



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

PINE CREEK VILLAGE AT BRIARGATE

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

PINE CREEK VILLAGE AT BRIARGATE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the date on the signature page hereof by LP47, LLC d/b/a La Plata Investments, a Colorado limited liability company (the "Declarant").

Declarant is the owner of the real property described in Exhibit "A," which is attached and incorporated by reference. This Declaration imposes upon the Properties (as defined in Article 1 below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of Pine Creek Village Association, Inc. to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, the Design Guidelines and the Community Guidelines (as these terms are defined below).

Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article 1 below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

The name of the common interest community created by this Declaration is "Pine Creek Village at Briargate." Pine Creek Village at Briargate is a planned community as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-103(22), Colorado Revised Statutes. All of Pine Creek Village at Briargate is located in the City of Colorado Springs, El Paso County, Colorado.

ARTICLE 1: DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Act": The Colorado Common Interest Ownership Act, §38-33.3-101 et seq., C.R.S. as it may be amended from time to time.

1.2. "Additional Property": All of that certain real property which is described on Exhibit "B", attached hereto and incorporated by reference, and which is subject to annexation to the terms of this Declaration in accordance with Article 7.

1.3. "ARB": The Architectural Review Board, as described in Section 9.2(a).

J. Patrick Kelly El Paso County

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1.4. "Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenant, contract, or agreement.

1.5. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Pine Creek Village Association, Inc., as filed with the Secretary of State of the State of Colorado.

1.6. "Association": Pine Creek Village Association, Inc., a Colorado nonprofit corporation, its successors or assigns.

1.7. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Colorado corporate law.

1.8. "Builder": Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business. Any Person occupying or leasing a Unit for residential purposes shall cease to be considered a Builder with respect to such Unit immediately upon occupation of the Unit for residential purposes, notwithstanding that such Person originally purchased the Unit for the purpose of constructing improvements for later sale to consumers.

1.9. "By-Laws": The By-Laws of Pine Creek Village Association, Inc., as they may be amended.

1.10. "Common Area": All real and personal property, including easements, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners. The Common Areas include, but are not necessarily limited to, those parcels and tracts of land identified as Common Areas on the Plat or hereafter identified as Common Areas on any Supplemental Plat, all the real property described on the attached Exhibit "C", and any real or personal property hereafter identified as Common Area in any Supplemental Declaration. The term also shall include the Exclusive Common Area, as defined below.

1.11. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. During the Development Period, Common Expenses shall not include any expenses incurred for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Delegates representing a Majority of the total votes of the Association (excluding any votes held by the Declarant) and the written consent of the Declarant.

1.12. "Community Guidelines": The guidelines and application and review procedures with respect to modifications of existing structures and other improvements, including but not limited to completed homes, applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9. The Community Guidelines may also set forth the Community-Wide Standard and include guidelines and standards with respect to conduct, maintenance and other activities within the Properties.

1.13. "Community-Wide Standard": The high quality standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors, the ARB, and the MC and may be included within the Community Guidelines.

1.14. "Covenant to Share Costs": Any agreement, contract or covenant between the Association and an owner or operator of property adjacent to, in the vicinity of, or within the Properties, including any Private Amenity, for the allocation of expenses that benefit both the Association and the owner or operator of such property, as described in Section 5.6.

1.15. "Declarant": LP47, LLC d/b/a La Plata Investments, a Colorado limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one Person entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

1.16. "Declaration": This Declaration of Covenants, Conditions and Restrictions for Pine Creek Village at Briargate, including all attached exhibits and the Plat, in its entirety, as it may be modified in the future by Supplemental Declarations, Supplemental Plats and other amendments.

1.17. "Declarant Control Period": The period of time during which the Declarant is entitled to appoint a Majority of the members of the Board of Directors as provided in Section 3.3.

1.18. "Design Guidelines": The guidelines and application and review procedures with respect to design and initial construction applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9.

1.19. "Development Period": The period of time during which the Declarant is entitled to exercise Development Rights and Special Declarant Rights. The Development Period shall commence upon the date that this Declaration is recorded and shall terminate upon the later of the following: (a) the date on which the Declarant no longer owns any portion of the property described on Exhibits "A" or "B" for development and sale as part of the development of Pine Creek; or (b) 20 years from the date that this Declaration is recorded unless reinstated or extended by agreement between Declarant and the Association, subject to such terms as the Board may impose upon the subsequent exercise by Declarant of the Special Declarant Rights.

1.20. "Development Rights": The rights reserved in this Declaration by the Declarant to (a) submit additional property to this Declaration; (b) create Units, Common Area, or Exclusive Common Area; (c) subdivide Units or convert Units into Common Area or Exclusive Common Area; and (d) withdraw real estate from the Properties, all as provided in Article 7.

1.21. "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods or Units, as more particularly described in Section 2.2.

1.22. "General Assessment": Assessments levied on all Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.3.

1.23. "Governing Documents": The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, all Plats and Supplemental Plats, all Design Guidelines, all Community Guidelines, the rules of the Association, any Covenants to Share Costs, or any of the above, as each may be amended from time to time.

- 1.24. "Majority": Those votes, Owners, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.
- 1.25. "MC": The Modifications Committee, as described in Section 9.2(b).
- 1.26. "Member": A Person subject to membership in the Association pursuant to Section 3.1.
- 1.27. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.
- 1.28. "Mortgagee": A beneficiary or holder of a Mortgage.
- 1.29. "Neighborhood": A separately developed area within the Properties, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each single-family attached or detached housing development may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one housing type with other features in common. Neighborhood boundaries may be established and modified as provided in Section 3.4.
- 1.30. "Neighborhood Assessments": Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 8.1 and 8.4.
- 1.31. "Neighborhood Association": Any condominium association or other owners association having concurrent jurisdiction with the Association over any Neighborhood.
- 1.32. "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to such Neighborhood(s).
- 1.33. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded land sales contract, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.
- 1.34. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.
- 1.35. "Plat": The engineering survey or surveys for all or any portion of the Properties satisfying the requirements of the Act, attached to this Declaration as Exhibit "D", as it may be amended from time to time.
- 1.36. "Private Amenity": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, designated by the Declarant and which are owned and operated, in whole or in part, by Persons other than the Association for recreational or other purposes on a club membership, daily fee, use fee, public, or private basis or otherwise, and may include, without limitation, the Pine Creek at Briargate Golf Course and all related and supporting facilities and improvements.

1.37. "Properties": The real property described on Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article 7.

1.38. "Public Records": The real property records of El Paso County, Colorado maintained in the Office of the El Paso County, Colorado Clerk and Recorder.

1.39. "Special Assessment": Assessments levied in accordance with Section 8.6.

1.40. "Special Declarant Rights": The rights of the Declarant set forth in Article 13.

1.41. "Specific Assessment": Assessments levied in accordance with Section 8.7.

1.42. "Supplemental Declaration": An instrument filed in the Public Records which subjects additional property to this Declaration, describes additional Common Area, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument filed by the Declarant pursuant to Section 3.4(c) which designates Voting Groups, any declaration of covenants, conditions and restrictions, and any declaration of condominium.

1.43. "Supplemental Plat": Any engineering survey or surveys for portions of the Properties satisfying the requirements of the Act, which are recorded with a Supplemental Declaration subjecting additional property to the Declaration, withdrawing property from the Declaration or adding, changing or removing any Unit, Common Area, or Exclusive Common Area, as each may be amended from time to time.

1.44. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The boundaries of each Unit shall be delineated on the Plat or a Supplemental Plat, and each Unit shall be identified by the number or address noted on the Plat or Supplemental Plat. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Area, common property owned by any Neighborhood Association, or property dedicated to the public. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such Plat or Supplemental Plat or shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such Plat or Supplemental Plat shall continue to be treated in accordance with this paragraph.

1.45. "Voting Delegate": The representative selected by the Members within each Neighborhood to be responsible for casting all votes attributable to Units in the Neighborhood on matters requiring a vote of the membership (except as otherwise specifically provided in this Declaration and in the By-Laws). The term "Voting Delegate" shall also refer to any alternate Voting Delegate acting in the absence of a Voting Delegate and any Owner authorized personally to cast the vote for his or her Unit pursuant to Section 3.4(b).

1.46. "Voting Group": One or more Voting Delegates who vote on a common slate for election of directors to the Board of Directors of the Association, as more particularly described in Section 3.4(c) of this Declaration or, if the context so indicates, the group of Members whose Units are represented thereby.

ARTICLE 2: PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to the title to each Unit, subject to:

- (a) This Declaration and any other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities, if any, within the Common Area pursuant to Section 4.3;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
- (f) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;
- (g) The right of the Board and the Declarant to permit use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of reasonable use fees, if any, established by the Board;
- (h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 2.5, Article 12, and in the Act;
- (i) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.2; and
- (j) The right of the Declarant to conduct activities within the Common Area, such as tournaments, charitable events, and promotional events and to restrict Members from using the Common Area during such activities, provided such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area and shall not exceed seven consecutive days.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of specified Units or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Owners of Units to which the Exclusive Common Areas are assigned either as a Neighborhood Assessment or as a Specific Assessment, as applicable.

Initially, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, in the deed by which the Common Area is conveyed to the Association or on the Plat or Supplemental Plat relating to such Common Area; provided however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods during the Development Period. Thereafter, a portion of the Common Area or the Exclusive Common Area may be assigned or reassigned in accordance with the Act.

The Association may, upon approval of a Majority of the votes within the Neighborhood(s) to which any Exclusive Common Area is assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses or Specific Assessments attributable to such Exclusive Common Area. Granting of such permission shall not constitute a reallocation or a reassignment of interest with respect to such Exclusive Common Area.

2.3. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration. Granting of permission to partition any Common Area or Exclusive Common Area pursuant to this Declaration shall not constitute a reallocation or reassignment of interest with respect to such Common Area or Exclusive Common Area.

2.4. Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Delegates representing at least 67% of the total votes in the Association and, during the Development Period, the written consent of the Declarant) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Voting Delegates representing at least 67% of the total votes of the Association and, during the Development Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

2.5. Actions Requiring Owner Approval. The conveyance or mortgaging of Common Area, except in accordance with Section 4.2, shall require a written instrument executed by Members holding at least 2/3 of the total votes in the Association, excluding any votes held by the Declarant, and, during the Development Period, the written consent of the Declarant. Notwithstanding anything to the contrary in Section 2.4 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee, or by any individual designated from time to time by the Owner in a written instrument delivered to the secretary of the Association.

3.2. Voting. The Association shall have one class of membership comprised of all Owners. Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.1; provided however, there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.11.

Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit shall be exercised by the Voting Delegate representing the Neighborhood of which the Unit is a part, as provided in Section 3.4(b). The Voting Delegate shall cast all such votes in the manner provided in Section 3.4(b). No vote shall be exercised on behalf of any Unit if any assessment for such Unit is delinquent.

In any situation where a Member is entitled personally to exercise the vote for his or her Unit and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

3.3. Rights of the Declarant. This Declaration, the By-Laws and the Articles provide the Declarant with certain Development Rights, Special Declarant Rights and other special rights which are set forth in the relevant sections of the Governing Documents. In addition, the Declarant may appoint a Majority of the members of the Board of Directors during the Declarant Control Period which shall continue until the first to occur of the following:

- (a) upon the date that is 60 days after 2,138 Units have been sold to Owners other than Declarant;
- (b) two years after the last conveyance of a Unit by Declarant in the ordinary course of business;
- (c) two years after Declarant last exercised its right to add any portion of the Additional Property to the Properties; or
- (d) when, in its discretion, the Declarant so determines and voluntarily terminates the Declarant Control Period.

Notwithstanding the foregoing, if Declarant voluntarily relinquishes its right to appoint and remove officers and directors of the Association prior to the termination of the Declarant Control Period, Declarant reserves the right to approve or disapprove specified actions of the Association as expressly provided in Section 3.21 of the By-Laws or other provisions of the Governing Documents.

3.4. Neighborhoods, Voting Delegates and Voting Groups.

(a) Neighborhoods. Every Unit shall be located within a Neighborhood; provided however, unless and until additional Neighborhoods are established, the Properties shall consist of one Neighborhood. The Declarant, in its sole discretion, may establish Neighborhoods within the Properties by designation on Exhibit "A" to this Declaration, a Supplemental Declaration, a Plat or a Supplemental Plat. During the Development Period, the Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to assign property to a specific Neighborhood, to redesignate Neighborhood boundaries, or to remove property from a specific Neighborhood.

The Owner(s) of a Majority of the total number of Units within any Neighborhood may at any time petition the Board of Directors to divide the property comprising the Neighborhood into two or more Neighborhoods. Such petition shall be in writing and shall include a survey of the entire parcel which indicates the proposed boundaries of the new Neighborhoods or otherwise identifies the Units to be included within the proposed Neighborhoods. The Board shall review any complete petition at its next meeting, shall make a determination in its sole discretion whether to grant or deny such petition, and shall provide a written response to such petition within a reasonable period thereafter. All applications and responses shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

The Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except in the case of a condominium or otherwise as required by law. Any Neighborhood which does not have a Neighborhood Association may, but shall not be obligated to, elect a Neighborhood Committee, as described in the By-Laws, to represent the interests of Owners of Units in such Neighborhood.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood and, upon the affirmative vote, written consent, or a combination thereof, of Owners of a Majority of the Units within the Neighborhood, the Association may, in its sole discretion, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Article 8 hereof.

(b) Voting Delegates. The Owners within each Neighborhood shall elect a Voting Delegate who shall be responsible for casting all votes attributable to Units owned by Members in the Neighborhood on all Association matters requiring a membership vote, except as otherwise specified in this Declaration or the By-Laws. In addition, each Neighborhood shall elect an alternate Voting Delegate who shall be responsible for casting such votes in the absence of the Voting Delegate. No Person shall be eligible to serve as a Voting Delegate or an alternate Voting Delegate if any assessment for such Person's Unit is delinquent. The Voting Delegate and alternate Voting Delegate from each Neighborhood shall be elected on an annual basis, either by written ballot cast by mail or at a meeting of the Members within such Neighborhood, as the Board determines; provided however, upon written petition signed by Members holding at least 10% of the votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at a meeting. If a meeting

will be held for an election of a Voting Delegate, notice of such meeting shall be provided to all Owners within the Neighborhood in the same manner as provided in the By-Laws. The presence, in person or by proxy, of Members representing at least 30% of the total votes attributable to Units in the Neighborhood shall constitute a quorum at any Neighborhood meeting.

The Board shall call for the first election of Voting Delegates not later than 30 days after 500 Units have been conveyed to Persons other than the Declarant or Builders; provided however, the first election of a Voting Delegate for any Neighborhood shall not be required until at least 75% of the Units planned for such Neighborhood have been conveyed to Persons other than Builders. Each Member who owns a Unit within the Neighborhood shall be entitled to cast one equal vote per Unit owned at any election of a Voting Delegate or an alternate Voting Delegate. The candidate who receives the greatest number of votes shall be elected as Voting Delegate and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Delegate. The Voting Delegate and the alternate Voting Delegate shall serve a term of one year and until their successors are elected. Subsequent elections of Voting Delegates within each Neighborhood shall be held annually.

Any Voting Delegate or alternate Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owners of a Majority of the total number of Units in the Neighborhood which the Voting Delegate or alternate Voting Delegate represents. Any Voting Delegate or alternate Voting Delegate shall be automatically removed and ineligible to cast the votes attributable to Units in such Voting Delegate's Neighborhood if any assessment for such Voting Delegate's Unit is delinquent. Upon removal of a Voting Delegate or an alternate, a successor shall be elected by the Owners of Units within the Neighborhood to fill the vacancy for the remainder of such delegate's term.

Until such time as the Board first calls for election of a Voting Delegate for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue requiring a vote of the Voting Delegates under this Declaration, the By-Laws, or the Articles. After the election of a Voting Delegate for any Neighborhood, the Owners within the Neighborhood shall not be entitled personally to cast the votes attributable to their respective Units, but may direct the manner in which the Voting Delegates cast such votes as described below.

Prior to taking a vote on any issue requiring membership approval, the Association shall distribute proxies to all Members represented by Voting Delegates allowing each Member to direct in writing how such Member's vote is to be cast with respect to such issue by the Voting Delegate who represents him or her. The Voting Delegates shall be required to cast all votes for which specific proxies are returned to the Voting Delegate in the manner directed in such proxies. All other votes may be cast as the Voting Delegate deems appropriate in its sole discretion. The Board may adopt resolutions establishing additional procedures for polling Members.

(c) Voting Groups. The Declarant may designate Voting Groups consisting of one or more Neighborhoods for the purpose of electing directors to the Board. The designation of Voting Groups, if any, shall be to promote representation on the Board of Directors for various groups having dissimilar interests and to avoid a situation in which the Voting Delegates representing similar Neighborhoods are able, due to the number of Units in such Neighborhoods, to elect the entire Board of Directors, excluding representation of others. Following termination of the Declarant Control Period, the number of Voting Groups within the Properties shall not exceed the total number of directors to be elected by the Members pursuant to the By-Laws. The Voting Delegates representing the Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of directors specified in the By-Laws.

The Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Declarant Control Period by filing with the Association and in the Public Records a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be unilaterally amended from time to time by the Declarant during the Development Period.

After expiration of the Declarant's right to amend any designation of Voting Groups as provided above, the Board shall have the right to file or amend any Supplemental Declaration for the purpose of designating Voting Groups. Neither recordation nor amendment of such Supplemental Declaration shall constitute an amendment to this Declaration, and no consent or approval of any Person shall be required except as stated in this paragraph. Until such time as Voting Groups are established, all of the Properties shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been filed, any and all portions of the Properties which are not assigned to a specific Voting Group shall constitute a single Voting Group.

ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration, the Design Guidelines and the Community Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Colorado.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of Sections 2.5 and 12.7. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibits "A" or "B," easements, personal property, utility lines, and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines. No later than 30 days after Declarant transfers the last Unit in the Properties to an Owner other than Declarant, Declarant shall convey to the Association the Common Areas described on the attached Exhibit "C".

4.3. Enforcement. The Board, or the covenants committee if established, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in the By-Laws. Such sanctions may include, without limitation:

(a) imposing reasonable monetary fines which shall constitute a lien upon the Unit of the violator. (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(b) filing liens in the Public Records for nonpayment of any assessments or fees;

- (c) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
- (d) suspending an Owner's right to vote;
- (e) suspending any Person's right to use any recreational facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;
- (f) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association; and
- (g) levying Specific Assessments to cover costs incurred in bringing a Unit into compliance in accordance with Section 8.7(b).

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and the removal of pets that are in violation of pet rules) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or estop the Association from enforcing any other covenant, restriction or rule.

4.4. Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. During the Development Period, the Declarant may designate sites within the Properties for fire, police, and utility facilities, public schools and parks, streets, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

4.6. Indemnification. The Association shall indemnify every officer, director, and ARB and other committee member against all damages, liabilities, and expenses, including attorneys fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been

an officer, director, or ARB or other committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Colorado law.

The officers, directors, and ARB and other committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and ARB and other committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association. The Association shall indemnify and forever hold each such officer, director and ARB and other committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or ARB or other committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Dedication of Common Area. The Association may dedicate portions of the Common Area to the City of Colorado Springs, Colorado or to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by Sections 2.5 and 12.7.

4.8. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or other measures, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.9. Relationship With Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations for the benefit of the Properties. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

4.10. Powers of the Association Relating to Neighborhood Associations. The Association may veto any action taken or contemplated by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Governing Documents or Community-Wide Standard. The Association also may require specific action to be taken by any Neighborhood Association to fulfill its obligations and responsibilities under any Governing Document. For example, the Association may require that specific maintenance or repairs or aesthetic changes be performed by the Neighborhood Association. If the Neighborhood Association fails to comply with such requirements within a reasonable time as specified in writing by the Association, the Association may effect such action on behalf of the Neighborhood Association and assess the Units within such Neighborhood for any expenses

incurred by the Association in taking such action. Such assessments may be collected as a Specific Assessment.

4.11. Trails. The Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas within the Properties, including the Common Areas, to be used as recreational bike and pedestrian pathways and trails ("trail system"). Each Owner acknowledges, understands and covenants to inform its lessees and all occupants of such Owner's Unit, that the Properties may contain a trail system and that there may be certain inconveniences and loss of privacy associated with the ownership of Units adjacent to such trail system resulting from the use of the trail system by the Declarant, the Association, its Members, their families, lessees and guests, and the public.

4.12. Aviation Rights. Each Owner, occupant, guest, and invitee acknowledges that the Properties are subject to that certain Avigation Easement dated March 17, 1986 and filed in Book 5144, Page 1022 of the Public Records. Pursuant to the Avigation Easement, the Air Force Academy has a right and easement for the passage of aircraft through airspace above the Properties, together with the right to cause noise and other effects of flight and the operation of aircraft. Each Owner hereby assumes any risks of owning property that is subject to such easement and forever waives and relinquishes, and agrees not to institute any action or suit at law or in equity nor to institute or prosecute, any claim, demand or compensation against LP47, LLC d/b/a La Plata Investments, the Declarant, or any successor Declarant; the Association or its Members (in their capacity as such); any Builder or contractor (in their capacities as such); any officer, director, member, manager or partner of any of the foregoing, or any officer or director of any partner of the foregoing for or on account of any damages, loss, or injury either to person or property, or both, resulting directly or indirectly from the exercise of such easement.

ARTICLE 5: MAINTENANCE

5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which may include, but need not be limited to:

- (i) Common Area;
- (ii) all landscaping and other flora, parks, structures, and improvements, including any entry features, sidewalks, bike and pedestrian pathways/trails, situated upon the Common Area;
- (iii) all furnishings, equipment and other personal property of the Association;
- (iv) any landscaping and other flora, parks, bike and pedestrian pathways/trails, sidewalks, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board; and
- (v) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, or any contract or agreement for maintenance thereof entered into by the Association.

The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services

related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to comply with and conform to the Community-Wide Standard and the Community Guidelines.

(b) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding 67% of the total votes in the Association (excluding any votes held by the Declarant) and, during the Development Period, the Declarant, agree in writing to discontinue such operation.

(c) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or a Neighborhood Association or (ii) such property is dedicated to any local, state, or federal governmental or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, the Covenant to Share Costs, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Areas are assigned, or a Specific Assessment against the particular Units to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit, and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association. Each Owner shall also maintain all landscaping located between the street curb and the property line(s) of the Unit closest to the curb. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Neighborhood's Responsibility. Upon resolution of the Board of Directors, the Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Neighborhood and adjacent public roads, regardless

of ownership and regardless of the fact that such maintenance may be performed by the Association; provided however, all Neighborhoods which are similarly situated shall be treated the same.

Any Neighborhood Association having responsibility for maintenance within a particular Neighborhood pursuant to additional covenants applicable to such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard and all Governing Documents. If it fails to do so, the Association may perform such responsibilities and assess the costs as a Specific Assessment against all Units within such Neighborhood as provided in Section 8.7.

5.4. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. The Association, and/or an Owner and/or a Neighborhood Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5. Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. 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.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

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

5.6. Covenant to Share Costs. Adjacent to or in the vicinity of the Properties, there may be certain residential, nonresidential or recreational areas, including without limitation single family residential developments, retail, commercial, or business areas and Private Amenities, which are not subject to this Declaration and which are neither Units nor Common Area as defined in this Declaration (hereinafter "adjacent properties"). The owners or operators of such adjacent properties shall not be Members of the Association, shall not be entitled to vote, nor shall they be subject to assessment under Article 8 of this Declaration.

The Association may enter into agreements with the owners or operators of portions of the adjacent properties:

(a) to obligate the owners or operators of such adjacent properties to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the owners within the Properties;

(b) to permit use of any recreational and other facilities located on such adjacent properties by the Owners of all Units or by the Owners of Units within specified Neighborhoods; and/or

(c) to obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such adjacent properties, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the owners within the Properties.

The owners or operators of such adjacent properties shall be subject to assessment by the Association only in accordance with the provisions of such agreement(s). If the Association is obligated to share costs incurred by the owners of such adjacent properties, the Covenant to Share Costs shall provide whether such payments by the Association shall constitute Common Expenses or Neighborhood Expenses of the Association. The owners or operators of the adjacent properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein.

ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association, its Members, its Board members, its management agent, if any, and their respective employees and agents, for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association may obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual General Assessments on all Units plus reserves on hand or \$50,000, whichever is higher. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation;

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage; and

(vii) Such additional insurance as may be required by law.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of 100% of current "replacement cost" of all effected improvements and other insurance property or the maximum limit of coverage available, whichever is less.

In addition, the Association may obtain and maintain property insurance on the insurable improvements within any Neighborhood in such amounts and with such coverages as the Owners in such Neighborhood may agree upon pursuant to Section 3.4(a). Any such policies shall provide for a certificate of insurance to be furnished to the Neighborhood Association or Neighborhood Committee, as applicable, and to the Owner of each Unit insured upon request.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment, except that (i) premiums for property insurance obtained on behalf of a Neighborhood shall be charged to the Owners of Units within the benefitted Neighborhood as a Neighborhood Assessment; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate. The Association shall have no insurance responsibility for any portion of the Private Amenities.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Colorado Springs, Colorado area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association upon request.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.7.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Colorado which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners of Units within the Neighborhood and their Mortgagees, as their interests may appear;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association;

(vii) provide a waiver of subrogation under the policy against any Owner or household member of a Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Voting Delegates representing at least 80% of the total votes in the Association (excluding any votes held by the Declarant), and, during the Development Period, the Declarant decide within 60 days after the loss not to repair or reconstruct. In addition, if the damage is to Exclusive Common Area, Owners of Units to which such Exclusive Common Area is assigned who hold at least 80% of the total votes vested in such Owners must vote not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard and all Governing Documents.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, may be distributed equally among all Owners, if such proceeds are for Common Area, or among the Owners within the Neighborhood, if such proceeds are for an Exclusive Common Area, or may be retained by the Association and used for the benefit of Owners who benefit from the Common Area or Exclusive Common Area, as the case may be.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Voting Delegates, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Neighborhood Association (if any) for the Neighborhood in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). The Association may, but shall not be obligated to, monitor compliance with this requirement. If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Unit and the Owner thereof pursuant to Section 8.7.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard and all Governing Documents. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Neighborhood Association that owns common property within the Neighborhood in the same manner as if the Neighborhood Association were an Owner and the common property were a Unit. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

ARTICLE 7: DEVELOPMENT RIGHTS

7.1. Annexation Without Approval of Membership. During the Development Period, Declarant reserves the unilateral right, but not the obligation, from time to time to subject to the provisions of this Declaration all or any portion of the Additional Property described in Exhibit "B." The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Declarant reserves the right, but not the obligation, to annex additional property not described in Exhibits "A" or "B" to the extent allowed by the Act.

Annexation shall be accomplished by filing in the Public Records a Supplemental Declaration and a Supplemental Plat describing the property being annexed. Any Supplemental Declaration or Supplemental Plat under this Section shall comply with the requirements of the Act as may be applicable. Such Supplemental Declaration and Supplemental Plat shall not require the consent of Voting Delegates, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration and Supplemental Plat unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property set forth in Exhibit "B" in any manner whatsoever.

7.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Voting Delegates representing 67% of the total votes of the Association and, during the Development Period, the written consent of the Declarant.

Annexation shall be accomplished by filing a Supplemental Declaration and a Supplemental Plat describing the property being annexed in the Public Records. Any Supplemental Declaration or Supplemental Plat under this Section shall comply with the requirements of the Act as may be applicable. Any such Supplemental Declaration shall be signed by the Association in accordance with the Act, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3. Withdrawal of Property. The Declarant reserves the unilateral right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Properties from the coverage

of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Properties and provided further that no property described on a particular Plat or Supplemental Plat shall be withdrawn after a Unit shown on that Plat or Supplemental Plat has been conveyed by Declarant to any Person other than an affiliate of the Declarant or a Builder. Such a withdrawal shall reduce the total number of votes in the Association and the Units subject to assessment. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal upon the request of the Declarant

7.4. Maximum Number of Units. The property described on Exhibit "A" and initially submitted to this Declaration contains 140 Units, which Declarant reserves the right to increase or decrease, subject to any limitations of the Act, during the Development Period.

Subject to the limitation below, the Declarant may create additional Units within the Properties and may subdivide any Unit into two or more Units; provided however, that Declarant may subdivide a Unit owned by an Owner other than Declarant only with the consent of such Owner. Declarant may also create additional Common Areas within the Properties or convert any of the Units within the Properties to Common Areas; provided however, that Declarant may convert a Unit not owned by Declarant to Common Area only with the consent of the Owner of such Unit.

Notwithstanding any other provision of this Declaration, the maximum number of Units that Declarant may create within the Properties is 2,850.

7.5. Additional Covenants and Easements. During the Development Period, the Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.6. Exercise of Development Rights. Except as otherwise provided, the Development Rights set forth in this Article may be exercised by Declarant with respect to all or any portion of the Properties. No assurances are made by Declarant concerning which portions of the Properties may be affected by Declarant's exercise of its Development Rights or the order in which portions of the Common Areas may be affected. Declarant is not obligated to exercise any of its Development Rights and may elect not to exercise any or all of them. If Declarant does exercise a Development Right in any portion of the Properties, Declarant is not obligated to exercise that Development Right in all or any portion of the remainder of the property affected by the exercise of such Development Right or in all or any other portion of the remainder of the Properties. If Declarant exercises its rights to annex Additional Property or withdraw property from the Declaration or to increase or decrease the number of Units subjected to the Declaration, voting rights shall continue to be allocated to each new or remaining Unit in accordance with Section 3.2 and each Unit shall bear its share of assessments in accordance with Article 8.

7.7. Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

ARTICLE 8: ASSESSMENTS

8.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 8.6; and (d) Specific Assessments as described in Section 8.7. Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorneys fees, shall be a charge and continuing lien upon each Unit against which the assessment or charge is made until paid, as more particularly provided in Section 8.8. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorneys fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, within 14 calendar days after a receipt of a written request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the General Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the 15th day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself from liability for assessments by non-use of Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2. Declarant's Obligation for Assessments. Until the Association establishes a budget and levies assessments, the Declarant shall pay the Association's Common Expenses. With respect to those assessments that Declarant is obligated to pay after the commencement date for assessments as provided in Section 8.9, the

Declarant's obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

8.3. Computation of General Assessment. Before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.5.

General Assessments shall be levied equally against all Units subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

During the Development Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials (in addition to any assessments paid by Declarant), which may be treated as either a contribution or an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be conspicuously disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years and the treatment of such payment shall be made known to the membership, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a summary of the budget and notice of the amount of the General Assessment for the following year to each Owner at least 60 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Voting Delegates representing at least 67% of the total votes in the Association (excluding any votes held by the Declarant) and, during the Development Period, by the Declarant. A meeting shall be set for a date not less than 14 nor more than 60 days after delivery of the notice of assessments for the purpose of considering the budget. A quorum is not required for such meeting.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board shall send a copy of the revised budget to each Owner at least 60 days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

8.4. Computation of Neighborhood Assessments. Before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association and, upon approval of Owners in accordance with Section 3.4(a), any additional costs shall be added to such budget. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood(s) benefitted thereby and levied

as a Neighborhood Assessment; provided however, if so specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by petition signed by a Majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefitted Units in proportion to the benefit received.

The Board shall cause a summary of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least 60 days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by Owners of a Majority of the Units in the Neighborhood to which the Neighborhood Assessment applies and, during the Development Period, by the Declarant. A meeting for the purpose of considering the budget shall be set for a date not less than 14 nor more than 60 days after delivery of the notice of assessments for the purpose of considering the budget. A quorum is not required for such meeting.

If the Owners within any Neighborhood disapprove any line item of a Neighborhood budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine a Neighborhood budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.5. Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual General Assessments or Neighborhood Assessments, as appropriate, over the budget period.

8.6. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Units, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Special Assessments shall be allocated equally among all Units subject to such Special Assessment. Any Special Assessment shall become effective unless disapproved at a meeting by Voting Delegates representing at least 67% of the total votes allocated to Units which will be subject to such Special Assessment (excluding any votes held by the Declarant) and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Voting Delegates as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within 20 days after delivery of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.7. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, janitorial service, pest control, etc.), which assessments may be

levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

The Association may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules; provided however, the Board shall give prior written notice to the Owners of Units in, or the Voting Delegate representing, the Neighborhood and an opportunity for such Owners or Voting Delegate to be heard before levying any such assessment.

8.8. Lien for Assessments. The Association shall have a lien for assessments and other charges (the "Lien") against the Units as provided in Section 38-33.3-316 of the Act. In addition to or in lieu of bringing suit to collect assessments, the Association may foreclose its Lien as provided by law and in this Section. The Board may elect (but is not required) to file a claim of lien against the Unit of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency; (b) the interest and expense of collection that have accrued; (c) the legal description and street address of the Unit against which the lien is claimed; and (d) the name of the record Owner of such Unit. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The Lien shall have the priority provided by the Act and shall be prior to any declaration of homestead rights recorded after the time that the Unit becomes part of the Properties; provided however, the Lien shall not have priority over the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The acceptance of a deed to Unit subject to this Declaration shall constitute a waiver by the Owner of the homestead exemption as against said Lien.

The Lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including without limitation, all court costs, recording costs and filing fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, if recorded, upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the cost of preparing and recording the release of the Notice of Lien. Unless paid or otherwise satisfied, the Lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including deeds of trust), or in any other manner permitted by law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the Lien securing the same.

The sale or transfer of any Unit shall not affect the Lien or relieve such Unit from the Lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first

Mortgage shall extinguish the Lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.9, including such acquirer, its successors and assigns.

8.9. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the date on which the Unit contains a completed dwelling intended for residential purposes and such dwelling is first occupied for residential purposes; provided however, that any Unit that is being used exclusively for model home and/or sales purposes shall not be considered to be occupied. The first annual General Assessment and Neighborhood Assessment, if any, levied on each Unit shall be prorated at the time assessments commence on the Unit.

8.10. Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.11. Exempt Property. The following property shall be exempt from payment of General Assessments, Neighborhood Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Property owned by any Neighborhood Association, or by the members of a Neighborhood Association as tenants-in-common, for the common use and enjoyment of all members within the Neighborhood.

8.12. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual General Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Unit for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

ARTICLE 9: ARCHITECTURAL REVIEW AND GUIDELINES

9.1. General. No exterior structure or improvement, as described in Section 9.4, shall be placed, erected, installed or made upon any Unit or, where the purpose of the structure or improvement is to service a Unit, adjacent to such Unit, except in compliance with this Article, and approval of the appropriate committee under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.3.

Any Owner may remodel, paint or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. The conversion of garage space to living areas shall also be subject to approval.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association or to improvements to any Private Amenity. This Article may not be amended during the Development Period without the Declarant's written consent.

9.2. Architectural Review. Responsibility for administration of the Design Guidelines and the Community Guidelines and review of all applications for construction and modifications under this Article shall be handled by the ARB, the members of which need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARB. The ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers or other professionals.

(a) Architectural Review Board. The ARB shall consist of at least one, but not more than five, persons and shall have exclusive jurisdiction over all construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to Owners other than Builders, the Declarant retains the right to appoint all members of the ARB who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee ("MC") to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. If established, the MC shall have jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space. If the MC is not established, its duties and responsibilities shall be performed by the ARB.

The MC may delegate its authority as to a particular Neighborhood to the Neighborhood Association, if any, so long as the MC has determined that such Neighborhood Association has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. The ARB shall have the right to veto any action taken by the MC or a Neighborhood Association which the ARB determines, in its sole discretion, to be inconsistent with the Design Guidelines, the Community Guidelines or any guidelines promulgated by the ARB. Upon expiration of the Declarant's right to appoint the members of the ARB, the MC may be eliminated and its duties assumed by the ARB.

9.3. Guidelines and Procedures.

(a) Design Guidelines and Community Guidelines. The Declarant shall prepare the initial Design Guidelines and the Community Guidelines for the Properties. The Design Guidelines and the Community Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. For example, by way of illustration but not limitation, the Design Guidelines may impose stricter requirements on those portions of the Properties adjacent to or visible

from any Private Amenity or any body of water. In addition, the Design Guidelines and the Community Guidelines may include separate review procedures for initial construction (or reconstruction) of homes and for modifications to existing structures and other improvements. The ARB and the MC may supplement such procedures consistent with the Design Guidelines.

The Design Guidelines and the Community Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the committees in considering applications hereunder. Neither the Design Guidelines nor the Community Guidelines are the exclusive basis for decisions of the committees, and compliance with the Design Guidelines and the Community Guidelines does not guarantee approval of any application.

The ARB shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the ARB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The ARB shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

The MC shall adopt the Community Guidelines at its initial meeting and thereafter shall have the authority to amend them consistent with the Design Guidelines and subject to review and approval or disapproval by the ARB. The Community Guidelines may be more restrictive than the Design Guidelines, but under no circumstances shall they be inconsistent with the Design Guidelines.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed exterior structures and improvements shall be submitted to the appropriate committee for review and approval (or disapproval) under this Declaration and the Design Guidelines or the Community Guidelines, as appropriate. In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines or the Community Guidelines. In reviewing each submission, the committees may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions of the committees may be based on purely aesthetic considerations and are final. No Owner or Builder shall have any right of appeal of any decision of the ARB or the MC. However, in no case may decisions of the ARB conflict with any express provision or the intent of the Design Guidelines. In addition, no decision of the MC may conflict with any express provision or the intent of the Design Guidelines or the Community Guidelines. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as committee members change over time.

In the event that the ARB or MC fails to approve or to disapprove any application within the time period provided in the Design Guidelines or the Community Guidelines, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines or the Community Guidelines unless a variance has been granted in writing by the ARB pursuant to Section 9.6.

Notwithstanding the above, the ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

9.4. Exterior Structures and Improvements. Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any dwelling or accessory buildings; exterior alteration of existing improvements; installation or replacement of mailboxes; basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools; wells; window air-conditioning units; hot tubs; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; irrigation systems; sidewalks, parking areas or driveways; exterior lighting; awnings; hedges, walls, dog runs, animal pens, or fences of any kind; painting or other finish material; artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing, the Association shall regulate antennas, satellite dishes, and any other apparatus for the transmission or reception of television, radio, satellite, or other signals or any kind only in strict compliance with all federal laws and regulations.

9.5. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.6. Variance. The ARB may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.7. Limitation of Liability. Notwithstanding review and approval of any application pursuant to this Article, neither the ARB nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.6.

9.8. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ARB or MC, Owners shall, at their own cost and expense, alter the structure or improvement so that it is in conformance with ARB or MC approval or remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to alter or remove and restore as required, any authorized agent of the ARB, MC or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment. In addition, the ARB, MC or the Board shall have the right to exercise any means of enforcement set forth in Section 4.3 of this Declaration.

Unless otherwise specified in writing by the committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Neither the ARB, MC or any member of the foregoing nor the Association, the Declarant, or their officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article, the Design Guidelines or the Community Guidelines may be excluded by the ARB from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

In addition to the foregoing, the Declarant and the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARB and MC.

ARTICLE 10: USE RESTRICTIONS

10.1. General. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Unit in addition to those requirements set forth in the Design Guidelines and the Community Guidelines. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits "A" or "B," offices for any property manager retained by the Association, business offices for the Declarant or the Association or related parking facilities and home occupations, as discussed in Section 10.3) consistent with this Declaration and any Supplemental Declaration.

10.2. Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Members, and, during the Development Period, the written consent of the Declarant.

10.3. Residential Use. All Units shall be used exclusively for residential purposes of a single family. No business, trade, or similar activity shall be conducted upon a Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the business activity conforms to provisions of the home occupation ordinance of the Zoning Code of the City of Colorado Springs; (b) the City of Colorado Springs has issued a Home Occupation Permit for the use and Unit in question; and (c) the business activity does not involve door-to-door solicitation of residents of the Properties.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of

whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Unit for residential purposes shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

10.4. Signs. No sign of any kind shall be erected by an Owner or occupant without the prior written consent of the ARB or MC, as applicable, except:

- (a) such signs as may be required by legal proceedings;
- (b) not more than one professional security sign of such size deemed reasonable by the ARB in its sole discretion; and
- (c) political signs erected no earlier than 60 days prior to an election and removed within 10 days after an election.

Unless in compliance with this Section, no signs shall be posted or erected by any Owner or occupant within any portion of the Properties, including the Common Area, any Unit, any structure or dwelling located on the Common Area or any Unit (if such sign would be visible from the exterior of such structure or dwelling as determined in the ARB's sole discretion) or within any Private Amenity.

The ARB reserves the right to restrict the number, size, color, lettering, design and placement of all signs. This provision shall not apply to entry, directional, or other signs installed by the Declarant.

10.5. Vehicles and Garages.

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways, if any, serving the Units unless otherwise approved by the ARB; provided however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Any vehicle not in a garage shall be considered a nuisance and may be removed from the Properties. No motorized vehicles shall be permitted on pathways or unpaved Common Area except for public safety vehicles authorized by the Board.

(b) Recreational vehicles shall be parked only in the garages, if any, serving the Units or, with the prior written approval of the ARB, other hard-surfaced areas which are not visible from the street or Private Amenities; provided however, guests of an Owner or occupant may park a recreational vehicle on the driveway serving such Owner's or occupant's Unit for a period not to exceed seven days each calendar year. "Visibility" shall be determined by the ARB in its sole discretion. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, trailers, other towed vehicles, motorcycles, minibikes, scooters, go-carts, golf carts, campers, buses, commercial trucks and commercial vans. Any recreational vehicle parked or stored in violation of this provision in excess of seven days shall be considered a nuisance and may be removed from the Properties. The Declarant and/or the Association may designate certain parking areas within the Properties for recreational vehicles subject to reasonable rules and fees, if any.

(c) No vehicle of any type shall be parked on any unpaved surface of a Unit that is visible from any street, any other Unit or any Private Amenity.

(d) Parking on any cul-de-sac street with a landscape island is restricted to the inside curb of the island. No vehicles, except for public safety vehicles temporarily parked, may be parked along the outside curb of any street with a cul-de-sac island.

(e) All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt. The Board may establish and levy fines and Specific Assessments for violation of such rules and regulations. The Association may also tow, at the expense of the Owner, any vehicle parked within the Properties in violation of the rules and regulations or any Governing Document.

(f) Garage doors shall remain closed at all times, except during ingress and egress from the garage and such other reasonable periods of time, as determined in the Board's sole discretion.

10.6. Leasing. Units may be leased for residential purposes only. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, Community Guidelines, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board.

10.7. Occupants Bound. All provisions of the Declaration, By-Laws, any rules and regulations, Design Guidelines and Community Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not paid timely, the fine may then be levied against the Owner.

10.8. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Unit; provided however, dogs, cats, and other usual and common household pets in reasonable number, as determined by the Board, may be maintained and kept, but not bred for commercial purposes, within Units. All pets shall be reasonably controlled by the owner whenever outside a Unit and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owners of the pet shall be responsible for all of the pet's actions. Pets shall not be permitted on the Pine Creek at Briargate Golf Course or within any other Private Amenity except in compliance with conditions established by the owner of such Private Amenity. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, they shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.3.

10.9. Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

Each Owner shall maintain its Unit in a neat and orderly condition throughout initial construction of a residential dwelling and not allow trash and debris from its activities to be carried by the wind or otherwise

scattered within the Properties. Storage of construction materials on the Unit shall be subject to such conditions, rules, and regulations as may be set forth in the Design Guidelines. Each Owner shall keep roadways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash from its activities at all times. Trash and debris during initial construction of a residential dwelling shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Units and shall not be buried or covered on the Unit. Owners shall remove trash and debris from the Unit and temporarily suspend construction activities on the Unit upon reasonable notice by Declarant in preparation for special events.

No noxious or offensive activity shall be carried on within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARB, shall be located, installed or maintained upon the exterior of any Unit unless required by law.

The reasonable and normal construction and development activities of the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Owner or occupant.

10.10. Prohibited Conditions. The following conditions, structures, or activities are prohibited within the Properties unless prior approval in writing is obtained from the ARB by the Owner or occupant:

(a) Lighting. Exterior lighting visible from the street as more specifically described in the Design Guidelines shall not be permitted except for: (i) approved lighting as originally installed on a Unit; (ii) 1 approved decorative post light; (iii) pathway lighting; (iv) landscape and accent lighting; (v) street lights in conformity with an established street lighting program for the Properties; (vi) seasonal decorative lights during the usual and common season; or (vii) front house illumination of model homes in compliance with the Design Guidelines; and

(b) Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

10.11. Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner is responsible for maintaining all drainage areas located on its Unit. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Unit. No Owner shall be entitled to overburden the drainage areas, drainage system, Properties, and/or Private Amenities with excessive water flow from its Unit. If remedial action is necessary to correct an

overburdening situation, an Owner shall be required to take whatever reasonable steps are necessary to remedy any overburdening situation.

(d) No Person shall alter the grading of any Unit without prior written approval pursuant to Article 9 of this Declaration.

(e) The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. However, the exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

(f) The Design Guidelines and Community Guidelines may set forth additional requirements with respect to drainage and grading.

10.12. Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped so as to permit safe sight across such areas and to comply with applicable requirements of the City of Colorado Springs regarding visibility and site distances.

10.13. Storage of Materials, Garbage, Dumping, Etc. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream or pond within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff.

No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Unit, except during the initial construction period of the improvements to the Unit and except for firewood that is stacked and placed on a Unit in accordance with any rules or regulations adopted by the Board. In addition, during construction the building materials on any Unit shall be placed and kept in an orderly fashion. Any Unit on which construction is in progress shall be policed prior to each weekend and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed.

10.14. Subdivision of Unit. Except as provided in Article 7, no Unit shall be subdivided or its boundary lines changed after a Plat or Supplemental Plat including such Unit has been approved and filed in the Public Records without the prior written consent of the Declarant, the Board, and the Owner(s) of such Unit(s). Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.15. Garage Conversions. No garage space shall be converted to living area without the prior written consent of the MC or, if the MC has not been formed, the ARB.

10.16. Occupancy of Unfinished Units. No dwelling erected upon any Unit shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being completed. After commencement of construction, each Owner shall diligently continue construction to complete such construction in a timely manner. With respect to construction of a residential dwelling, such construction shall be completed within one year from commencement. For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the ARB; (b) a building permit has been issued for the Unit by the appropriate jurisdiction; and (c) construction of a residential dwelling on the Unit has physically commenced beyond site preparation.

Completion of a dwelling shall mean that the residential dwelling has been substantially completed and may be used for residential purposes or that a final inspection report has been issued for such dwelling.

10.17. Temporary Structures. Except as may be permitted by the ARB, no temporary house, dwelling, garage or out building shall be placed or erected on any Unit. Except as provided in Section 10.5(b), no mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Unit as a temporary or permanent dwelling.

10.18. Golf Course Areas. Owners, as well as their families, tenants, guests, invitees, and pets, shall be obligated to refrain from any actions which would detract from the playing qualities of any golf course adjacent to the Properties. Such prohibited activities shall include, but shall not be limited to, burning materials where the smoke will cross the golf course property; maintenance of dogs or other pets under conditions which interfere with golf course play due to their loud barking or other actions; playing of loud radios, televisions, stereos or musical instruments; running, bicycling, skateboarding, crossing, walking, sitting, or trespassing in any way on the golf course property; and picking up balls or similar interference with play. In addition, no Person shall, by virtue of this Declaration, have any right to use any portion of any golf cart path system, including any portion thereof which may be situated upon Common Area, without the prior written approval of the owner of such golf course. Any golf course and golf cart path system shall be private property, and all Owners hereby acknowledge that no easement has been reserved or granted over or across such property for the benefit of the Owners or their families, tenants, guests, invitees or pets. This covenant is for the benefit of any golf course adjacent to the Properties and the owner thereof and persons playing golf on said golf courses and shall be enforceable by the owner of such golf course.

10.19. Standard Mailboxes. The ARB reserves the right to approve the style, design, color and location of any mailbox prior to the installation or replacement of any mailbox. By accepting a deed to a Unit, each Owner agrees that the ARB may remove any nonapproved mailbox in a reasonable manner; all costs for same shall be paid by Owner of such Unit, and all claims for damages caused by the ARB are waived.

ARTICLE 11: EASEMENTS

11.1. Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; ponds, wells, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility lines and meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant specifically grants to the local water supplier, electric company, telephone company, cable television company and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant, during the Development Period, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit, and except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.2. Easement for Slope Control, Drainage and Waterway Maintenance. The Declarant, for itself and the Association, and their respective representatives, successors and assigns, contractors and agents, hereby establishes and reserves a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon each Unit for the purposes of:

- (a) controlling soil erosion, including grading and planting with vegetation any areas of any Unit which are or may be subject to soil erosion;
- (b) drainage of natural or man-made water flow and water areas from any portion of the Properties;
- (c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Unit;
- (d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and
- (e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties.

11.3. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs, and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefitting from such easement is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such property.

11.4. Easement for Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Unit, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents, employees and managers of the Association, any member of its Board or committees, and its officers, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement includes the right to enter any Unit to cure any condition which may increase the risk of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Any entry by the Association or its authorized agents, employees or managers of the Association, any member of its Board or committees, or its officers onto a Unit for the purposes specified herein shall not constitute a trespass.

11.5. Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Unit to (a) perform its maintenance responsibilities under Article 5, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Unit shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

The Association also may enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys fees, may be assessed against the violator as a Specific Assessment.

11.6. Lateral Support. Every portion of the Common Area, every Unit, and any improvement which contributes to the lateral support of another portion of the Common Area or of another Unit shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.7. Easements for Private Amenities.

(a) Every Unit and the Common Area and the common property of any Neighborhood Association adjacent to any Private Amenity are burdened with an easement permitting golf balls unintentionally to come upon such Common Area, Units or common property of a Neighborhood and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Unit to retrieve errant golf balls; provided however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from any activity relating to a Private Amenity, including but not limited to, any errant golf balls or the exercise of this easement: LP47, LLC d/b/a La Plata Investments, the Declarant, or any successor Declarant; the Association or its Members (in their capacity as such); the owner(s) of the Private Amenities or their successors, successors-in-title, or assigns; any Builder or contractor (in their capacities as such); any officer, director, member, manager, or partner of any of the foregoing, or any officer or director of any partner of the foregoing.

(b) The owner(s) of the Private Amenities, their respective successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies

of water within the Common Areas, if any, lying reasonably within range of golf balls hit from any golf course within such Private Amenity.

(c) The owner of any Private Amenity within or adjacent to any portion of the Properties, its agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary to the operation, maintenance, repair and replacement of its Private Amenity.

(d) There is hereby established for the benefit of the Private Amenities and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel between the entrance to the Properties and the Private Amenities and over those portions of the Properties (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenities. Without limiting the generality of the foregoing, members of the Private Amenities and guests and invitees of the Private Amenities shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after special events, tournaments and other similar functions held by or at the Private Amenities to the extent that the Private Amenities have insufficient parking to accommodate such vehicles.

(e) Any portion of the Properties immediately adjacent to the Private Amenities are hereby burdened with a non-exclusive easement in favor of the adjacent Private Amenities for overspray of water from the irrigation system serving the Private Amenities. Under no circumstances shall the Association or the owner(s) of the Private Amenities be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(f) The Declarant hereby reserves for itself, its successors and assigns, and may assign to the owner(s) of the Private Amenities, an easement and all rights to draw water from any pond within or adjacent to the Properties for purposes of irrigation of the Private Amenities and for access to and the right to enter upon any ponds within or adjacent to the Properties, if any, for installation and maintenance of any irrigation systems.

11.8. Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any Plat or Supplemental Plat for the Properties, except in cases of willful or wanton misconduct.

11.9. Easement for Special Events. Declarant hereby reserves for itself, its successors, assigns and designees a perpetual, non-exclusive easement over the Common Area for the purpose of conducting educational, cultural, entertainment, or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.10. Rights to Stormwater Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees, including but not limited to the owner of any Private Amenity, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each

Owner agrees, by acceptance of a deed to a Unit, that Declarant shall retain all such rights. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

11.11. Easements for Wells and Water. The Declarant reserves, creates, establishes, promulgates and declares for itself and its duly authorized successors and assigns, which may include the owners of any Private Amenities, successors-in-title, agents, representatives, employees, licensees, and mortgagees, non-exclusive, perpetual, reciprocal, appurtenant easements over the Properties (but not through a dwelling) for the purposes of access, ingress and egress and for the purposes of connecting, installing, constructing, monitoring, replacing, repairing, maintaining and operating wells and water and irrigation lines and systems and for the purpose of withdrawing water from any wells or aquifers within or underlying the Properties. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to any property as a result of the use of these easements.

11.12. Additional Easements. All or portions of the Properties are also subject to those additional easements described in Exhibit "E", which is attached hereto and incorporated by this reference.

ARTICLE 12: MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

12.2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Voting Delegates representing at least 67% of the total Association vote consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (neither the conveyance of property in accordance with Section 4.2 nor the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Units and the Common Area (the issuance and amendment of Design Guidelines, Community Guidelines, architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

12.3. Other Provisions for First Lien Holders. To the extent not inconsistent with Colorado law:

(a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

12.4. Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association as a result of destruction, damage, or condemnation pursuant to Section 12.3, to amendments made by Declarant to exercise Development Rights or Special Declarant Rights or to the annexation of property in accordance with Article 7.

(a) The consent of Voting Delegates representing at least 67% of the total votes in the Association (excluding any votes held by the Declarant) and, during the Development Period, of the Declarant, and the approval of the Eligible Holders of first Mortgages on Units to which at least 67% of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of Voting Delegates representing at least 67% of the total votes in the Association (excluding any votes held by the Declarant) and, during the Development Period, of the Declarant, and the approval of Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of the Properties;
- (vii) leasing of Units;
- (viii) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit; or
- (ix) any provisions included in the Declaration, By-Laws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

12.5. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.6. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

12.7. HUD/VA Approval. During the Declarant Control Period, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development, so long as it is insuring the Mortgage on any Unit, or the U.S. Department of Veterans Affairs, so long as it is guaranteeing the Mortgage on any Unit: merger, consolidation or dissolution of the Association; annexation of additional property other than the Additional Property described on Exhibit "B;" dedication, conveyance or mortgaging of Common Area except in accordance with Section 4.2; or material amendment of this Declaration, the By-Laws or the Articles.

12.8. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.9. Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Colorado law for any of the acts set out in this Article.

ARTICLE 13: SPECIAL DECLARANT RIGHTS

13.1. Special Declarant Rights. The Declarant reserves the following Special Declarant Rights during the Development Period, which may be exercised, where applicable, anywhere within the Properties:

- (a) To complete any improvements indicated on the Plats or Supplemental Plats filed with the Declaration or any Supplemental Declaration;
- (b) To exercise any Development Right reserved in the Governing Documents;
- (c) To maintain advertising signs on the property described on Exhibits "A" and "B" and to maintain offices as set forth in Section 13.3;
- (d) To exercise easements through the Common Area for the purpose of making, constructing and installing improvements within the property described on Exhibits "A" and "B";
- (e) To merge or consolidate the Association with another common interest community of the same form of ownership; and
- (f) To appoint and remove any director or officer of the Association as provided in the By-Laws.

13.2. Transfer of Special Declarant Rights.

(a) Assignment. The Declarant may assign any or all of the Special Declarant Rights, Development Rights, or other special rights and obligations of the Declarant set forth in this Declaration or the By-Laws to any affiliate of the Declarant or a Builder, or Declarant may allow any affiliate of the Declarant or a Builder to exercise such rights on behalf of the Declarant. The method of exercising such rights shall be subject to the agreement of the parties thereto, which agreement shall not require recordation in the Public Records.

(b) Transfer. Any or all of the Special Declarant Rights, Development Rights, or other special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all future liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.3. Sales and Construction Activities. During the Development Period, the Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Properties such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, including, but not limited to, signage, business offices, sales offices, management offices, and model units and any related parking facilities and sales,

development and construction activities. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

13.4. Construction of Improvements. During the Development Period, the Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

13.5. Other Covenants Prohibited. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 7.5, may conflict with the Declaration, By-Laws or Articles.

ARTICLE 14: PRIVATE AMENITIES

14.1. General. Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

14.2. Conveyance of Private Amenities. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. Further, the ownership or operation of the Private Amenities may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; or (c) the conveyance of any Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association, any Neighborhood Association, any Voting Delegate, or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

14.3. View Impairment. Neither the Declarant, the Association, nor the owner of any Private Amenity, guarantees or represents that any view over and across any Private Amenity, the Common Area or any public facilities from Units will be preserved without impairment. The owners of such property, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute