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COPY

TWENTY-SIXTH SUPPLEMENTAL DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
PINE CREEK VILLAGE AT BRIARGATE

(The Carriages at Pine Creek Filing No. 1)

THIS TWENTY-SIXTH SUPPLEMENTAL DECLARATION (this "Supplemental Declaration"), dated to be effective as of February 28, 2006 is executed by LP47, LLC, a Colorado limited liability company doing business as La Plata Investments, LLC ("La Plata"), by PINE CREEK VILLAGE ASSOCIATION, INC., a Colorado nonprofit corporation ("PCVA"), and by ELITE PROPERTIES OF AMERICA, INC., a Colorado corporation ("Elite").

RECITALS

A. This Supplemental Declaration amends and supplements the Declaration of Covenants, Conditions and Restrictions for Pine Creek Village at Briargate recorded November 12, 1998 under Reception No. 098165891, records of El Paso County, Colorado, and supplements thereto, as amended (the "Declaration").

B. This Supplemental Declaration is made with respect to the real property in the City of Colorado Springs, El Paso County, Colorado, platted and legally described as Carriages at Pine Creek Filing No. 1 (the "Carriages").

C. La Plata is the "Declarant" under the Declaration and the developer of the residential community known as Pine Creek at Briargate, which includes the Carriages. The "Development Period," as defined in the Declaration, has not yet expired.

D. Elite is the owner of the Carriages, and the Carriages is within the "Additional Property," as defined in the Declaration.

E. PCVA is the homeowners association established pursuant to the Declaration and is responsible for maintaining

the "Common Area," the "Area of Common Responsibility" and the "Exclusive Common Areas" as provided in the Declaration.

Pursuant to the Declaration, Declarant has the right, power and authority to amend the Declaration as provided herein. The purpose of this Supplemental Declaration is to extend the Declaration to the Carriages, make the Carriages subject to the provisions of the Declaration and impose additional covenants, conditions, restrictions and easements on the Carriages. Accordingly, Declarant hereby amends the Declaration, with the consent of Elite, as follows:

1. Addition of the Carriages. Pursuant to Section 7.1 of the Declaration, Declarant hereby adds all of the Carriages to the "Properties," as defined and described in the Declaration. All of the terms, conditions and provisions of the Declaration shall apply to and be binding upon the Carriages and the Carriages shall be subject to all of the terms, conditions and provisions of the Declaration and of this Supplemental Declaration.

2. Eighteenth Supplemental Plat. Declarant hereby adopts and implements the Eighteenth Supplemental Plat for Pine Creek Village at Briargate (The Carriages at Pine Creek Filing No. 1) attached hereto as **Exhibit A** (referred to herein as the "Eighteenth Supplemental Plat") pursuant to its rights, power and authority set forth in the Declaration and in accordance with the Colorado Common Interest Ownership Act. The Eighteenth Supplemental Plat shows the Carriages and modifies the Plat of Pine Creek Village at Briargate, which is part of and is attached to the Declaration as Exhibit D (the "Plat") and was recorded with the Declaration.

3. Neighborhood. The Carriages is hereby designated as a "Neighborhood," as defined in the Declaration. Pursuant to Section 5.3 of the Bylaws of the PCVA, the owners of Units within the Neighborhood formed for the Carriages may form a committee composed of three to five individuals (the "Carriages Neighborhood Committee"). The Carriages Neighborhood Committee will advise the board of directors of the PCVA with respect to services to be provided to the Carriages by PCVA, the amount of the Neighborhood Assessment (as discussed below in Section 9) and other issues affecting the Carriages.

4. Units. Each of the platted lots identified as Lots 1 through 38, inclusive, in the Carriages at Pine Creek Filing No. 1 on the Eighteenth Supplemental Plat is a "Unit" for all purposes of the Declaration.

5. Easement for Fences and Walls. Elite hereby creates and reserves to itself, and grants and conveys to PCVA and La Plata, perpetual, non-exclusive easements to construct,

erect, install, maintain, repair, remove and replace fences and/or walls, including but not limited to posts, pilasters, bars, rails and associated fixtures and improvements, on, over, under, along and above the following areas:

(a) the strip of land lying adjacent to the southerly boundary of Tract B, including the land within Lots 1 through 10, inclusive, lying outside the Townhome Buildings on Lots 1 through 10;

(b) a strip of land five feet in width centered on the common boundary line of Lots 17 and 18, outside of the Townhome Building on Lots 17 and 18;

(c) a strip of land five feet in width along the entire westerly lot line of Lot 18 outside of the Townhome Building on Lot 18;

(d) the westerly five feet of Lot 20;

(e) a strip of land five feet in width along the most southerly corner of Lot 23;

(f) a strip of land five feet in width along the entire northeasterly lot line of Lot 27;

(g) a strip of land five feet in width across the most westerly corner of Lot 28;

(h) a strip of land five feet in width along the most northerly corner of Lot 30;

(i) a strip of land ten feet in width along the most westerly corner of Lot 32;

(j) a strip of land five feet in width along the most southerly corner of Lot 33, along with a strip of land five feet in width along the entire southeasterly lot line of Lot 33, outside of the Townhome Building on Lot 33; and

(k) a strip of land five feet in width along the entire northeasterly lot line of Lot 38 outside of the Townhome Building on Lot 38.

These areas identified in Subsection 5(a) through 5(g) above are referred to as the "Easement Area." All Lots and Tracts referred to above are as shown on the recorded subdivision plat of the Carriages and on the Eighteenth Supplemental Plat. The fences and/or walls shall be located within the Easement Area. The easement hereby granted or reserved shall include the right of reasonable ingress and egress by Elite and PCVA from time to time to and from the Easement Area through, on, over and across

all Units within the Carriages, as reasonably necessary to construct, erect, install, maintain, repair, remove or replace any fences or walls within the Easement Area. The owners of the Units within the Carriages shall retain the right to make full use of the Easement Area on their respective Units, except for such use as might damage any fences or walls or endanger or interfere with the rights of PCVA in its maintenance of such fence or walls.

6. Designation as Common Area. La Plata, in its capacity as Declarant under the Declaration and pursuant to its express rights under Section 7.5 "Additional Covenants and Easements" of the Declaration during the Development Period, hereby declares that the following areas shall, from and after the date of this Supplemental Declaration, be deemed to be additional Common Area under the Declaration, to be maintained by PCVA:

(a) The standard perimeter wall that is typically installed throughout the Pine Creek Village subdivision, which will be installed within Tract A, Carriages at Pine Creek Filing No. 1 (referred to in this Supplemental Declaration as "Tract A"), adjacent to Briargate Parkway and Lexington Drive (the "Village Wall").

(b) Any entry monumentation, landscaping and sprinkler systems within the area lying between the Village Wall and Briargate Parkway and between the Village Wall and Lexington Drive, which landscaped area is referred to herein as the "Buffer Area."

(c) Tract B, Carriages at Pine Creek Filing No. 1 (referred to in this Supplemental Declaration as "Tract B").

(d) The metal view fence to be located adjacent to and running along the entire southerly boundary line of Tract B, between said southerly boundary line of Tract B and the rear lot lines of Lots 1 through 10, inclusive.

(e) The metal view fence to be located within Tract B adjacent to the northeasterly boundary of Tract A and northerly of Lots 11 through 14, inclusive, running from a point near the southeasterly corner of Tract B and continuing southeasterly to the Village Wall adjacent to Briargate Parkway, which fence is a continuation of the fence described above in Section 6(d).

(f) The neighborhood mailbox facility to be located within Tract A.

The cost and expense of owning, maintaining, repairing and replacing shall be Common Expenses of PCVA to be paid from the General Assessment.

7. Designation as Exclusive Common Area.

Pursuant to the authority referred to in Section 6 above, La Plata, as Declarant, hereby declares that the following areas shall, from and after the date of this Supplemental Declaration, be deemed to be Exclusive Common Areas (as defined in the Declaration) for the exclusive use and enjoyment of the residents of Units within the Carriages, to be maintained by PCVA:

(a) Tract A, except for the following areas and improvements: (i) the Village Wall; (ii) the Buffer Area; (iii) the fence referred to above in Sections 6(d) and 6(e); and (iv) the mailbox facility referred to above in Section 6(f).

(b) The Private Streets known as Carriage Creek Point and Pine Knoll View within Tract A, as shown on the recorded plat of the Carriages at Pine Creek Filing No. 1 (hereinafter known as the "Private Streets").

(c) All walls and fences within the Easement Area described above in Sections 5(b) through 5(g), inclusive.

8. Designation as Areas of Common Responsibility.

La Plata, in its capacity as Declarant under the Declaration and pursuant to its express rights under Section 7.5 "Additional Covenants and Easements" of the Declaration during the Development Period, hereby declares that the following areas shall, from and after the date of this Supplemental Declaration, be deemed to be Areas of Common Responsibility under the Declaration, to be maintained by PCVA:

(a) The landscaped areas between the foundation of a Unit and the lot line for that Unit.

(b) All sidewalks and driveways on each Unit for purposes of snow removal only.

Any replacement of such landscaping, sidewalks and driveways shall be at the expense of the Owner of the Unit adjacent to the area needing replaced.

9. Other Maintenance and Services. Trash removal services for the Carriages Neighborhood shall be provided by PCVA in the same manner as for other areas of Pine Creek. The PCVA will provide snow removal services for the Carriages

Neighborhood in accordance with rules and procedures to be adopted by the board of directors of the PCVA upon the recommendation and advice of the Carriages Neighborhood Committee, if such a Committee is formed.

10. Neighborhood Assessment. Each Unit within the Carriages will be assessed Neighborhood Assessments (as defined in the Declaration) in order to cover (i) the costs of owning and maintaining the Exclusive Common Area identified in Section 7; (ii) the costs of maintaining the Areas of Common Responsibility referred to in Section 8(a) above; (iii) the costs of snow removal referred to in Section 8(b) above; and (iv) the costs of management, administrative and legal expenses relating to services funded by the Neighborhood Assessments and enforcement of this Supplemental Declaration. Such Neighborhood Assessments for the Carriages will be set annually by the board of directors of PCVA upon advice and recommendation of the Carriages Neighborhood Committee and assessed uniformly against all Units in the Carriages Neighborhood. The Neighborhood Assessments for Units within the Carriages shall specifically exclude charges or fees for any of the following: (i) exterior maintenance of Townhomes (as defined in Section 14 below) within the Carriages; (ii) maintenance, repair and replacement of roofs, doors, windows and siding on Townhomes; and maintenance repair and replacement of decks, patios, and other improvements on Units within the Carriages that are not specifically identified as Exclusive Common Areas in Section 7 or as Areas of Common Responsibility in Section 8. Any expenses incurred by the PCVA to maintain the Community-Wide Standard or the safety and general welfare of the Unit Owners shall be assessed against any offending Unit Owner pursuant to Section 15.1 below.

11. Pedestrian Easement. La Plata and Elite hereby grant to all owners of Units within the Carriages, their licensees and invitees, an easement to walk about the Carriages Neighborhood, outside of the Units.

12. Acceptance of Maintenance.

(a) Upon completion by Declarant and inspection by the PCVA of the Common Area identified in Section 6; and upon completion by Elite and inspection by the PCVA of the Private Streets, landscaping, sidewalks, lighting, signage and other improvements within the Exclusive Common Area identified in Section 7 and the Areas of Common Responsibility identified in Section 8, PCVA shall accept ownership, maintenance and replacement responsibility for such areas and improvements. PCVA shall accept such Common Area, Exclusive Common Areas and Areas of Common Responsibility by written notice of acceptance delivered to Elite and Declarant. After such acceptance, PCVA shall maintain such Common Area, Exclusive Common Areas and Areas

The cost and expense of owning, maintaining, repairing and replacing shall be Common Expenses of PCVA to be paid from the General Assessment.

7. Designation as Exclusive Common Area.

Pursuant to the authority referred to in Section 6 above, La Plata, as Declarant, hereby declares that the following areas shall, from and after the date of this Supplemental Declaration, be deemed to be Exclusive Common Areas (as defined in the Declaration) for the exclusive use and enjoyment of the residents of Units within the Carriages, to be maintained by PCVA:

(a) Tract A, except for the following areas and improvements: (i) the Village Wall; (ii) the Buffer Area; (iii) the fence referred to above in Sections 6(d) and 6(e); and (iv) the mailbox facility referred to above in Section 6(f).

(b) The Private Streets known as Carriage Creek Point and Pine Knoll View within Tract A, as shown on the recorded plat of the Carriages at Pine Creek Filing No. 1 (hereinafter known as the "Private Streets").

(c) All walls and fences within the Easement Area described above in Sections 5(b) through 5(g), inclusive.

8. Designation as Areas of Common Responsibility.

La Plata, in its capacity as Declarant under the Declaration and pursuant to its express rights under Section 7.5 "Additional Covenants and Easements" of the Declaration during the Development Period, hereby declares that the following areas shall, from and after the date of this Supplemental Declaration, be deemed to be Areas of Common Responsibility under the Declaration, to be maintained by PCVA:

(a) The landscaped areas between the foundation of a Unit and the lot line for that Unit.

(b) All sidewalks and driveways on each Unit for purposes of snow removal only.

Any replacement of such landscaping, sidewalks and driveways shall be at the expense of the Owner of the Unit adjacent to the area needing replaced.

9. Other Maintenance and Services. Trash removal services for the Carriages Neighborhood shall be provided by PCVA in the same manner as for other areas of Pine Creek. The PCVA will provide snow removal services for the Carriages

of Common Responsibility in accordance with the Declaration and as provided in this Supplemental Declaration. To the maximum practicable extent, PCVA shall use existing gates, roads, trails and facilities to avoid disturbing the owners of the Units when working on Common Area, Exclusive Common Area or Areas of Common Responsibility.

(b) Until such time as all 38 Units within the Carriages have been completed and conveyed by Elite to third parties, Elite shall pay to PCVA any difference between the Neighborhood Expenses and the Neighborhood Assessments payable by Unit Owners. In addition, Elite shall pay a Neighborhood Assessment to PCVA in the month the sale of a Unit to a third-party buyer closes.

13. Nature of Easements. This Supplemental Declaration and all easements granted hereby shall run with the land, shall be deemed to touch and concern the land, shall burden all of the Carriages and shall benefit Elite, Declarant, PCVA and all real property owned or maintained by PCVA from time to time.

#### ADDITIONAL COVENANT PROVISIONS

14. Types of Construction. All buildings or structures erected upon the Units shall be Townhomes of new construction, and no buildings or structures shall be moved from other locations onto the Property. For the purposes of this Supplemental Declaration, "Townhome" is a single-family residence joined together with another single-family residence by a common exterior, roof, and foundation, and common wall (or "Party Wall"), and "Townhome Building" is the entire building, containing two Townhomes. No subsequent buildings or structures, other than Townhome Buildings, shall be constructed.

15. Maintenance. The Carriages is a unique Townhome development wherein each Owner is responsible for the maintenance of the exterior building surfaces of his or her Townhome, and the collective Owners of each Townhome Building are jointly responsible for the maintenance of the roof and Party Walls, and painting of the exterior walls, of the Townhome Building, as more specifically set forth herein. Each Owner hereby acknowledges the Owner's maintenance obligations as described herein, and acknowledges that PCVA's maintenance obligations within the Carriages Neighborhood specifically exclude any obligation to paint, repair, replace, maintain and care for roofs, gutters, downspouts, exterior building surfaces, patios, decks, and balconies of the Townhomes and Townhome Buildings, driveways, sidewalks and privacy fences and fenced areas of the Units, (except fences within the Easement Area identified in Section 5).



15.1. Maintenance of Townhomes and Units by Owners.

Each Owner shall maintain his or her Townhome in a manner consistent with the Declaration and the Community-Wide Standards. Specifically, each Owner is responsible for and obligated to maintain, replace, and repair: gutters, downspouts, exterior building surfaces, including patios, decks, covered porches, covered entries, and balconies, driveways, sidewalks, front doorsteps, glass surfaces, exterior light bulbs, doors, screens, windows, shutters, awnings, and chimneys on their Townhome, and all fenced areas adjacent to their Unit, including maintenance of any fences and of landscaping within any privacy fenced areas, except those fences and walls within the Easement Area.

The maintenance of patios, decks, covered porches, covered entries, and balconies includes removing snow and debris therefrom, sealing all floor surfaces thereof as needed, repairing and sealing the exterior facing surfaces of such areas, and replacing decks and balconies when, and if, PCVA determines that replacement thereof is needed for the aesthetic character of the Neighborhood as a whole or for the safety of the Owners. The maintenance of landscaping within privacy fenced areas includes maintenance of the landscaping, drainage, and sprinkler systems in such a fashion that the soil surrounding the foundations of the Townhomes shall not become so impregnated with water that they cause expansion or shifting or the soils supporting the improvements or other damage to the improvements. Such maintenance shall not impede the proper functioning of the drainage, landscaping or the sprinkler system as originally installed, and shall include, where necessary, the removal or replacement of improperly functioning landscaping, drainage, or sprinkler system elements and re-grading and resurfacing where necessary to prevent ponding and to provide for adequate drainage. Owners shall not install landscaping or use water on the Units in such a way as to endanger the structural integrity or stability of any of the landscaping, drainage or sprinkler systems or the Townhome Building. No Owner shall, in whole or in part, change the landscaping adjacent to or upon his Unit by the addition or removal of any items thereon, including fences, without the prior written approval of the PCVA. An Owner may not alter the appearance of the fence, except, as permitted by the PCVA, to contain a pet.

All utilities, fixtures and equipment installed, commencing at a point where the utility lines, pipes, wires, conduits or systems shall be maintained and kept in repair by the Owner benefiting from such service(s). An Owner shall do no act or any work that will impair any easement or utility service, nor do any act nor allow any condition to exist which will adversely affect the use and enjoyment of the other Units or the provision of utility services to such Units.

If an Owner fails to fulfill his or her responsibilities under this Section, the PCVA, at its option, may take such action permitted by the Declaration as it deems appropriate, including without limitation, performing the Owner's obligations, after ten days' notice to such Owner, except in emergencies, and any costs resulting therefrom shall be an assessment against such Owner and his Unit and shall be due and payable by the Owner thereof pursuant to the terms of the Declaration.

15.2. Maintenance of Townhome Buildings by the Collective Owners.

(a) Maintenance Obligations. The collective Owners of each Townhome Building shall maintain the exterior of the Townhome Building in a manner consistent with the Declaration and the Community-Wide Standards. Specifically, the collective Owners of the Townhome Building are responsible and obligated to maintain, replace, and repair the roof, foundation and Party Walls of the Townhome Building, and to paint the exterior walls of the Townhome Building, as follows: foundation: includes removing snow and debris therefrom, and repairing and sealing all surfaces thereof as needed (together with each Owner's responsibility to maintain landscaping as provided in Section 15.1 above); roof: includes removing snow and debris therefrom, repairing all surfaces thereof as needed, and replacement and weatherproofing of the roofing as needed; exterior walls: includes repainting or re-staining trim and shutters once every five years and painting or re-coloring the stucco exterior of the Townhome Building once every ten years or sooner as necessary to keep such exterior from having a weather-beaten or worn-down appearance as determined by the Modifications Committee; and common wall: includes repair and maintenance of the common wall and weatherproofing of the common wall as necessary.

(b) Requirement for Maintenance. The Owners of each Townhome Building shall complete the collective maintenance as follows: If any Owner determines that maintenance or repair of the foundation, roof, common wall, or painting of the exterior surfaces is necessary (the "Maintenance"), such Owner shall deliver written notice of the need for the Maintenance to the other Townhome Building Owner (the "Maintenance Notice"). The Maintenance Notice shall be delivered to the Townhome address. The Owner receiving the Maintenance Notice shall have 15 days from the receipt of the Maintenance Notice in which to either (i) accept the proposed Maintenance by acknowledgment on the Maintenance Notice, or (ii) reject the proposed Maintenance by notice to the initiating Owner or through

inaction regarding the Maintenance Notice. If the receiving Owner accepts the Maintenance, the Owners shall proceed pursuant to Section 15.2(c) below. If the receiving Owner rejects the proposed Maintenance, then the initiating Owner may petition PCVA in writing for a determination of whether the Maintenance is required. The Modifications Committee of PCVA (the "Modifications Committee") shall determine if the Maintenance is necessary (such determination to be made within 30 days of receipt of the written petition by the initiating Owner). The Modifications Committee may elect, in its sole discretion, to schedule a meeting of the Owners, to rely on any materials or information provided by the Owners, and/or to conduct a physical or visual inspection of the Townhome Building, to determine if the Maintenance is necessary. The written decision by the Modifications Committee shall be a conclusive and final determination as to whether the Maintenance is required. In the event the Modifications Committee determines the Maintenance is required, the Owners shall proceed pursuant to Section 15.2(c) below. In the event the Modifications Committee determines the Maintenance is not required, then the Maintenance shall not be completed, and the initiating Owner may not request the same Maintenance for a period of three months from the date of such decision. In addition, PCVA, at its option, may independently determine that Maintenance is required for the aesthetic character of the Carriages Neighborhood as a whole or for the safety of the Owners. In such an event, the collective Owners of the Townhome Building shall proceed to complete the Maintenance pursuant to Section 15.2(c) below.

(c) Completion of Maintenance. In the event Maintenance is required or approved pursuant to Section 15.2(b) above, the Owners shall collectively act to obtain all required PCVA approvals for the Maintenance. Owners shall not paint or change the appearance of the exterior of the Townhome Building without the prior written approval of PCVA. The Owners shall then proceed to complete the Maintenance (or contract to complete the Maintenance, as applicable). The cost of the Maintenance shall be shared equally by the Owners of the Townhome Building (unless the Owners reach some other written agreement for the sharing of the costs of the Maintenance). If any Owner fails to fulfill his responsibilities under this Section, the PCVA, at its option, may take such action permitted by the Declaration as it deems appropriate, including without limitation, performing the Owner's obligations, after ten days' notice to such Owner, except in emergencies, and any costs resulting therefrom shall be an assessment against such Owner and his Unit and shall be

due and payable by the Owner thereof pursuant to the terms of the Declaration.

Notwithstanding the above, the right of any such Owner to call for a larger contribution for the Maintenance costs from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions, shall not be affected by this Section. In addition, any Owner who by his negligent or willful act necessitate the Maintenance shall bear the whole cost of furnishing the necessary Maintenance, pursuant to Section 18 below.

(d) Destruction by Fire or Other Casualty. If Maintenance is required due to destruction by fire or other casualty, the required Maintenance shall be completed pursuant to Section 17 below.

(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner for Maintenance under this Section 15.2 shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) Party Wall. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

16. Owner's Personal Property and Liability Insurance. Each Owner shall be solely responsible, at his expense, for all insurance covering all loss or damage to any and all fixtures, appliances, furniture, furnishings or other personal property supplied, maintained or installed by the Owner and covering liability for injury, death or damage occurring within his Townhome.

Notwithstanding any other provisions contained in this Supplemental Declaration, all damages due to negligence of an Owner shall be the sole responsibility of that Owner and the deductible related to that insurance claim will be paid to the other Owner.

PCVA shall not maintain insurance on the Townhomes, Townhome Buildings or Units within the Carriages, and shall not maintain insurance on the fixtures, structural portions, building service equipment or any appliances which are attached thereto. Each Unit Owner within the Carriages shall be responsible for maintaining such property insurance as the Owner determines to be advisable in his sole discretion with respect to his Unit and his Townhome and the Townhome Building.

Except as provided herein, no Owner of a Townhome within a Townhome Building shall be entitled to receive any proceeds from insurance which is maintained by the Owner of the other portion of the Townhome Building.

The Owners shall maintain general comprehensive public liability insurance for claims arising from or occasioned by the condition or use of the Party Wall. Such policy of insurance shall have limits for loss of life or bodily injury in the amounts of not less than \$1,000,000.00 for each person and \$2,000,000.00 for each occurrence, and for property damages of \$500,000 for each occurrence. Such insurance may be carried under a blanket policy. Upon the request of a party, the other party shall furnish a certificate of insurance reflecting that the required insurance coverage is being maintained pursuant to this Agreement. Such certificate of insurance shall provide that no cancellation of any such insurance shall be valid or effective except after the expiration of not less than 30 days' prior written notice to the other party.

Each Owner is entitled to a contribution from the other for one-half of all expenses, liabilities, losses, damages and costs, including reasonable attorney's fees, incurred in connection with or arising from any accident, injury, or property damage caused by or on the Party Wall. However, where a claim arises from or is occasioned by the negligence or intentional acts or omissions of an Owner or the agents, servants, employees or invitees of that Owner, that Owner shall be solely responsible for all expenses, liabilities, losses, damages and costs incurred in connection with any such claim. In addition, the other Owner shall be entitled to indemnification for any expenses, liabilities, losses, damages and costs, including reasonable attorneys' fees, incurred in connection with such a claim.

17. Damage or Destruction/Repair. All of the Owners and Mortgagees holding a first lien or mortgage on a Unit within the Carriages (hereinafter, a "First Mortgagee") irrevocably constitute and appoint PCVA as insurance trustee under C.R.S. 38-33.3-313(5) and (9) and under this Supplemental Declaration and as their true and lawful attorney in their name, place and stead, for the purpose of dealing with Common Areas of the Carriages in the event of their destruction, damage, condemnation, or liquidation of all or a part of the Carriages or from the termination of the Carriages, including without limitation the repair, replacement and improvement of any improvements and service equipment owned by the Association or located on the Common Area. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided.

As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the power herein granted and to represent the Owners in any proceedings, negotiations, settlements or agreements. The proceeds of any insurance collected shall be payable to the Association, for the benefit of the Association, the Owners and their First Mortgagees as their interests appear, for the purpose of repair, restoration, reconstruction or replacement as provided in this Declaration. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within 30 days after either such event. At such meeting a new attorney-in-fact to deal with the Common Area upon its destruction, damage, or condemnation shall be appointed. Said appointment must be approved by vote or agreement of Owners of Units to which at least 67% of the votes (based upon proportionate interests) in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, and at least 67% of the First Mortgagees. Notwithstanding any contrary provision of this Declaration, the Association's Articles of Incorporation and Bylaws, no Owner or any other party shall have priority over any rights of the First Mortgagee of the Unit pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of any Common Area.

18. Willful or Negligent Damage. In the event that the need for maintenance or repair described in Section 15.2 of this Article is caused through the willful or negligent acts or omissions of any Owner, his family, guests, tenants, contractors, or invitees, or other persons or parties acting with the consent of any of the foregoing, including without limitation any pets or animals of those persons or parties, the cost of such maintenance shall be the personal obligation of such Owner and may be imposed by PCVA as a Specific Assessment on the Owner's Unit under Section 8.7 of the Declaration, and if so imposed, such cost shall become a lien against such Owner's Unit as provided in the Declaration.

19. Access/Easements.

19.1 Access. PCVA shall have the right to enter upon any Unit within the Carriages when necessary and shall not be deemed a trespass for the purposes of: (i) inspection of the Unit to determine compliance with the Declaration and the Community-Wide Standards and to determine if Maintenance is required; or (ii) to deliver notification of breach or non-compliance of the Declaration or the Community-Wide Standard.

19.2 Easement for Encroachments. If any part of the Common Area or any Common Area improvement or structure encroaches upon a Unit or Units, a valid easement for such encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Unit or any Townhome or other structure related thereto encroaches upon the Common Area, or upon any adjoining Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. In the event that a Townhome, Townhome Building or structure related thereto is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachment of parts of the Townhome or Townhome Building due to such construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Townhome, Townhome Building or related structure, by error in the plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Neighborhood or any portion thereof. Such encroachments and easements shall not be considered or construed to be title defects or encumbrances either on the Common Area or on the Units. In interpreting any and all provisions of the Declaration, this Supplemental Declaration, subsequent deeds, Mortgages, or other security instruments relating to Units and Townhomes, the actual location of a Townhome or Townhome Building, and related structures, shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Unit, Townhome, Townhome Building, and related structure, as indicated on the plat.

19.3 Easement for Foundations. Owners of adjoining Units shall have mutual easements of horizontal and vertical support for the foundations on which adjacent walls of their improvements rest, and similar easements for support from the Common Area, the Exclusive Common Area and for the benefit of the Common Area and the Exclusive Common Area shall also exist.

19.4 Easement for Ingress and Egress. Subject to the provisions of the Declaration and this Supplemental Declaration, each Owner, his agents and guests are hereby granted a perpetual, non-exclusive easement, over any streets, roadways, driveways, and sidewalks, which are located upon the Exclusive Common Area, for the purpose of vehicular and pedestrian ingress to and egress from such Owner's Unit. Elite shall have the right to relocate any portion of the private streets, but only if it provides all Owners with reasonable access to their Units, and Elite may also dedicate any portion of any private street or roadway upon the Property as a public right-of-way, in which

case, if accepted by a public entity, PCVA's obligations for repair and maintenance of the road shall cease.

19.5 Easement to Complete Maintenance. Each Owner, his agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon the adjacent Unit and in and upon adjacent Townhomes for purposes of completing Maintenance. Any damage occasioned to the adjacent Unit or improvements, including the Townhome and Townhome Building, in exercising said easement shall be the responsibility of the Owner whose negligence or wrongful acts or omissions cause such damage.

20. Review by PCVA. After the purchase of a Unit from Elite, no Improvements shall be constructed or maintained upon the Unit; no alterations to re-staining or repainting of the exterior of a Townhome Building shall be made; no landscaping performed; and no Owner shall enclose, by means of screens or otherwise any balcony, porch or patio, without the prior written approval of PCVA.

21. Right to Assess Fines (Sanction). In addition to any other remedies available to PCVA, upon the failure of an Owner to cure a breach or non-compliance within 30 days of written notification, PCVA may, at its option, assess a fine upon the Unit in an amount not to exceed \$100.00 for each act of breach or non-compliance for each week that the breach or non-compliance is not remedied. These costs shall be due and payable to PCVA within 30 days after receipt of such notice. If these costs have not been paid after expiration of this 30-day period, PCVA may thereafter record a lien against the Unit (including the improvements thereon) for all costs, including reasonable attorneys' fees, incurred in collecting such costs and foreclosing the lien.

22. Enforcement. In addition to any other remedy provided in the Declaration, a violation of any condition, covenant, restriction or reservation contained in this Supplemental Declaration by any Owner, or such Owner's permittee, shall give to the other Owner or the Declarant or the ARB the right to send 30 days written notice to cure the violation of the violating Owner. Such 30-day period shall be extended if the cure cannot reasonable be accomplished within the 30-day period, and the Owner in violation of the Declaration or this Supplemental Declaration, or such Owner's permittee, has commenced within such 30-day period reasonable efforts to cure such violation and diligently pursues the cure to completion. If the violation specified in such notice has not been cured within the proper time period from the date of said notice, the other Owner or the Declarant or ARB, as applicable, will have the right to remedy such violation pursuant to the terms of the



Declaration or to bring suit in law or equity against the party or parties violating any such condition, covenant, restriction and/or reservation to enjoin them from so violating, to cause any such violation to be remedied and to recover damages resulting from such violation. In any legal or equitable proceeding for the enforcement of this Supplemental Declaration or any provision hereof, whether it be an action for damage, declaratory relief, injunctive relief, or any other action, the prevailing party in such action shall recover from the nonprevailing party all of its costs incurred in such action and interest thereon at the rate of 18% per annum. Costs shall include court costs and reasonable attorneys' fees. All remedies provided in the Declaration or at law or in equity shall be cumulative and not exclusive. The rights and remedies for enforcement of this Declaration shall be cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any of the others.

23. No Waiver. The failure of any Owner, the Declarant, or the ARB to enforce any of the conditions, covenants, restrictions or reservations contained in this Supplemental Declaration shall in no event be deemed to be a waiver of the right to do so for subsequent violations or the right to enforce any other conditions, covenants, restrictions or reservations contained herein.


24. Warranty Claims. By an Owner's purchase of a Townhome and by PCVA's receipt of title to any Common Area, the Owner and PCVA acknowledge that all actions related to warranty claims or any other claims related to alleged construction defects of any kind or nature are governed by the terms of any Home Builder's Limited Warranty provided to each Owner as part of its purchase of a Townhome.

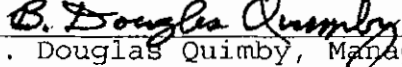
25. Hot Tubs; Heating and Air Conditioning Equipment. Except as otherwise specifically approved in writing by PCVA, hot tubs shall not be permitted within any Unit outside of a Townhome Building, but shall be permitted within the interior of a Townhome itself. All types of refrigerating, cooling or heating apparatus and equipment shall be concealed as installed by Elite or as permitted by PCVA.

IN WITNESS WHEREOF, the parties have executed this Supplemental Declaration to be effective as of the day and year first above written.

LA PLATA:

LP47, LLC, a Colorado limited liability company

By   
Scott E. Smith, Manager

By   
B. Douglas Quimby, Manager


PCVA:

PINE CREEK VILLAGE ASSOCIATION, INC., a Colorado nonprofit corporation

By   
Steven K. Moorhead, President

ELITE:

ELITE PROPERTIES OF AMERICA, Inc., a Colorado corporation

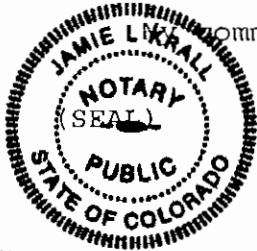
By   
Joe Leidolt, President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 1st day of MARCH, 2006 by Scott E. Smith as Manager and by B. Douglas Quimby as Manager of LP47, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 08-01-09



Jamie L Krall  
Notary Public

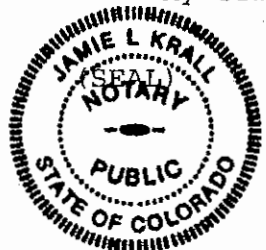
My Commission Expires 08-01-09

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 1st day of MARCH, 2006 by Steven K. Moorhead as President of Pine Creek Village Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 08-01-09



Jamie L Krall  
Notary Public

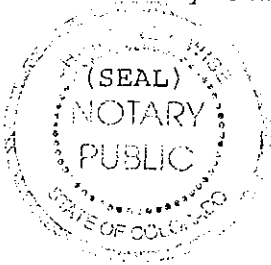
My Commission Expires 08-01-09

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of February, 2006 by Joe Loidolt as President of Elite Properties of America, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires: 12-02-2009



Cristine B. Wise  
Notary Public