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**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS
FOR
PARK AVENUE VILLAS**

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**SECOND AMENDED AND RESTATED
DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
PARK AVENUE VILLAS**

RECITALS

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR PARK AVENUE VILLAS (this "Declaration") dates as of _____, 2021, shall be effective upon recordation and is made by the PARK AVENUE VILLAS HOMEOWNERS ASSOCIATION, INC. a Colorado nonprofit corporation (the "Association").

WHEREAS, a Declaration for Park Avenue Villas was recorded on May 29, 2007 in the Office of the Clerk and Recorder of Garfield County, Colorado, as Reception No. 724239 ("Original Declaration");

WHEREAS, an Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Park Avenue Villas was recorded on April 23, 2018 in the Office of the Clerk and Recorder of Garfield County, Colorado, as Reception No. 905733 ("First Amended Declaration");

WHEREAS, the Owners and Association desire to amend and restate all provisions of the First Amended Declaration, as amended and supplemented, by virtue of this Second Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Park Avenue Villas ("Second Amended Declaration"), and intend, upon recording of this Second Amended Declaration, that all prior recorded Declarations, amendments and instruments creating covenants, conditions, restrictions, and reservations on the Property shall be superseded and replaced by this Second Amended Declaration; and

WHEREAS, pursuant to C.R.S. Section 38-33.3-2017 of the Act and Section 15.3 of the First Amended Declaration, Owners representing an aggregate ownership of sixty-seven percent (67%) or more in the Common Elements have approved of this Second Amended Declaration.

NOW, THEREFORE, the First Amended Declaration is replaced and amended and restated as follows:

**ARTICLE I.
DEFINITIONS**

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

- 1.1 "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.



- 1.2 “Allocated Interests” means the Common Expense liability and votes in the Association allocated to each Lot. The Common Expense liability shall be allocated equally amongst the Lots, so that each Owner is responsible for one-thirteenth (1/13) of the Common Expense liability. One (1) vote in the Association is allocated to each Lot in the Community.
- 1.3 “Articles of Incorporation” or “Articles” means the Articles of Incorporation of Park Avenue Villas Homeowners Association, Inc. which have been filed with the office of the Secretary of State of Colorado, as the same may be amended from time to time.
- 1.4 “Assessment(s)” means the Regular, Special, and Reimbursement Assessments levied pursuant to Article VIII below. Assessments are also referred to as a common expense liability under the Act.
- 1.5 “Association” means Park Avenue Villas Homeowners Association, Inc., 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, the Articles of Incorporation, or Bylaws of the Association.
- 1.6 “Association Documents” or “Governing Documents” means the basic documents creating and governing the Community, including, but not limited to, this Declaration, the Articles of Incorporation, the Bylaws, and any procedures, rules, regulations, or policies relating to the Community adopted under such documents by the Association or the Executive Board.
- 1.7 “Association Property” means:
 - (a) all real and personal property now or hereafter owned by the Association;
 - (b) all Common Elements now or hereafter owned by the Association; and
 - (c) all real or personal property with respect to which the Association holds an easement or license for the use, care, or maintenance thereof, or for which the Association has a right or duty to maintain, and which property is held for the common use and enjoyment of the Members pursuant to the terms and provisions of this Declaration.

As of the date of this Declaration, the Association Property is subject to the Permitted Exceptions.

- 1.8 “Board” or “Executive Board” means the governing body of the Association, as provided in this Declaration, the Articles of Incorporation, and Bylaws of the Association.
- 1.9 “Budget” means a written, itemized estimate of the Common Expenses to be incurred by the Association in performing its functions under this Declaration and adopted by the Executive Board.
- 1.10 “Bylaws” mean the Bylaws of the Association which have been or will be adopted by the Executive Board of the Association, as the same may be amended from time to time.



- 1.11 “Capital Improvements” shall refer to any significant new Common Element amenity or a substantial discretionary improvement or upgrade to the Common Elements. Capital Improvements shall not refer to Improvements required for safety purposes or government mandated Improvements.
- 1.12 “Common Elements” means all of the Community except the portions thereof which constitute Lots. Common Elements shall include, but are not limited to, all land designated as a Common Element on the Plat, and all improvements, landscaping, fixtures, and personal property thereon which may from time to time be owned by the Association, and all common lighting, common utilities, and the common access road within the Community.
- 1.13 “Common Expense(s)” means any expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, but not limited to, the following:
- (a) The costs of maintenance, management, operation, snowplowing, repair, and replacement of the Common Elements and of all other parts of the Community which are managed or maintained by the Association or a Managing Agent;
 - (b) The costs of repainting as needed the exterior walls of the Townhomes (not including the staining of decks, which is an Owner responsibility) and reasonable reserves for any of such costs;
 - (c) The cost of maintenance and repair of the sidewalks, walkways, driveways, and reasonable reserves for any of such costs;
 - (d) The costs of maintaining, replacing, and improving the landscaping on the Common Elements;
 - (e) The costs of Improvements constructed from time to time by the Association on or in connection with the Common Elements, if such costs were included within a duly adopted Budget;
 - (f) The costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, and employees, and/or costs provided to be paid by the Owners in accordance with the terms of this Declaration pursuant to the respective Management Agreements, if any, for the operation, management, and/or maintenance of the Community;
 - (g) The costs of insurance maintained by the Association as required or permitted herein;
 - (h) The costs of utilities and services which are provided to the Association or the Community or parts thereof and not individually metered or assessed to Lots, and

other services which generally benefit and enhance the value and desirability of the Community;

- (i) Reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Executive Board to meet anticipated costs and expenses including, but not limited to, maintenance, repair, and replacement of Common Elements which must be maintained, repaired, or replaced on a periodic basis;
 - (j) Taxes paid by the Association;
 - (k) The costs incurred by any committees that may be established from time to time by the Executive Board that may be reimbursed by the Association to members of such committees;
 - (l) All expenses expressly declared to be Common Expenses by this Declaration and all expenses lawfully determined to be Common Expenses by the Executive Board if such expenses are not vetoed by the Owners at the annual Budget Meeting; and
 - (m) Other expenses incurred by the Association for any reason whatsoever in connection with the Common Elements, or the cost of any other item or service provided or performed by the Association pursuant to any of the Association Documents or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.
- 1.14 “Community” means all of the Property, depicted and described as Park Avenue Villas, City of Rifle, Garfield County, Colorado, according to the Plat thereof recorded May 29, 2007 as Reception No. 724239, together with all improvements and other amenities now or hereafter located thereon, and together with all easements, rights, appurtenances, and privileges belonging or in any way pertaining thereto.
- 1.15 “Declaration” means this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Park Avenue Villas, together with any supplement or amendment to this Declaration, recorded in the office of the Clerk and Recorder of Garfield County, Colorado.
- 1.16 “Director” means a member of the Executive Board.
- 1.17 “General Common Elements” means all of the Common Elements except the Limited Common Elements and shall include, but not be limited to: the weight room and sauna, landscaping, landscaping irrigation fixtures and systems, roadway and access drives, curbs and sidewalks, retaining walls, drainage structures and drainage pipelines, and other utility fixtures, lines, and facilities. Furthermore, as indicated in the Original Declaration recorded on May 29, 1007 at Reception No. 724240 with the Garfield County Recorder’s Office, at Section 1.2(i), with respect to that certain “GCE – Recreation Building” so shown and identified on the Plat, it is hereby provided that the boundaries thereof are defined as the interior surfaces of the walls, ceilings and floors, as shown on the Plat (including those areas used for access to said Recreation Room), and that the land underlying the entire



perimeter boundary of Lot 6, as shown on the Plat, Page 2 of 2, Upper Level, comprises a part of Lot 6 and no part of such land is a part of said GCE – Recreation Building.”

- 1.18 “Improvements” means all buildings, parking areas, loading areas, fences, walls, hedges, plants, poles, antennae, driveways, signs, changes in any exterior color or shape, excavation, and all other site work, including, without limitation, grading roads, utility improvements, and the removal of trees or plants. “Improvements” include original improvements and all later changes and improvements. “Improvements” do not include turf, shrub, or tree repair, or replacement of a magnitude which does not change exterior colors or exterior appearances.
- 1.19 “Interest Rate” shall refer to the interest rate that may be applied to delinquent assessments. Such Interest Rate shall be twenty-one percent (21%) per annum.
- 1.20 “Limited Common Elements” means Common Elements which are either limited to and reserved for the exclusive use of any Owner of a Lot or are limited to and reserved for the common use of more than one, but fewer than all of the Lot Owners. Limited Common Elements are specifically designated on the Plat.
- 1.21 “Lot(s)” means each of the thirteen (13) individual residential dwelling areas in the Community depicted on the Plat. Each Lot shall consist of the fee simple lot, together with the easements also described or dedicated on the Plat or created, reserved, or granted in this Declaration, and all areas such as parking garages, landscaping, and similar accessory facilities.
- 1.22 “Management Agreement” means any agreement or arrangement entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance, and management of the Community.
- 1.23 “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 Community.
- 1.24 “Member” means a Person, or if more than one, all Persons collectively, who constitute the Owner of a Lot.
- 1.25 “Occupant” or “Tenant Occupant” means any person who is a tenant in a Lot, pursuant to a lease with the Owner thereof, or any person who is present within the Community as a family member, guest, agent, licensee, or invitee of an Owner, an Occupant, the Association, or a Managing Agent.
- 1.26 “Owner” means any record owner (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 Lot. The term “Owner” shall be analogous to the term “unit owner,” as that term is defined in the Act.
- 1.27 “Permitted Exceptions” means all liens, encumbrances, reservations, restrictions, conditions, easements, and other matters of record, as of the date this Declaration is

recorded, which encumber the title to all or any part of the Community. This Declaration shall be subject to such Permitted Exceptions.

- 1.28 "Person" means a natural person, a corporation, a partnership, a limited liability company, an association, a trust, or any other entity or combination thereof.
- 1.29 "Plat" means the Amended Plat of Park Avenue Villas as recorded May 29, 2007 as Reception No. 724239 in the Office of the Clerk and Recorder of Garfield County, Colorado, as said Plat may be amended from time to time.
- 1.30 "Property" means the real property described in the attached Exhibit A.
- 1.31 "Regular Assessment" means a charge against each Owner and the Owner's Lot for purposes of covering the annual costs of operating and administering the Association and all other Commons Expenses levied pursuant to Section 8.4 below.
- 1.32 "Reimbursement Assessment" means a charge against a particular Owner and the Owner's Lot for purpose of reimbursing the Association for costs and expenses incurred by the Association in connection with the enforcement of any provision hereof or the remedying of any violation by the Owner or an Occupant of any of the Association Documents, as amended, or for other purposes set forth in the Declaration, pursuant to Section 8.6 hereof, together with any late charges and interest as provided for herein. Reimbursement Assessment shall include without limitation any Common Expense caused by the misconduct of any Owner or of such Owner's Occupants.
- 1.33 "Rules and Regulations" refers to such rules, regulations, or policies as may be adopted from time to time by the Executive Board, as provided in Section 7.9 of this Declaration.
- 1.34 "Shared Barrier" shall mean and refer to any wall or fence which is built as a part of the original construction of the Community and placed on or immediately adjacent to a dividing line between any two Lots.
- 1.35 "Special Assessment" means a charge against each Owner and the Owner's Lot for purposes of reimbursing the Association for costs and expenses incurred or to be incurred by the Association for the purpose of paying for construction, reconstruction, repair, or replacement of Capital Improvements within the Community, the costs of which were not included in a Regular Assessment, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association, as authorized by the Executive Board from time to time as provided herein.
- 1.36 "Townhome" shall refer to the portion of the residential building located on each Lot that contains such Lot Owner's living space.

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



**ARTICLE II.
IMPOSITION OF COVENANTS**

- 2.1 Purpose. The purpose of this Declaration is to create a planned community under the name "Park Avenue Villas" (the "Community") pursuant to the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes (the "Act"), for the Lots and other improvements located on the Property. There shall be a maximum of thirteen (13) residential Lots within the Community. Those portions of the Property not comprising the Lots are Common Elements and may be so designated on the Plat. No additional Lots may be established on the Property by Subdivision of existing Lots, conversion of designated Common Elements, or otherwise.
- 2.2 Intention of Declaration. This Declaration was adopted to establish and impose a common and general plan for the improvement, development, use, and occupancy of the Community, all in order to protect and enhance the value, desirability, and attractiveness of the Community and to further a plan for the improvement, marketing, sales, and ownership thereof, and promote and safeguard the health, comfort, safety, convenience, and welfare of the Owners of Lots in the Community.
- 2.3 Declaration. To accomplish the purposes and intentions recited above, this adopted Declaration imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration below, and the Association 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.
- 2.4 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 all Owners and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

**ARTICLE III.
DIVISION OF COMMUNITY INTO LOTS**

- 3.1 Division into Lots. As of the recording of this Declaration, the Property has been divided into thirteen (13) residential Lots.
- 3.2 Delineation of Lot Boundaries. The Lot lines shown on the Plat shall be the perimeter boundaries of the Lots, except where exterior structural elements of a Townhome as originally constructed extend beyond such Lot lines, in which case the structural elements as built shall represent the perimeter boundary of the Lot. Where two Townhomes share a common wall, said common wall shall be deemed divided equally in half vertically through its center, and each half shall be deemed a part of and owned by the Lot adjacent to that half of the common wall. Lots shall not be deemed to have an uppermost horizontal boundary or a lowermost horizontal boundary, as each Lot includes ownership of the underlying platted lot.

- 3.3 Lot 6 Encumbrance. Pursuant to the Original Declaration and the Plat, Lot 6 includes a General Common Element, which is the recreation room on the first floor of the building located on Lot 6. Such Lot shall be sold or otherwise conveyed with the understanding that the Owner of Lot 6 does not own the first floor and that the recreation room is a General Common Element which encumbers said Lot. All purchasers of Lot 6 shall own the real property below the building on Lot 6 and all other portions of Lot 6 except for the General Common Element indicated on the Plat.
- 3.4 Inseparability of Lot. No part of a Lot or of the legal rights comprising ownership of a Lot may be partitioned or separated from any other part thereof during the period of ownership prescribed in this Declaration. Subject to Section 3.1 above, each Lot shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Lot. Every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Lot or any part thereof shall be presumed to be a disposition of the entire Lot, together with all appurtenant rights and interests created by law or by this Declaration including the Owner's membership in the Association. This provision is not intended, however, to prohibit joint or common ownership by two or more Persons of a Lot.
- 3.5 Description of a Lot. Every contract, deed, lease, security interest, and every other legal document or instrument affecting title to a Lot may legally describe the Lot as follows:
- Lot ____, Park Avenue Villas, according to the Plat of Park Avenue Villas recorded on May 29, 2007 as Reception No. 724239, and according to the Amended and Restated Declaration for Park Avenue Villas recorded as Reception No. _____, all in the Office of the Clerk and Recorder of Garfield County, Colorado.
- Such description shall be legally sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect the Lot and its appurtenances, including all improvements thereon, and to incorporate all of the rights, interests, obligations, restrictions, and burdens appurtenant or incident to ownership of a Lot as set forth in this Declaration and the Plat. Each such description shall be construed to include a nonexclusive easement over the Common Elements for appropriate ingress and egress to and from each Lot, and a non-exclusive right to use and enjoy the Common Elements, subject to all applicable provisions of this Declaration.
- 3.6 Nonpartitionability of Common Elements. Subject to the provisions of this Article III and Article V below, the Common Elements shall be owned by the Association as herein provided and shall remain physically undivided. No Owner shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment to a Lot, each Owner of the Lot shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and this Section 3.6 may be pleaded as a bar to the maintenance of such an action. Any Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Association's costs, expenses, and reasonable attorneys' fees in defending any such action. Such amounts shall automatically become a



Reimbursement Assessment determined and levied against such Owner's Lot and enforced by the Association in accordance with Sections 8.6 and 8.7 below.

Notwithstanding the foregoing, the Association shall have the right to dedicate, sell, or otherwise transfer all or any part of the Common Elements to any public, governmental or quasi-governmental agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. However, such dedication or transfer of the Common Elements shall not be effective unless an instrument has been signed by Owners holding an aggregate interest equal to at least sixty-seven percent (67%) of the total Association votes allocated to the Owners, agreeing to such dedication, sale, or transfer. Notwithstanding the preceding sentence, the granting of easements by a majority of voting Directors of the Executive Board, for public utilities, for access by pedestrians, or for other public purposes not inconsistent with the intended use of the Common Elements shall not be deemed a transfer requiring such consent of the Owners within the meaning of this Section.

3.7 Additions, Alterations, or Improvements. No additions, alterations, changes, or Improvements shall be constructed, made, done, or permitted to any Lot by any Owner, Occupant, or employee or agent thereof, without the prior written approval of the Executive Board.

- (a) Without limiting the generality of the foregoing, said restrictions shall apply to and include:
 - (i) Alteration or change of any structural elements of a Lot, including the roof;
 - (ii) Painting, staining or other alteration or change of the exterior of a Lot, including doors and windows; or
 - (iii) Alteration or change of any Common Elements.
- (b) The foregoing restrictions shall not apply to non-structural additions, alterations, changes, or improvements to the interior of a Lot that are not visible from outside the Lot, that have no adverse impact on another Lot, and that are in compliance with this Declaration and with all applicable laws, ordinances, regulations, and codes.
- (c) No Owner or Occupant shall have any right to alter, change or improve in any way the Common Elements or any part thereof, said Common Elements being the exclusive responsibility and jurisdiction of the Association.

If an Owner applies for approval to modify the exterior of a Lot, the Executive Board shall exercise its best judgment to the end that all modifications conform to and harmonize with neighboring structures. The Executive Board shall have the absolute right to deny any requested changes which the Executive Board reasonably determines do not conform to and harmonize with neighboring structures.



**ARTICLE IV.
SHARED BARRIERS**

- 4.1 Easements. Mutual reciprocal easements are hereby established, declared, and granted for all Shared Barriers between Lots, which reciprocal easements shall be for mutual support and shall be governed by this Declaration. Every conveyance of a Lot, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.
- 4.2 General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Section 4.2, the general rules of law regarding Shared Barriers and liability for property damage due to negligent or willful acts or omissions shall apply thereto.
- 4.3 Sharing of Repair or Maintenance. Unless otherwise provided herein, the cost of reasonable repair and maintenance of a Shared Barrier shall be shared by the Owners who make use of the wall or fence in proportion to such use. If there is a dispute about the shared cost of such repairs and maintenance between the two Owners of the Shared Barrier, such Owners shall resolve the dispute by binding arbitration, per Section 4.7.
- 4.4 Destruction by Fire or Other Casualties. If a Shared Barrier is destroyed or damaged by fire or other casualty, any Owner who has used the wall or fence may restore it and, if the other Owners thereafter make use of the wall or fence, they shall contribute to the cost of the restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. If one Owner causes the Shared Barrier to be restored and any other Owner uses the Shared Barrier and does not contribute to the costs of the Shared Barrier's restoration, the Owner who caused the Shared Barrier to be restored shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Lot, and the same shall become and remain a lien against such property until fully paid. The lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.
- 4.5 Destruction Due to Negligence or Willful Act. Notwithstanding any other provision of this Section 4.5, an Owner who by his negligent or willful act causes the Shared Barrier to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- 4.6 Right of Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Section 4.6 shall be appurtenant to the land and shall pass to such Owner's successors in title.
- 4.7 Binding Arbitration. Any disputes between Owners about a Shared Barrier shall be resolved by Binding Arbitration, subject to Section 4.8. Such Owners shall abide by the decision of the Arbitrator(s).
- 4.8 Association's Option to Repair. Notwithstanding any other provision of this Section 4.8, the Association may, in its sole discretion make any repairs to Shared Barriers which the



Association deems necessary and the cost for said repairs shall be assessed equally against the Lots benefited by said repairs unless the repairs are necessitated by intentional acts or negligence of one Owner in which case the Owner causing the damage shall pay for all costs of repairs.

**ARTICLE V.
OWNER'S PROPERTY RIGHTS IN COMMON ELEMENTS**

- 5.1 Common Elements. Every Owner (and Owner's Occupant, as designated by that Owner) shall have a perpetual right and easement of access over, across, and upon the Common Elements for all purposes for which such Common Elements were established and as required for the purpose of entering and exiting such Owner's Lot, the parking area of such Owner, and the public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Lot; provided, however, that such right and easement shall be subject to the following:
- (a) The covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in the Association Documents;
 - (b) The right of the Association to regulate on an equitable basis the use of parking spaces and storage spaces which are Common Elements, from time to time;
 - (c) The right of the Association to adopt, from time to time and in cooperation with the City of Rifle, any and all Rules and Regulations concerning vehicular traffic and travel upon, in, under, and across the Community;
 - (d) The right of the Association to adopt, from time to time, any and all Rules and Regulations concerning the Common Elements as the Association may determine is necessary or prudent, subject to the terms of Section 7.9 and Article XIII hereof; and
 - (e) No Owner or Occupant shall place any structure or improvement whatsoever upon the Common Elements, nor shall any Owner or Occupant engage in any activity which will temporarily or permanently impair free and unobstructed access to or use of all parts of the Common Elements by all Owners and by the Association.

Notwithstanding the foregoing, the Association shall take no action which unreasonably restricts any Owner's or Occupant's right and easement of access over, across, and upon the Common Elements to his/her/its Unit(s).

**ARTICLE VI.
MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

- 6.1 Association Membership. Every Owner shall be a Member of the Association and shall remain a Member for the period of the Owner's ownership of a Lot. No Owner, whether one or more Persons, shall have more than one membership per Lot owned, but all of the Persons owning a Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Lot. Membership in the Association shall be appurtenant to,

may not be separated from, and shall automatically pass with fee simple ownership of a Lot. However, any Owner may appoint, in a written instrument furnished to the secretary of the Association, a delegate to exercise the rights of such Owner as a Member of the Association, and in the event of such appointment, the delegate shall have the power to cast votes on behalf of the Owner as a Member of the Association, subject to the provisions of and in accordance with the procedures more fully described in the Bylaws of the Association.

6.2 Membership Voting.

- (a) Allocation. The Owner (whether one or more Persons) of each Lot in the Community shall be entitled to one (1) vote in the Association. All Members of the Association shall be entitled to vote on all matters affecting the Community which are required by this Declaration or the Act to be submitted to the vote of the Owners. Occupants of Lots shall not have voting rights unless the Owner has delegated such rights to one (1) or more of the Occupants.
- (b) Multiple Owners. If title to a Lot is owned by more than one (1) person, such persons shall collectively vote their interest as a single vote.
 - (i) If only one of the multiple owners of a Lot is present at an Association meeting, such owner is entitled to cast the vote allocated to that Lot.
 - (ii) If more than one of the multiple owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the owners. There is a majority agreement if any of the multiple owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the Lot.
 - (iii) In the event that a protest is made by one or more multiple owners, and a majority-in-interest of the multiple owners of a Lot cannot agree on how to cast their vote, any vote cast for that Lot shall be null and void with regard to the issue being voted upon.
 - (iv) Such multiple owners and their Lot shall nevertheless be counted in determining the presence of a quorum with respect to the issue being voted upon.
- (c) Membership Quorum. A quorum is deemed present throughout any meeting of the Members of the Association if persons entitled to cast at least thirty percent (30%) of the votes in the Association are present, in person or by proxy, at the beginning of the meeting.
- (d) Majority Approval. Provided a quorum is present in person or by proxy, the affirmative vote of a majority of the Members so present shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the Act, this Declaration, the Articles, or the Bylaws.

- (e) Voting by Proxy. The vote allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner.
 - (i) If a Lot is owned by more than one person, each owner of the Lot may vote or register a protest to the casting of a vote by the other owners of the Lot through a duly executed proxy.
 - (ii) An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over the meeting of the Association.
 - (iii) A proxy is void if it is not dated or purports to be revocable without notice.
 - (iv) A proxy shall terminate eleven (11) months after its date unless a different termination date is otherwise set forth on its face.
- (f) Membership Removal of Board Director. The Members by a vote of sixty-seven percent (67%) of all Members present and entitled to vote at any meeting of the Members at which a quorum is present, may remove any Director on the Executive Board with or without cause.

6.3 Executive Board.

- (a) Number and Purpose. The Executive Board shall consist of at least three (3) Members as fixed in the Articles of Incorporation and the Bylaws. All Directors on the Executive Board shall be entitled to participate in Association affairs which affect the Community in its entirety.
- (b) Board Quorum. A quorum shall be deemed present throughout any meeting of the Executive Board if Directors entitled to cast at least fifty percent (50%) of the votes on the Executive Board are present at the beginning of the meeting or grant their proxy as provided in Colorado Revised Statutes Section 7-128-205(4).
- (c) Open Board Meetings. With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3-7) of the Act, all regular and special meetings of the Executive Board or any committee thereof shall be open to attendance by all Members in the Association or their representatives. Agendas for meetings of the Executive Board shall be made reasonably available for examination by all Members or their representatives.
- (d) Executive Sessions.
 - (i) Generally. The members of the executive board or any committee thereof may hold an executive or closed door session and may restrict attendance to executive board members and such other persons requested by the executive board during a regular or specially announced meeting or a part thereof.



- (ii) Matters for discussion by an executive or closed session are limited to:
 - (1) Matters pertaining to employees of the association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association;
 - (2) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;
 - (3) Investigative proceedings concerning possible or actual criminal misconduct;
 - (4) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;
 - (5) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; or
 - (6) Review of or discussion relating to any written or oral communication from legal counsel.
- (iii) Without limiting the generality of Section 6.3(c), no rule or regulation may be validly adopted during an executive session.
- (e) **Board Powers & Duties.** The Executive Board shall have all powers, authority, and duties granted or delegated to it by the Act, this Declaration, the Articles, or Bylaws. Except as provided in the Act, this Declaration, the Articles, or Bylaws, the Executive Board may act in all instances on behalf of the Association.
- (f) **Restrictions on Board Authority.** The Executive Board may not, however, act on behalf of the Association to amend this Declaration, to terminate the Community, or to elect Directors or determine the qualifications, powers and duties, or terms of office of Directors, but the Executive Board may fill Director vacancies in its membership for the unexpired portion of any term.
- (g) **Delegation of Authority.** The Executive Board may, by resolution, delegate portions of its authority to officers or property manager of the Association, but such delegations of authority shall not relieve the Executive Board of the ultimate responsibility for management of the affairs of the Association. No Director or officer shall be liable for actions taken or omissions made in performance of such Director's or officer's duties except for wanton and willful acts or omissions.

6.4 Owner's and Association's Address for Notices.



- (a) Address Registration. All Owners of each Lot 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(s) of a Lot shall furnish such address to the Secretary of the Association within five (5) days after transfer of title to the Lot to such Owner(s). Such registration shall be in written form and signed by all of the Owners of the Lot or by such persons as are authorized by law to represent the interests of all Owners of the Lot.

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

If the address of the Lot is the registered address of the Owners, then any notice shall be deemed duly given if delivered to any person occupying the Lot or, if the Lot is unoccupied, if the notice is held and available for the Owners at the principal office of the Association.

- (b) Executive Board Address. All notices and demands intended to be served upon the Executive Board shall be sent to such address as registered with the Colorado Secretary of State, as the Executive Board may designate from time to time by notice to all of the Owners.
- (c) Email Registration. Owners may, but shall not be required to, provide the Association with an email address to be registered with the Association and to be used by the Association for sending notices, demands, and all other communications regarding Association matters. Such registration of email address shall act as a waiver of receiving mailed notices, unless the Owner notifies the Association that the Owner wants to revoke permission for the Association to use such email address to send such notices, demands, or other communications regarding Association matters or if such Owner notifies the Association that they want to receive notices by both mail and email.
- (d) Acceptable forms of Delivery of Notices. All notices given in accordance with this Section shall be sent by:
- (i) Personal delivery, which shall be effective upon receipt;
 - (ii) Regular, registered, or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. mail; or
 - (iii) Email if such Owner has registered an email address with the Association, which shall be effective upon time of sending.

ARTICLE VII. ASSOCIATION RIGHTS AND DUTIES

- 7.1 Association Formation and Purpose. The Association has been formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act to manage the affairs of the Community. The Association shall serve as the governing body for all of the Owners and Occupants for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Elements, the levying and collection of Assessments for Common Expenses and other expenses of the Association, and such other matters as may be provided in this Declaration, the Articles and the Bylaws.
- 7.2 General Powers of Association.
- (a) Powers Authorized by Colorado Law. The Association shall have all of the powers, authority and duties as may be necessary or appropriate for the management of the business and affairs of the Community, including without limitation all of the powers, authority and duties of a nonprofit corporation formed under the Colorado Revised Nonprofit Corporation Act, and all of the powers and duties provided for in the Act.
 - (b) Power to Assign Future Income. The Association shall have the power to assign its right to future income, including the right to receive Common Expense assessments, but only upon the affirmative vote of the Owners of Lots holding a majority of the votes in the Association.
 - (c) Association as Nonprofit Corporation. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.
 - (d) Power to Employ. The Association shall have the power to employ and discharge employees, agents, independent contractors, and consultants, including lawyers and accountants.
- 7.3 Association Management Duties and Responsibilities. Subject to the rights and obligations of the other Owners as set forth in this Declaration, the Association shall be responsible for the administration, operation, management, and control of the Community, including the maintenance responsibilities set forth in Section 9.4 below.
- 7.4 Responsible Governance Duties. To promote responsible governance, the Association shall maintain accounting records using generally accepted accounting principles and adopt policies, procedures and rules and regulations concerning collection of unpaid assessments; handling of conflicts of interest involving board members; conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles; enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines; inspection and copying of Association records by Owners; investment of Reserve funds; and procedures for the adoption and amendment of policies, procedures and rules.

- 7.5 Owner's Negligence. Subject to the terms of Section 9.8 hereof, in the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of an Owner, or by any Owner's Occupant, or violation of any provision of the Association Documents by an Owner, or Owner's Occupant, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. Each Owner shall indemnify, defend, and hold the Association harmless from any loss, damage, expense, or liability arising from the circumstances described in the sentence immediately above. 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 under the provisions of this Section 7.5, and such expenses shall automatically become a Reimbursement Assessment determined and levied against such Lot, enforceable by the Association in accordance with Sections 8.7 and 8.8 below.
- 7.6 Delegation of Management and Maintenance Duties. The Association, through the Executive Board, may delegate all or any part of their powers and duties to one or more Managing Agents. Notwithstanding the delegation by the Executive Board to one or more Managing Agents, such parties shall not be relieved of their responsibilities under this Declaration and no such delegation shall modify specific requirements in the Association Documents for approval of certain actions by the Executive Board or by members of the Association.
- 7.7 Limitation Upon Liability of Association. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR PORTIONS OF THE COMMUNITY, 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 THOSE PORTIONS OF THE COMMUNITY TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION, OR CAUSED BY THE ELEMENTS OR OTHER OWNERS AND PERSONS.
- 7.8 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.
- 7.9 Issuance of Rules and Regulations. The Executive Board may, by the majority approval of the Directors, make and amend reasonable Rules and Regulations governing the use and rental of the Lots and the use and operation of Common Elements. Notwithstanding the foregoing, any such Rules and Regulations shall not be inconsistent with the terms of this Declaration, including, but not limited to Article XIII. Copies of the currently effective Rules and Regulations shall be made available to each Owner and Occupant upon request and payment of the reasonable expense of copying the same. Each Owner and Occupant shall comply with such Rules and Regulations and each Owner shall see that Occupants claiming use through such Owner comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and

the provisions of this Declaration, the provisions of this Declaration shall govern. Such Rules and Regulations may establish penalties (including the levying and collection of fines) for the violation of such Rules and Regulations or any provision of this Declaration, the Articles, or the Bylaws.

- 7.10 Enforcement of Association Documents. The Association or any aggrieved Owner may take judicial action against any Owner or Occupant to enforce compliance with such Rules and Regulations and with the other provisions of the Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law.
- 7.11 Implied Rights. The Association may exercise any and all other rights or privileges given to it by this Declaration, or by the other Association Documents, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association in the Association Documents or reasonably necessary to effectuate any such right or privilege.
- 7.12 Books and Records of the Association. The Executive Board and/or each Managing Agent, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the Common Elements and Lots, of paid and unpaid Assessments for each Lot and shall maintain such other books and records at its principal office as may be required under the Act, and the books, records, and papers of the Association shall be available for inspection and copying by any Owner during business hours upon appointment with the Association Manager's agent or Executive Board. The Association may charge a fee, not to exceed the Association's actual cost per page, for copies of Association records.

ARTICLE VIII. ASSESSMENTS

- 8.1 Assessment Obligation. The Association, for each Lot in the Community, shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefore (including a public trustee's or sheriffs deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) Regular Assessments or charges, (2) Special Assessments, and (3) Reimbursement Assessments, such assessments to be established and collected as hereinafter provided (collectively the "Assessments"). The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Lot against which each such Assessment is charged. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without set-off or deduction of any kind or nature. Each Owner is liable for Assessments made against such Owner's Lot during his period of ownership of the Lot. Each Assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the joint, several, and personal obligation of each Person who was an Owner of such Lot at the time when the Assessment became due. Upon the transfer of title to a Lot, the transferor and the transferee shall be jointly, severally, and personally liable for all unpaid Assessments and other charges due to the

Association prior to the date of transfer, and the transferee shall be personally liable for all such Assessments and charges becoming due thereafter.

- 8.2 Statutory Lien. The Association has a statutory lien pursuant to §38-33.3-316 of the Act on the Lot of an Owner for all Assessments levied against such Lot or fines imposed against such Unit's Owner from the time the Assessment or fine becomes due (the "Assessment Lien"). Fees, charges, late charges, attorneys' fees, fines, and interest charged by the Association pursuant to the Act or this Declaration are enforceable as Assessments. The amount of the lien shall include all such items from the time such items become due. If an Assessment is payable in installments, the Association has an Assessment Lien for each installment from the time it becomes due, including the due date set by the Executive Board's acceleration of installment obligations.
- 8.3 Perfection of Lien. The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien for Assessments is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Lot as a Reimbursement Assessment.
- 8.4 Regular Assessments. Regular Assessments shall be levied on a calendar basis and shall be paid in installments on a monthly, quarterly or semi-annual basis, as the Executive Board may determine from time to time, and shall be due either on the first day of each calendar month or on the first day of each calendar year quarter (January 1, April 1, July 1 and October 1), or on the first day of a semi-annual period (e.g. January 1, July 1) as appropriate. Unless and until changed to a quarterly or semi-annual system by the Executive Board, Regular Assessments shall be due and payable on the first day of each calendar month. Any Owner acquiring a Lot between installment due dates shall pay a pro rata share of the immediately preceding installment.
- 8.5 Special Assessments.
- (a) Generally. In addition to the Regular Assessments and Reimbursement Assessments authorized in this Article VIII, the Executive Board may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, maintenance, or replacement of capital improvements (including related fixtures and personal property) to or upon or serving the Community, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association. Except in the event of an emergency, or an excess tort liability, where no membership vote shall be required, the Executive Board shall not levy a Special Assessment without the approval of the Owners in the Community as provided below.
- (b) Procedure for Special Assessment Approval.
- (i) Notice. Written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Owners no less than ten (10) or more than thirty (30) days before the meeting.



- (ii) Quorum. At the meeting, the presence of Owners in person or by proxy that are entitled to cast thirty-five percent (35%) of the votes in the Association shall constitute a quorum.
 - (iii) Reduced Quorum. If the required quorum is not present, another meeting may be called pursuant to the same notice requirements, and the required quorum at this second meeting shall be only thirty percent (30%) of the votes in the Association. No such second meeting shall be held more than sixty (60) days following the date of the first meeting.
 - (iv) Approval Requirement. Provided a quorum of Owners entitled to vote is present in person or by proxy, in accordance with the quorum requirements set forth in the preceding paragraph, then the affirmative vote of a majority of the Owners so present shall constitute approval of the proposed Special Assessment.
- (c) Exception to Owner Approval Requirement. For purposes of this Section 8.5, the term "emergency" shall mean any circumstances or set of circumstances which pose an imminent threat of loss, damage, or injury, actual or threatened, to persons or property.
 - (d) Special Assessment Allocation. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the Allocated Interests of each Lot in the Community,
 - (e) Special Assessment Due Dates. An approved Special Assessment shall be due and payable to the Association on the due date fixed by the Executive Board in the notice given to the Owners of such Special Assessment, which due date shall be no earlier than thirty (30) days after the giving of such notice.

8.6 Reimbursement Assessments. In addition to the Regular and Special Assessments authorized hereunder, the Executive Board may levy against any Owner or Owners, at any time and from time to time, a Reimbursement Assessment for purposes of:

- (a) Reimbursing the Association for all costs and expenses incurred by it in enforcing any provision of or in remedying any violation of this Declaration, the Articles and Bylaws, or any Rules and Regulations, by such Owner or Owners, their Occupant(s), or their agents, employees or contractors; Reimbursement Assessments may also be made by the Executive Board
- (b) For any other purposes for which this Declaration provides for the levying of a Reimbursement Assessment; or
- (c) A Reimbursement Assessment may also be levied in the form of a reasonable fine against an Owner for a violation of this Declaration, the Articles, Bylaws, or the

Rules and Regulations, but only after the Owner(s) to be so fined have been provided with Notice and Hearing as provided in the Bylaws.

Reimbursement Assessments shall be due and payable to the Association on the due date fixed by the Executive Board in the notice given to the Owner(s) of such Reimbursement Assessment, which date shall be no earlier than thirty (30) days after the giving of such notice.

- 8.7 Effect of Nonpayment of Assessments. If any Regular, Special, or Reimbursement 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 and late fees shall accrue, (ii) the Association may declare due and payable all unpaid quarterly or other installments of the Regular 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 Lot in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

If any Owner fails to timely pay assessments or any money or sums due to the Association, the Association may require reimbursement for collection costs and reasonable attorney's fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding.

If legal action is commenced, then all unpaid installments of Regular and Special Assessments and all Reimbursement Assessments, any late charges, any accrued interest, the Association's costs, expenses, and reasonable attorneys' fees incurred for any such action and/or foreclosure proceedings 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 Lot in satisfaction of the Association's lien.

- 8.8 Successor's Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Lot to pay all Assessments on the Lot, and notwithstanding the Association's perpetual lien upon a Lot for such Assessments, all successors in interest to the fee simple title of a Lot shall be jointly and severally liable with the prior Owner of the Lot for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Lot, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor.

ARTICLE IX. MAINTENANCE RESPONSIBILITY

- 9.1 Generally. All property within the Community, including without limitation all Lots and Common Elements, shall be kept and maintained in clean and attractive condition and in good order, condition, and repair.



9.2 Owner's Rights and Duties with Respect to Interiors. Each Owner shall have the exclusive right and duty to paint, tile, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, and doors forming the boundaries of such Owner's Lot and all walls, floors, ceilings, and doors within such boundaries.

9.3 Responsibility of the Owner.

- a. Interior Townhome Maintenance. The Owner at the Owner's expense shall maintain and keep in repair the interior of the Townhome, including the fixtures and utilities located in the Townhome to the extent current repair shall be necessary in order to avoid damaging other Lots or the Common Elements. All fixtures, equipment, and utilities installed and included in a Lot serving only that Lot's Townhome, commencing at a point where the fixtures, equipment, and utilities enter the Lot (from the Lot line) shall be maintained and kept in repair by the Owner of that Lot.
- b. Exterior Townhome Maintenance. An Owner shall also maintain and keep in repair all windows, skylights, and other glass items related to such Owner's Lot, any entry door or doors serving such Lot, and any garage door or doors serving the Townhome. The Association shall be responsible for painting the door jams and window trim per Section 9.4(d) below.
- c. Deck, Fencing, and Landscaping Maintenance. An Owner shall also maintain, stain, and keep in good repair portions of fencing and decks which are located within or along the Lot's boundaries and the landscaping located within the fence in the backyard of each Lot. Shared Boundary (fence) maintenance responsibility is also addressed in Article IV.
- d. Prohibited Maintenance. An Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems, or integrity of the Lot, or impair any easement or hereditament.

9.4 Responsibility of the Association. The Association, without the requirement of approval of the Owners, shall maintain and keep in good, clean, attractive, and sanitary condition, order and repair by repairing, replacing, and improving, as a Common Expense, the Common Elements and all portions of the Community not required in this Declaration to be maintained and kept in good repair by an Owner, including, but not limited to, the following:

- (a) Maintaining (including snowplowing), repairing, and altering and improving when necessary or desirable, all Common Elements (including without limitation landscaping, irrigation and drainage systems, streets, driveways, parking areas, sidewalks, walkways, and common lighting and utilities, and any facilities, furnishings, and equipment related thereto;

- (b) Maintaining any portion of a deck or stairway to a deck that is located outside of any Lot boundary;
 - (c) Maintaining, repairing, and replacing the Townhome roofs, including soffits, gutters, and other elements directly related to the roofs, with the exception of skylights, which are the Owner's responsibility as indicated in Section 9.3(b);
 - (d) Painting necessary of the exterior portions of all Townhome buildings, including the door jams and window trim, but not including the staining of the decks or fences, which is an Owner responsibility as indicated in Section 9.3(c) & Article V; and
 - (e) Maintaining, repairing, and replacing the landscaping located within the areas designated as Common Elements.
- 9.5 Standard of Care. The Association and individual Owners and Occupants shall each use a reasonable standard of care in performing their respective maintenance, repair, and upkeep responsibilities so that the entire Community will reflect a pride of ownership. All repairs and replacements within the Community shall be substantially similar to the original construction and craftsmanship.
- 9.6 Emergency Maintenance and Repair. Notwithstanding any other provisions of this Article IX, in the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of persons or property within the Community, the Executive Directors shall have the authority (without any notice being required) to take whatever remedial action and to undertake such maintenance, repairs and improvements as may be necessary anywhere in the Community to protect persons and property, including the right to enter into the interior of a Lot to perform such responsibilities.
- 9.7 Maintenance Easements. The Association and the Executive Board and their respective agents, employees and contractors are hereby granted perpetual, non-exclusive easements to enter upon the Lots and Common Elements as may be necessary or appropriate to perform the maintenance, repair and improvement responsibilities and rights described in this Article IX.
- 9.8 Owner's Failure to Maintain or Repair. In the event that portions of a Lot or other improvements are not properly maintained and repaired, and if the maintenance responsibility of the unmaintained improvement lies with the Owner of the Lot, or in the event that such improvements 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 written notice to the Owner and the expiration of the thirty (30) day cure period, and with the approval of the Executive Board, shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and other improvements 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 Lot 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 IX of this Declaration. In addition, each Owner shall be responsible for any damage to other Lots or Common Elements resulting from the Owner's failure to perform or negligent performance of the Owner's maintenance and repair responsibilities as set forth herein. Each Owner shall perform the Owner's maintenance and repair responsibilities in such manner as shall not unreasonably disturb or interfere with other Owners or Occupants.

ARTICLE X. INSURANCE AND FIDELITY BONDS

10.1 Insurance Requirements. The Association shall obtain, maintain, and keep in full force and effect at all times the following types of insurance, and the cost of said coverage shall be paid by the Association as a Common Expense:

(a) Casualty Insurance. Such casualty insurance policy will cover all Common Elements within the Community and improvements thereon (excepting any such improvements installed by Owners). Such insurance shall also include coverage on the Townhomes' exterior ("walls out" coverage). However, such insurance shall not include or cover the interiors of the Townhomes, including, but not limited to, finished interior surfaces of the walls, floors, and ceilings of the Townhomes.

(b) Liability Insurance. Comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of Common Elements within the Community, and covering public liability or claims of liability for injury to persons and/or property, and death of any person or persons. Such liability insurance shall, to the extent reasonably obtainable, (a) have limits of not less than One Million Dollars (\$1,000,000.00) per person and One Million Dollars (\$1,000,000.00) per occurrence; (b) insure the Executive Board, the Association and its officers, and their respective employees, agents and all Persons acting as agents; (c) include the Owners as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of Common Elements; (d) cover claims of one or more insured parties against other insured parties; and (e) be written on an occurrence basis.

(c) Directors and Officers Liability Insurance. The Association may, in its discretion, carry directors' and officers' liability insurance in such amount as the Executive Board may deem appropriate.

(d) Other Insurance. Such other insurance in such amounts as the Executive Board shall determine, from time to time, to be appropriate to protect the Association or the Owners, or as may be required by the Act. In no event shall insurance coverage

obtained or maintained by the Association obviate the need for Owners and Occupants to obtain insurance for their own benefit.

- (e) Nonliability of Association or Executive Board. Notwithstanding the duty of the Association to obtain insurance coverage, as stated herein, neither the Association nor any Executive Board member, shall be liable to any Owner, Occupant or other Person, if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner and Occupant to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or Occupant may desire.
 - (f) Premiums. Premiums for insurance policies purchased by the Association and other expenses connected with acquiring such insurance shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or Common Elements, by an Owner or Occupant, may at the Executive Board's election, be assessed against that particular Owner and his Lot as a Reimbursement Assessment.
 - (g) Endorsements. All policies of insurance to the extent obtainable shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts an Owner and shall provide that such policies may not be cancelled or modified without at least ten (10) days prior written notice to all of the insureds, including Mortgagees.
 - (h) Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for the Association, the Owners, or the Occupants, as their interests may appear.
- 10.2 Other Insurance to be Carried by Owners. Insurance coverage on the Lot, interior of the Townhome, any improvements installed by Owner, furnishings, and other items of personal property belonging to an Owner or Occupant, and public liability insurance coverage upon each Lot shall be the responsibility of the Owner or Occupant of the Lot.

ARTICLE XI. LIMITED LIABILITY

Neither the Association nor its past, present or future officers or directors, nor any other employee, agent or committee member of the Association shall be liable to any Owner or Occupant or to any other person for actions taken or omissions made except for wanton and willful acts or



omissions. Without limiting the generality of the foregoing, the Association and the Executive Board shall not be liable to any Owner or Occupant or other person for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice. To the extent insurance carried by the Association for such purposes shall not be adequate, the Owners severally agree to indemnify and to defend the Association and the Executive Board against claims, damages or other liabilities resulting from such good faith action or failure to act.

**ARTICLE XII.
 MECHANICS' LIENS**

- 12.1 Mechanics' Liens on Lots. Subsequent to the recording of this Declaration, no labor performed or materials furnished for use and incorporated in or on any Lot with the consent of or at the request of the Owner of the Lot or the Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against a Lot of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien for labor performed or for materials furnished in work on such Owner's Lot against the Lot of another Owner or against the Common Elements, or any part thereof.

- 12.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper), the Association shall enforce the indemnity provided by the provisions of Section 12.1 above by collecting from the Owner of the Lot on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. In the event that the Owner of the Lot on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount of the claim, or any portions thereof from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 12.2, and such amount to be indemnified shall automatically become a Reimbursement Assessment determined and levied against such Lot, and enforceable by the Association in accordance with Sections 8.6 and 8.7 above.

- 12.3 Mechanic's Liens on Common Elements. The Association shall be responsible for the release of mechanic's liens filed with respect to Common Elements, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of the Association, its directors, officers, agents, contractors or subcontractors. No labor performed or materials furnished with respect to a Lot at the instance of the Owner thereof shall be the basis for filing a lien against the Common Elements. No labor performed or materials furnished with respect to a Common Element at the instance of the Executive Board shall be the basis for filing a lien against any Lot.

**ARTICLE XIII.
USE RESTRICTIONS**

13.1 Residential Use and Occupancy. Each Lot and Townhome shall be improved, occupied, and used only for single-family residential purposes in conformity with all zoning laws, ordinances, and regulations.

(a) Leasing. No Owner may lease his Townhome for transit or hotel purposes, including the leasing of a Townhome through Airbnb or similar service. No leases for less than six (6) months shall be allowed and in no event may any Owner lease less than the entire Townhome. Any lease agreement for a Townhome is required to be in writing and shall specifically provide that the terms of the lease shall be subject in all respects to the provisions of the Association's Governing Documents.

(b) Non-Residential Use Prohibited. No business, professional, or other non-residential or commercial use shall be made of any Lot or Townhome, or conducted in any Townhome, excepting in-home businesses or occupations which do not involve employees other than Owners or tenant Occupants, the solicitation or invitation of the general public, or the servicing of customers, in which activities are conducted entirely within the Townhome and do not cause any additional traffic or parking within the Community or otherwise create a nuisance for neighboring Lots or the Community and which are permitted by applicable zoning codes.

13.2 Parking and Vehicles.

(a) Assigned Parking. All permitted vehicles shall be parked only on assigned parking spaces. An Owner/Occupant may only park in designated spaces. Designated parking spaces have been assigned as follows:

(i) Four Lots (533, 563, 593, and 595) have four parking spaces, two are located in the garage and the other two are located directly outside of the garage.

(ii) All other Lots have three parking spaces, two are located in the garage, and the other is located in the designated parking area.

(b) Maintenance of Vehicles. No work or maintenance on automobiles or other vehicle repair shall be performed in any visible or exposed portion of the Community, except in emergencies.

(c) Abandoned & Inoperable Vehicles. An abandoned or inoperable vehicle is any vehicle which has not been driven under its own propulsion for three (3) weeks or longer and which appears incapable of operation. Abandoned or inoperable vehicles shall not be stored or parked on any portion of the Community. A written notice describing the abandoned or inoperable vehicle and requesting its removal shall be personally served upon the Owner or posted on the vehicle. If such vehicle has not been removed within seventy-two (72) hours after notice is given, the



Association may remove the vehicle without liability, and the expense of removal shall be charged against the Owner.

- (d) Permitted Vehicles. Any vehicles parked in designated spaces are to be street legal and in working order.
- (e) Guest Parking. Available guest parking may be used for no more than twenty-four (24) hours by any single Lot at a time.
- (f) Handicapped Accessible Parking. Available handicapped accessible parking spaces may be used only by vehicles with handicapped placard or license plate.
- (g) Violation Enforcement. A violation of this Section could cause Owners to be subject to fines, pursuant to the Association's Covenant Enforcement Policy and as levied by the Association, even if violations are by Tenant Occupants.
- (h) Parking Policy. The Board, in its sole discretion may also adopt additional parking rules and regulations in a separate policy. In the event of conflict between any adopted parking policy and the provisions of this Declaration, the provisions of this Declaration shall govern.

13.3 Conveyance of Lots. All Lots, 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.

13.4 Owner's Disclosure Obligation to Buyer Upon Sale of Lot. Except in the case of a foreclosure sale, the seller of a Lot in the Community shall mail or deliver to the purchaser, on or before the title deadline and at least ten (10) days prior to closing, copies of all of the following in the most current form available: (a) the Bylaws and Rules of the Association; (b) the Declaration; (c) the Covenants; (d) any Rules and Regulations and (e) any other Association documents.

13.5 Use of Common Elements. There shall be no obstruction of, nor shall any motor vehicle or any other item of personal property be kept or stored by any Owner or Occupant on, any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed by any Owner, Occupant, or other party from the Common Elements without the prior written approval of the Association.

13.6 Prohibition of Certain Activities. No damage to or waste of the Common Elements shall be committed by any Owner or Occupant, and each Owner and tenant Occupant shall indemnify and hold the Association and the other Owners and tenant Occupants harmless against all loss resulting from any such damage or waste caused by him, or any Occupants present in the Community by his permission. Failure to so indemnify shall be a default by such Owner or tenant Occupant under this Section, and such amount to be indemnified shall automatically become a Reimbursement Assessment determined and levied against such Lot.

13.7 Pets. Pets shall be restricted to the confines of the Lot of each Owner or Tenant Occupant unless under the immediate control of the Owner or Tenant Occupant thereof. Such maintenance of dogs and cats shall be further subject to such Rules and Regulations as may be promulgated by the Association. No animal shall be allowed to urinate on Lot decks. Any animal waste deposited on the Common Elements shall be immediately removed by the Lot Owner or Tenant Occupant and placed in a trash receptacle. No other animals, livestock or poultry of any kind shall be kept, raised, or bred on any portion of Community. A violation of this Section could cause Owner to be subject to fines, as levied by the Association, even if violations are by Tenant Occupants.

13.8 Weight Room/Sauna.

(a) Requirements to use. Owners shall have access to the weight room/sauna. Tenant Occupants shall be allowed to use the Weight Room/Sauna only if the following documentation has been completed and is on file in the records of the Association:

- i. Information Sheet;
- ii. Signed guidelines and rules;
- iii. Signed Release of Liability form;
- iv. Payment of \$25.00 monthly access fee.

(b) Guests or Invitees of Tenant Occupants. There shall be no use of the weight room/sauna by guests or invitees of Tenant Occupants under any circumstances.

(c) Guests or Invitees of Owners. Any guests/invitees of Owners must have a signed release form prior to use and must be accompanied by Owner at all times.

(d) Tenant Occupants. Tenant Occupants shall have the laminated access card with them at all times when using the weight room/sauna and produce it upon request of the agents of the Association.

(e) Association Liability. The Association shall have no liability to any users of the Weight Room/Sauna and Persons using such Weight Room/Sauna uses such amenities at their own risk.

(f) Penalties. Violation of this Section could cause the Owners to be subject to fines, pursuant to the Association's Covenant Enforcement Policy and as levied by the Association, even if violations are by Tenant Occupants.

13.9 Signs. No advertising signs (except one of not more than five square feet "For Rent" or "For Sale" sign per Lot) or billboards shall be erected, placed, or permitted to remain on the premises. Political signs shall be allowed, as permitted by the Act at 38-33.3-106.5, if:

- (a) Such signs are displayed no earlier than forty-five (45) days before the day of an election and no later than seven (7) days after an election day;
 - (b) There is only one political sign per political office or ballot issue in a pending election; and
 - (c) Each political sign is no larger than thirty-six (36) inches by forty-eight (48) inches.
- 13.10 Satellite Dishes. Satellite dishes or similar devices shall not be permitted to be installed on the exterior of any Townhome, including such Townhome's roof, without prior written approval by the Association.
- 13.11 Drainage. No Lot Owner shall do or allow any work, construct any improvements, place any landscaping, or allow any condition which alters or interferes with the drainage pattern for the Community, unless approved in writing by the Association.
- 13.12 Nuisances. No nuisance shall be allowed upon the Common Elements or within a Lot, nor any use or practice that is the source of annoyance to Owners or which interferes with the peaceful possession and proper use of the Community by the Owners.
- 13.13 Sanitary Conditions and Trash. All parts of the Community shall be kept in a clean and sanitary condition, free of offensive odors, rodent and insect manifestations, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard allowed to exist. Each Owner or Occupant shall provide and use their own trash receptacle for the temporary storage and collection of solid waste, which shall be stored away from public view and protected from wind, animals, and other disturbances. A violation of this Section could cause Owners to be subject to fines, pursuant to the Association's Covenant Enforcement Policy and as levied by the Association.
- 13.14 Unsigntliness. Decks, patios, balconies, porches, and Common Elements shall not be used for storage of personal property of any kind, and nothing shall be placed on or in windows or doors or otherwise on the exterior of Lots which create an unsightly appearance.
- 13.15 Improvements. No Improvements shall be placed, installed, or erected upon the Lots or any other portion of the Community by an Owner or Occupant without the Board's written approval.
- 13.16 Lawn and Other Irrigated Areas. Owners are responsible for maintenance of all landscaping in the backyards of the Lots.
- 13.17 Special Fencing Allowances and Requirements. Lots 531 and 595 may fence the property located at the front of the HOA. Such fencing shall be:
- (a) Four (4) feet in height;
 - (b) Material as approved by the Executive Board;
 - (c) Fencing shall be maintained at least every other year at the Owner's expense;

- (d) Have a setback of two and one-half (2 ½) feet to allow for parking; and such fencing shall be outside of the ten-foot General Common Element Drainage and Utility Easement at the front of the property and five-foot General Common Element Drainage and Utility Easement at the back of the property; and
- (e) Should the Owners of these Lots elect not to install such fencing, or elect not to maintain landscaping, they can be assessed each quarter for maintenance of the area, including lawn and landscape maintenance.

ARTICLE XIV. EASEMENTS

- 14.1 Easement of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment of the Common Elements, which shall be appurtenant to and shall pass with the title to every Lot, subject to the easements set forth in this Article XIV.
- 14.2 Recorded Easements. In addition to the easements described in this Article XIV and elsewhere in this Declaration, the Property shall be subject to any recorded easements and licenses as shown on any recorded plat affecting the Property.
- 14.3 Utility Easements. There is hereby created, granted and reserved to the Association, its agents, employees and assigns (including all utility companies) a perpetual, general easement upon, across, over, in and under all of the Property for ingress and egress and for installation, replacements, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity, and a cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical, telephone, and other communication services to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. The Association, any utility company, or person using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of the Owners and the Association; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, the Executive Board shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 14.3 shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.
- 14.4 Reservation of Easements, Exceptions, and Exclusions. The Board reserves for itself and its successors and assigns and hereby grants to the Association the concurrent right to establish from time to time by declaration or otherwise, utility and other easements within the Common Elements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas,

consistent with the Lot ownership of the Community for the best interest of all of the Owners and the Association, in order to serve all the Owners within the Community.

- 14.5 Easements of Access for Repair, Maintenance, and Emergencies. There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement and right to enter upon all Lots as necessary for the performance of the Association's rights and responsibilities under this Declaration for the making of emergency repairs or reconstruction to the Lots and/or Common Elements. In the case of emergency, where there is an imminent threat of damage or injury to person or property, entry shall be made at any time provided that a reasonable effort is made, under the circumstance, to give notice of such intended entry.
- 14.6 Easements Deemed Created. All conveyances of Lots hereafter made, shall be deemed and construed to grant and reserve the easements contained in this Article XIV and elsewhere in this Declaration, even though no specific reference to such easements or to this Article XIV appears in the instrument for such conveyance.

ARTICLE XV. MISCELLANEOUS

- 15.1 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.
- 15.2 Amendment. The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon the written agreement of Owners holding at least sixty-seven percent (67%) of the votes in the Association, provided, however, matters not requiring Owner approval as described in C.R.S. 38-33.3-217(1) may be handled by the Executive Board. In addition, (a) a majority of the voting Directors of the Executive Board may make, without the approval of the Owners, changes to the Association Documents to the extent necessary to correct a factual error. In the event of termination, the provisions of Section 38-33.3-218 of the Act shall apply.
- 15.3 Recording of Amendments. Any amendment to this Declaration made in accordance with this Article XV shall be immediately effective upon recording in the office of the Clerk and Recorder of Garfield County, Colorado, a copy of the amendment, executed and acknowledged by the appropriate number of Owners, accompanied by a certificate of a licensed title insurance company as to ownership, or upon the recording of a copy of the amendment, together with a duly authenticated certificate of the secretary of the Association stating that the required number of consents of Owners and a certificate of a licensed title company as to title to the Lots were obtained and are on file in the office of the Association.
- 15.4 Enforcement. Every Owner and Occupant of a Lot in the Community shall fully and faithfully observe, abide by, comply with and perform all of the covenants, conditions, and restrictions set forth in this Declaration, the Articles, Bylaws, and Rules and Regulations, and all approvals granted by the Executive Board, as the same or any of them may be amended from time to time.



Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges, and other provisions contained in this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association, all as amended, shall be by any proceeding at law or in equity against any person or persons, including the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings, and the Association shall further have the right (after notice and an opportunity to be heard) to levy and collect fines for the violation of any provision of the aforesaid documents.

Any legal action initiated by the Association other than as described in this Declaration shall require the approval of the Executive Board. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court.

- 15.5 No Dedication to Public Use. Nothing contained in this Declaration shall be deemed to be or to constitute a dedication of all or any part of the Community to the public or to any public use.
- 15.6 Interpretation of Declaration. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a common and general plan for the development, improvement, enhancement, protection and enjoyment of the Community, and to the extent possible, shall be construed so as to be consistent with the Act. In the event that any of the terms and conditions of this Declaration are determined to be inconsistent with the Act, the Act shall control.
- 15.7 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any person entitled to enforce the provisions of this Declaration. This provision does not limit the remedies that may be available under this Declaration or at law or in equity. Failure of the Association to bring an enforcement action to correct any violation of this Declaration shall not constitute a waiver of or estop the Association from bringing a future or subsequent enforcement action to correct such violation or any other similar violation.
- 15.8 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.
- 15.9 Costs and Attorney's Fees. For any failure to comply with the provisions of the Act or any provision of this Declaration, Bylaws, Articles, or Rules and Regulations, other than the payment of Assessments or any money or sums due to the Association, the Association, any Owner, or any class of Owners adversely affected by the failure to comply may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding.

In any action or proceeding involving the interpretation or enforcement of any provision of this Declaration, or the Association Bylaws, Articles, or Rules and Regulations, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith.

- 15.10 Governing Law; Jurisdiction. The laws of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Declaration. Any legal action brought in connection with this Declaration shall be commenced in the District Court for Garfield County, Colorado, and by acceptance of a deed to a Lot each Owner voluntarily submits to the jurisdiction of such court.
- 15.11 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof. Where any provision of this Declaration is alleged to be or declared by a court of competent jurisdiction to be unconscionable, the Board shall have the right, by amendment to this Declaration, to replace such provision with a new provision, as similar thereto as practicable but which in the Board's reasonable opinion would be considered not to be unconscionable.
- 15.12 Conflict of Provisions.
- (a) In the event of any conflict or inconsistency between the provisions of this Declaration and the Plat (including any Resubdivision Plat or Map), the provisions of the Plat shall govern and control and the Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of the Plat.
 - (b) In the event of any conflict or inconsistency between this Declaration and the Articles and Bylaws of the Association, this Declaration shall control. In the event of any conflict or inconsistency between the Articles and the Bylaws of the Association, the Articles shall control.
- 15.13 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.
- 15.14 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning 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.
- 15.15 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.
- 15.16 Disclaimer Regarding Safety. THE ASSOCIATION HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. ANY OWNER OR OCCUPANT OF PROPERTY

WITHIN THE COMMUNITY ACKNOWLEDGES THAT THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION AND BYLAWS, OR IN THE ACT, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

Executed on the day and year first written above.

PARK AVENUE VILLAS HOMEOWNERS ASSOCIATION, INC.

By: *Justin Sanderson*
Board President

State of Colorado)
COUNTY OF *Garfield*) ss

The above and foregoing document was acknowledged before me the *25th* day of *March*, 2021, by *Justin Sanderson*, President of Park Avenue Villas Homeowners Association, Inc.

Witness my hand and official seal.

My commission expires:

September 6, 2024

Brenda Mae Locker
Notary Public





Reception#: 953518
03/31/2021 03:35:48 PM Jean Alberico
41 of 42 Rec Fee:\$218.00 Doc Fee:0.00 GARFIELD COUNTY CO

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Amended Plat of Park Avenue Villas recorded in the records of the Garfield County Clerk and Recorder at Reception No. 724239, Section 9, Township 6, Range 93: Subdivision: Park Avenue Villas

EXHIBIT B

ALLOCATED INTERESTS

The Common Expense liability and votes in the Association shall be allocated equally amongst the Units, and shall therefore be as follows:

Unit No.	Percentage Share of Common Expenses	Votes in Association
1	1/13	1
2	1/13	1
3	1/13	1
4	1/13	1
5	1/13	1
6	1/13	1
7	1/13	1
8	1/13	1
9	1/13	1
10	1/13	1
11	1/13	1
12	1/13	1
13	1/13	1
	Total Units: 13	
	Total Common Expense: 1	
	Total Votes: 13	