EXHIBIT B
EASEMENTS AND LICENSES OF RECORD

1. Unpatented mining claims, reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights and claims or title to water.
2. Rights or claims of parties in possession not shown by the public records.
3. Easements, or claims of easements, not shown by the public records.

EXHIBIT C
RULES OF ARBITRATION

Claimant will submit a Claim to arbitration under these Arbitration rules and regulations by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's submission of the Claim to arbitration ("Arbitration Notice").

1. Any arbitration conducted under these rules and regulations and in connection with any Claim arising out of or relating to the interpretation, application, or enforcement of the Declaration, or relating to the design or construction of the Common Areas or Exterior Maintenance Area, will conform with and be subject to the rules and procedures adopted and routinely applied by Construction Arbitration Services, Inc. ("CAS").
2. The Parties will select a panel of arbitrators (the "Panel") as follows ("Party Appointed Arbitrators"): all Claimants will agree upon one Party Appointed Arbitrator, and all Respondents will agree upon one Party Appointed Arbitrator. The Party Appointed Arbitrators will, by agreement, select one Additional arbitrator ("Additional").
3. If the Panel is not selected under Rule 2 within forty five (45) days from the date of the Arbitration Notice, any Party may notify the nearest chapter of The Community Associations Institute for any dispute arising under the Declaration, the Articles, the Bylaws, or the Rules, or CAS for any dispute relating to the design or construction of any portion of the Property, which will appoint one Additional ("Appointed Additional") and will notify the Appointed Additional and all Parties in writing of such appointment. The Appointed Additional will thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees will have no further duties involving the arbitration proceedings.
4. No Person may serve as an Additional in any arbitration in which that Person has any financial or personal interest in the result of the arbitration. Any Person designated as an Additional or Appointed Additional will immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Additional or Appointed Additional after receipt of that Additional's Bias Disclosure, such Additional or Appointed Additional will be replaced in the same manner in which that Additional or Appointed Additional was selected.
5. The Appointed Additional or Additional, as the case may be ("Arbitrator") will fix the date, time and place for the hearing. The place of the hearing will be at a place mutually agreed to by the Parties. In fixing the date of the hearing, or in

continuing a hearing, the Arbitrator will take into consideration the amount of time reasonably required to determine Claimant's damages accurately.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but will hear Claimant's case and decide accordingly.
7. All Persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator will determine any relevant legal issues, including whether all indispensable Parties are Bound Parties or whether the Claim is barred by the statute of limitations.
8. The hearing will be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The Arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.
9. Notwithstanding the foregoing, multiple Party disputes or Claims not consolidated or administered as a class action pursuant to the following sentence will be subject to, and will be arbitrated individually. Only with the written request of all Parties involved, but not otherwise, the Arbitrator may: (a) consolidate in a single arbitration proceeding any multiple Party Claims that are substantially identical; and (b) arbitrate multiple Claims as a class action in accordance with the rules and procedures adopted by CAS.
10. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance will be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and will immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional will be replaced by another independent licensed professional selected by the Arbitrator.
11. No formal discovery will be conducted in the absence of order of the Arbitrator or express written agreement among all the Parties. The only evidence to be presented at the hearing will be that which is disclosed to all Parties at least thirty (30) days prior to the hearing; provided, however, no Party will deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is

60

relevant and material to the Claim, and will produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator will be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence will not be necessary. The Arbitrator will be authorized, but not required, to administer oaths to witnesses.

12. The Arbitrator will declare the hearings closed when satisfied the record is complete.
13. There will be no post hearing briefs.
14. The Award will be rendered immediately following the close of the hearing, if possible, and no later than fourteen (14) days from the close of the hearing, unless otherwise agreed by the Parties. The Award will be in writing, will be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it will be in summary form.
15. Except with respect to awards of attorneys' fees and expenses only to the extent specifically provided under Section 123 of the Act, no Party will be entitled to receive any award of damages in connection with the arbitration of a Dispute other than such Party's actual damages. All Parties to an arbitration conducted under these rules and regulations will be deemed to have waived their right to receive any damages other than actual damages, including, without limitation, special damages, consequential damages, and punitive or exemplary damages. The provisions of this paragraph 15 will be binding upon all Parties to the fullest extent permitted by applicable law, as may be in effect from time to time.

Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

STATE OF COLORADO
COUNTY OF LARIMER

I do hereby certify that this is a full, true and correct copy of
This document as it appears of record in my office at

Book _____ Page _____

Reception No. 20170013088

Witness my hand and official seal this 28th day
of February, 2017.



Angela Myers, Larimer County Clerk and Recorder

By:  Deputy Clerk

Fees: 16.00