DECLARATION

OF

COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

FOR

THE GREENS AT KISSING CAMELS ESTATES TOWNHOMES
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DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
THE GREENS AT KISSING CAMELS ESTATES TOWNHOMES

This Declaration ("Declaration") is made this 5th day of September, 2001, by HILL DEVELOPMENT CORPORATION, a Delaware corporation ("Declarant").

ARTICLE I - STATEMENTS OF PURPOSE AND DEDICATION

1.1. Owner and Property. Declarant is the owner of certain real property located in the City of Colorado Springs, El Paso County, Colorado more particularly described on Exhibit A, attached hereto (the "Property").

1.2. Project. Declarant intends to develop the Property as a planned community of townhomes to be known as The Greens at Kissing Camels Estates Townhomes (hereinafter the "Project"), all in accordance with the Colorado Common Interest Ownership Act, Colo. Rev. Stat. § 38-33.3-101 through § 38-33.3-319, as amended and supplemented from time to time (the "Act").

1.3. Project a Part of Planned Community. The Project is contained within an area referred to as the "Corporate Area" in that certain Certificate of Incorporation of Kissing Camels Property Owners' Association filed of record with the Colorado Secretary of State on or about May 23, 1960. The Corporate Area constitutes a planned community composed of single family, duplex, townhome and condominium properties, as well as golf course, clubhouse, tennis, swimming, recreation center and other amenities, of which the Project is a part.

1.4. Purpose. The Property exists in a unique setting within an urban area and within the boundaries of the Corporate Area. The purpose of this Declarant is to impose upon the Property mutually beneficial covenants, conditions, restrictions and easements under a common and general plan of development in order to (i) assure, preserve and enhance, now and in the future, the attractiveness, desirability and value of the Property, and all improvements and amenities constructed thereon, and the compatibility of such improvements with the private, secure and exclusive residential living environment of the Corporate Area as a whole, (ii) prevent any future impairment of the same and guard against the construction on the Property of improvements which are incompatible with the Corporate Area or constructed of improper or unsuitable materials or with improper quality or methods of construction, (iii) provide for the operation, administration, use and maintenance of common areas within the Property, (iv) promote the recreation, health, safety and welfare of the owners of lots within the Property, (v) provide for the Association (as defined below) to hold, maintain and manage the common areas in the Property and perform certain functions for the benefit of owners of lots within the Property, (vi) set forth the duties, powers and rights of said Association, and (vii) set forth the duties, powers
and rights of owners of lots within the Property.

1.5. Development and Use. It is anticipated the Project will initially be composed of two (2) Townhome Lots. Upon completion of the Project, and conditioned on compliance with the regulations of the City of Colorado Springs and El Paso County, Colorado, the Project may consist of a maximum of 38 Townhome Lots. Each Townhome Lot may be developed by the construction of a townhome dwelling unit. No more than 38 Townhome Lots may be established on the Property by subdivision of existing Lots or residential units or by time shares or any other method.

1.6. Dedication. To accomplish the purposes, intentions and desires set forth above, Declarant hereby declares, for itself, its successors and assigns, that from and after the date of recording of this Declaration, the Property shall constitute a planned community under the Act, and shall be held, sold and conveyed subject to the covenants, conditions, restrictions and easements set forth herein. The provisions of this Declaration are hereby imposed and imposed upon the Property and each part and parcel thereof as an equitable servitude, shall run with the land and shall bind, be a charge upon and inure to the mutual benefit of all persons and entities having or acquiring any right, title or interest thereto (including the Declarant and the Association) and their encumbrancers, claimants, heirs, personal representatives, successors and assigns, agents, family members, lessees/tenants, employees, independent contractors, guests, invitees and licensees.

ARTICLE II - DEFINITIONS

The following terms, as used in this Declaration are defined as follows:

2.1. “Act” means the Colorado Common Interest Ownership Act, Colo. Rev. Stat. § 38-33.3-101 through § 38-33.3-319, as amended and supplemented from time to time, or any successor legislation to these statutes.

2.2. “Annual Assessment” means the Assessment levied annually pursuant to Section 11.3, below.

2.3. “Architectural Control Committee” or “ACC” or “Committee” means the committee formed pursuant to the provisions of this Declaration to perform the functions described herein and as may be delegated to it from time to time by the Board.

2.4. “Articles” or “Articles of Incorporation” means the articles of incorporation for the Association, which shall be filed with the Colorado Secretary of State to create the “THE GREENS AT KISSING CAMELS ESTATES TOWNHOMES HOMEOWNERS ASSOCIATION, INC.”, as such Articles may be amended or restated from time to time.

2.5. “Assessments” means the Annual, Special and Default Assessments levied pursuant to Article XI, below.
2.6. "Association" means the THE GREENS AT KISSING CAMELS ESTATES TOWNHOMES HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit membership corporation, and any successor to that entity by whatever name, charged with the duties and obligations of administering the Project.

2.7. "Association Documents" means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the Articles, the Bylaws, and any rules, regulations, policies or procedures adopted under such documents by the Association, the Board of Directors and its authorized committees, the Architectural Control Committee, and the Plat.

2.8. "Board of Directors" or "Board" means the Board of Directors of the Association, which is the executive board, as defined in the Act, designated in this Declaration to act on behalf of the Association.

2.9. "Bylaws" means the Bylaws of the Association, which establish the methods and procedures of its operation, as such bylaws may be amended or restated from time to time.

2.10. "Common Area" means all those areas designated as such in any Plat of the Property, as amended from time to time, whether within a street right-of-way or otherwise, which are not separately owned by Owners of Townhome Lots, and any other real property and Improvements thereon, if any, in which the Association owns an interest for the common use, benefit and enjoyment of some or all of the Owners and such other persons who may be permitted to use the Common Area under the terms of this Declaration or any agreement with the Association. Such interest may include, without limitation, estates in fee, for terms of years, or easements.

2.11. "Common Expenses" means (i) all expenses expressly declared to be Common Expenses by the Association Documents; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Area and Exterior Maintenance Area; (iii) insurance premiums for the insurance carried under Article XIV; (iv) all expenses lawfully determined to be Common Expenses by the Board of Directors; (v) all expenses to be allocated among Owners as provided in Article XI; and (vi) all expenses for maintenance obligations as may be shown on the Plat.

2.12. "Corporate Area" means the real property identified as "Corporate Area" in that certain Certificate of Incorporation of Kissing Camels Property Owners' Association filed of record with the Colorado Secretary of State on or about May 23, 1960, as the same may be amended from time to time.

2.13. "Declarant" means HILL DEVELOPMENT CORPORATION, a Delaware corporation, or its successors or assigns, including any Successor Declarant to the extent the rights of Declarant are assigned to the Successor Declarant, as provided in this Declaration below.

2.14. "Declaration of Annexation" means a declaration prepared and recorded in
accordance with the provisions of Article XVIII to incorporate all or any part of the Expansion Property, or other unspecified real estate, within the Property governed by this Declaration.

2.15. “Default Assessment” means the Assessments levied by the Association pursuant to Section 11.5, below.

2.16. “Default Rate” means an annual rate of interest that is the lesser of (i) five percent above the prime rate of interest charged by the Association’s bank, or such other rate as shall have been established by the Board of Directors, and (ii) the maximum rate permitted by the Act or other applicable law.

2.17. “Development Rights” is defined in Section 13.1.2, below.

2.18. “Director” means a member of the Board.

2.19. “Eligible Mortgage Holder” means a First Mortgagee or any insurer or guarantor of a First Mortgage which has notified the Association in writing of its name and address and status as a holder, insurer or guarantor of a First Mortgage. Such notice will be deemed to include a request that the Eligible Mortgage Holder be given the notices and other rights described in Article XIX.

2.20. “Expansion Property” means such additional real property owned by Declarant, as Declarant may make subject to the provisions of this Declaration by a duly recorded Declaration of Annexation. The real property, if any, identified as Expansion Property as of the date of this Declaration is more particularly described on Exhibit B attached to this Declaration, and may be added to this Declaration as provided in Article XVIII.

2.21. “Exterior Maintenance Area” means the exterior of any Residence (excluding window panes) and any property or Improvements surrounding the Residence and within the perimeter of the Townhome Lot on which the Residence is located.

2.22. “First Mortgage” means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

2.23. “First Mortgagee” means the holder of record of a First Mortgage.

2.24. “Guest” means any family member, employee, agent, independent contractor, lessee or tenant, guest, invitee or licensee of an Owner.

2.25. “Improvement” means all Residences, Structures or Landscaping, as those terms are defined herein, and shall include as well any, all and every other improvement, addition, change or alteration to the Property, including changes in any exterior color or shape, excavation and all other site work, including without limitation grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. “Improvement(s)” does not include
turf, shrub, or tree repair or replacement of a magnitude that does not change exterior colors or exterior appearances. “Improvement(s)” does include both original work and all later changes and additions.

2.26. “Landscaping” means the treatment of ground surface with live or artificial plant materials, chips, crushed stone, decorative rocks, mulch materials, wood, hedges, windbreaks, ponds, grass, planted trees and shrubs, flowers, or other decorative surfacing or landscaping materials.

2.27. “Limited Common Area” means and refers to those parts, if any, of the Common Area reserved by this Declaration or by operation of the Act for the exclusive use of the Owners of one or more, but fewer than all, of the Lots. Any patios, porches, balconies, decks, window wells, shutters, awnings, window boxes, exterior doors and windows, doorsteps, stoops, entryways, walkways, driveways, utility, mechanical, exhaust and/or ventilation systems and/or other fixtures or Improvements that are designed to serve one or more, but fewer than all, Residences shall be deemed Limited Common Area allocated exclusively to the Residence served. In addition, any physical portion of the Property designated on any map or Plat of the Property as “Limited Common Area”, “LCA” or the like shall be deemed a Limited Common Area allocated exclusively to the Residences served.

2.28. “Manager” means such person or entity engaged by the Board to perform certain duties, powers, or functions of the Board pursuant to this Declaration or the Bylaws.

2.29. “Master Association” means the Kissing Camels Property Owners’ Association, a Colorado nonprofit corporation, or any successor to that corporation.

2.30. “Master Association Documents” shall mean the basic documents creating and governing the Master Association, including but not limited to the Articles of Incorporation and Bylaws for the Master Association, and any other procedures, rules, regulations, policies, procedures or agreements adopted under such documents by the Master Association or its Board of Trustees/Directors.

2.31. “Member” means any person holding a membership in the Association.

2.32. “Mortgage” means any mortgage, deed of trust or other document which is recorded in the office of the Clerk and Recorder of El Paso County, Colorado, and which encumbers any portion of the Property or interest therein as security for payment of a debt or obligation.

2.33. “Mortgagor” means any person named as a mortgagor or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

2.34. “Owner” means the owner of record (including Declarant, and including a contract seller, but excluding a contract purchaser), whether one or more persons, of fee simple title to any Townhome Lot, but does not mean or refer to any person who holds such interest
merely as security for the performance of a debt or other obligation, including a Mortgage, unless and until such person has acquired fee simple title pursuant to foreclosure or other proceedings.

2.35. “Party Wall” means the common wall located in the common boundary separating individual Residences contained within duplex structures, as shown on the Plat, the footings underlying the common wall, and the portion of the roof over the common wall.

2.36. “Period of Declarant Control” means the period during which Declarant (or any Successor Declarant) may appoint and remove the Directors and officers of the Association as permitted under the Act. The Period of Declarant Control will begin on the date this Declaration is first recorded in the office of the Clerk and Recorder of El Paso County, Colorado, and will end no later than either sixty (60) days after conveyance of seventy-five percent (75%) of the Townhome Lots that may be created within the Property (including the Expansion Property) to Owners other than Declarant (or any Successor Declarant), two (2) years after the last conveyance of a Townhome Lot by Declarant (or any Successor Declarant) in the ordinary course of business, two (2) years after any right to add new Townhome Lots was last exercised, or the date on which Declarant (or any Successor Declarant) voluntarily terminates the Period of Declarant Control by recording a notice to that effect in the office of the Clerk and Recorder of El Paso County, Colorado, whichever of the foregoing dates or events occurs first.

Notwithstanding the foregoing, the Period of Declarant Control will be extended at the option of Declarant if the Act is amended to allow for the extension of the period of Declarant Control beyond the limiting dates outlined in this Section above, or if the Period of Declarant Control is reinstated or extended by agreement between Declarant and the Association. After the termination of the Period of Declarant Control, Declarant, if still an Owner, will have all the rights and duties ordinarily given to Members under this Declaration.

2.37. “Person” (whether or not in capitalized form) means a natural person, a corporation, a partnership, a limited liability company, an association, a trust, or any other entity or combination thereof.

2.38. “Plat” means any land or engineering survey or surveys of all or part of the Property, together with such other diagrammatic plans and information regarding the Property as may be required by the Act or other applicable law, or as may be included at the discretion of Declarant, as each may be supplemented, amended, vacated and or replatted from time to time, and all as recorded in the office of the Clerk and Recorder of El Paso County, Colorado.

2.39. “Project” means the planned community established by this Declaration, including any additional real property that may be incorporated in the Project from time to time and made subject to this Declaration pursuant to the provisions hereof.

2.40. “Property” means and includes the real property described on Exhibit A and initially subjected to this Declaration, and also refers to any additional real property that may be incorporated in the Project from time to time and made subject to this Declaration pursuant to the provisions hereof.
2.41. "Residence" means a townhome dwelling unit constructed on any one Townhome Lot designated by the City of Colorado Springs and by Declarant (by appropriate notes on the Plat or otherwise) for residential use.

2.42. "Special Assessment" means the Assessment levied pursuant to Section 11.4, below, on an irregular basis.

2.43. "Special Declarant Rights" is defined as set forth in Article XIII hereof.

2.44. "Special Declarant Rights Period" means the period beginning on the date this Declaration is first recorded in the office of the Clerk and Recorder of El Paso County, Colorado, and ending on the date on which Declarant shall have conveyed to third parties (other than a Successor Declarant) all Townhome Lots/Residences that may be created within the Property (including the Expansion Property).

2.45. "Structure" means any thing or device, other than Landscaping (as that term is defined herein), the placement of which upon the Property (or the attachment of which to any Residence or other Structure), might affect the Property’s appearance including, by way of illustration and not limitation, any Residence, building, outbuilding, porch, shed, greenhouse, play area or recreational apparatus, gate, flag pole, house number, sign, mail box, patio, deck, cover, awning, sun screen, addition, walkway, patio, sprinkler pipe, garage, carport, access way, driveway, parking area, loading area, wall, fence, screening wall, retaining wall, stair, pole, satellite dish, exterior lighting or other fixture.

2.46. "Successor Declarant" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as permitted by Section 26.8 and evidenced by an assignment or deed of record in the office of the Clerk and Recorder of El Paso County, Colorado, designating such party as a Successor Declarant, signed by the transferor and the transferee, and otherwise complying with the requirements of the Act. Upon such recording, Declarant’s rights and obligations under the Declaration shall cease and terminate to the extent provided in such document.

2.47. "Townhome Lot" or "Lot" means a parcel of land designated as a lot on any Plat of the Property and reserved for development and occupancy of a Residence, together with all appurtenances and Improvements, including a Residence, now or in the future on such Lot. (A Townhome Lot is a "unit" as defined in the Act.)

ARTICLE III - PROJECT A PLANNED COMMUNITY

3.1. Establishment of Planned Community. By this Declaration, the Project is established as a planned community under the Act. It is anticipated the Project will initially be composed of two (2) Townhome Lots. Upon completion of the Project, and conditioned on compliance with the regulations of the City of Colorado Springs and El Paso County, Colorado, the Project may consist of a maximum of 38 Townhome Lots.
3.2. **Declaration of Townhome Lot Boundaries.** The boundaries of each Townhome Lot are delineated on the Plat, and each Townhome Lot is identified by the number or address noted on the Plat.

3.3. **Plat.** The Plat shall conform to the requirements of the Act and shall be filed for record in the office of the Clerk and Recorder of El Paso County, Colorado. In connection with the development of the Project, Declarant intends to file a series of supplemental plats from time to time (including, potentially, vacations/replats of existing plats) as stages of construction of the Project are completed. Any plat filed subsequent to the initial Plat of the Property shall be termed a replat or supplement to the Plat, and the numerical sequence or other identifying information of each supplement or replat shall be shown thereon.

3.4. **Recorded Easements and Licenses.** The recording data for recorded easements and licenses appurtenant to or included in the Project is set forth on the attached Exhibit C.

**ARTICLE IV - ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

4.1. **Membership.** Every Owner of a Townhome Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Townhome Lot. No Owner, whether one or more persons, will have more than one membership per Townhome Lot owned, but all of the persons owning each Townhome Lot will be entitled to rights of membership and use and enjoyment appurtenant to such ownership.

4.2. **Transfer of Membership.** An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Townhome Lot and then only to the purchaser or Mortgagee of his Townhome Lot.

4.3. **Classes of Membership.** Initially, the Association shall have one class of voting membership, composed of all Owners, including Declarant. The Bylaws may set forth additional classifications of membership from time to time.

4.4. **Voting Rights.** Each Member shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one vote for each Townhome Lot owned, as each Townhome Lot is originally platted by Declarant. The number of votes will be determined by reference to the Plat as originally recorded by Declarant.

When more than one person holds an interest in any Townhome Lot, all such persons shall be Members. The vote for such Townhome Lot shall be exercised by one person or alternative persons as the Owners among themselves determine. If more than one of the multiple Owners are present at a meeting in person or by proxy, the vote allocated to their Townhome Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is a majority agreement if any one of the multiple Owners casts the vote allocated to his Townhome Lot without protest being made promptly to the person presiding over the meeting by...
any of the other Owners of the Townhome Lot.

Any Owner of a Townhome Lot which is leased may assign his voting right to the tenant, provided that a copy of the instrument of assignment is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right.

4.5. **Appointment of Officers and Directors by Declarant.** Until the expiration of the Period of Declarant Control and subject to the limitations of the Act, Declarant will retain the exclusive powers to appoint and remove Directors and officers of the Association.

Notwithstanding the foregoing, Declarant may voluntarily surrender the right to appoint and remove Directors and officers of the Association before the end of the Period of Declarant Control by providing a notice to that effect to the Association and otherwise complying with the procedures for termination of this Special Declarant Right, as set forth in the Bylaws. However, upon voluntarily terminating this Special Declarant Right in advance of the expiration of the Period of Declarant Control, Declarant may require throughout the balance of the Period of Declarant Control (had it not been voluntarily terminated) that specified actions of the Association or the Board, as described in an instrument executed and recorded by Declarant in the Office of the Clerk and Recorder of El Paso County, Colorado, be approved by Declarant before those actions become effective.

After the Period of Declarant Control, the Directors and officers of the Association will be elected as provided in the Bylaws.

4.6. **Notice of Membership.** Any person, on becoming a Member, will furnish the Secretary of the Association with a photocopy or certified copy of the recorded instrument or such other evidence as may be specified by the Board under the Bylaws or the Association rules, vesting the person with the interest required to make him a Member. At the same time, the Member will provide the Association with the single name and address to which the Association will send any notices given pursuant to the Association Documents. The Member will state in such notice the voting interest in the Association to which the Member believes he is entitled and the basis for that determination. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Member will give a new written notice to the Association containing all of the information required to be covered in the original notice. The Association will keep and preserve the most recent written notice received by the Association with respect to each Member.

4.7. **Owner’s and Association’s Addresses for Notices.** All Owners of each Townhome Lot shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Townhome Lot shall furnish such registered address to the Secretary of the Association within five days after transfer of title to the Townhome Lot to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Townhome Lot or by such persons as are authorized by law to represent the interests of all Owners of the Townhome Lot. If no address is registered or if all of
the Owners cannot agree, then the address of the Townhome Lot shall be deemed their registered address until another registered address is furnished as required under this Section.

If the address of the Townhome Lot is the registered address of the Owners, then any notice shall be deemed duly given if delivered to any person occupying the Residence or sent to the Residence by any other means specified for a particular notice in any of the Association Documents, or if the Residence is unoccupied, if the notice is held and available for the Owners of the principal office of the Association. All notices and demands intended to be served upon the Board of Directors shall be sent to the address of the Association or such other address as the Board may designate from time to time by a notice delivered to all Owners in accordance with this Section.

Unless applicable provisions of this Declaration or the Act expressly require otherwise, all notices given under this Declaration shall be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit with a courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three days after deposit in the U.S. mail.

4.8. Compliance with Association Documents and Master Association Documents. Each Owner will abide by and comply in all respects with the provisions, covenants, conditions, easements and restrictions contained in the Association Documents and the Master Association Documents.

ARTICLE V - POWERS AND DUTIES OF ASSOCIATION

5.1. Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration and the Act, the Association shall be responsible for the administration and operation of the Project. The Board of Directors will exercise for the Association all powers, duties and authority vested in or obligated to be taken by the Association and not reserved to Declarant or the other Members by this Declaration, the other Association Documents, the Act or other applicable law.

5.2. Common Area. From time to time before the expiration of the Period of Declarant Control, Declarant may, but shall not be obligated to, convey to the Association by written instrument recorded with the Office of the Clerk and Recorder of El Paso County, Colorado, specified parcels of the Property (including the Expansion Property), as Common Area.

5.3. Provisions Generally Applicable to Common Area

5.3.1. Use of Common Area and Limited Common Area. Any Common Area generally is designated by this Declaration for the common use, benefit and enjoyment of all Owners and their Guests, and each other person as may be permitted to use the Common Area by the terms of this Declaration, by agreement established under this Article below, or otherwise;
provided, however, the use of any Limited Common Area shall be deemed allocated exclusively for the benefit and enjoyment of the Owners of the Residences to which it is appurtenant and their Guests, and each other person as may be permitted use by the terms of this Declaration or the Association Documents.

5.3.2. No Dedication to the Public. Nothing contained in this Declaration or the other Association Documents shall be construed as a dedication to public use, or a grant to any public municipal or quasimunicipal authority or utility, or an assumption of responsibility for the maintenance of any Common Area by any such authority or utility, absent an express written agreement to that effect.

5.3.3. Association’s Responsibility for Common Area. The Association, subject to the rights and obligations of the Owners set forth in this Declaration, will be responsible for the maintenance, management and control of any Common Area (including Improvements, furnishings and/or equipment related thereto or located thereon), and will keep it in good, clean, and attractive condition and repair consistent with the standards of the Project and the Corporate Area.

5.3.4. Declarant’s Right to Perform for the Account of the Association. In the event the Association does not repair or maintain the Common Area, Declarant will have the right, but not the obligation, to perform such duties for the Association. In that event, Declarant will be entitled to reimbursement from the Association of all costs incurred by Declarant, such reimbursement being due within 30 days after the receipt by the Association of an invoice from Declarant, itemizing the costs incurred. After expiration of the 30 day period allowed for payment, Declarant may collect interest on the amount due at the Default Rate.

5.3.5. Association’s Agreements Regarding Common Area. The Association, acting through the Board of Directors, may grant easements, rights-of-way, leases, licenses and concessions through or over the Common Area without the independent approval by the Owners, subject, however, to the rights of Declarant and the Owners to use the Common Area as provided in this Declaration. Without limiting the generality of the foregoing, the Association may grant such rights to suppliers of utilities serving the Project or property adjacent to the Project, and to developers or owners of property adjacent to the Project for the purpose of accommodating minor encroachments onto the Common Area or other purposes that do not unreasonably interfere with the use and enjoyment of the Common Area by the Owners.

5.3.6. Declarant’s Agreements Regarding Common Area. Upon the transfer by Declarant to the Association of any Common Area as provided in this Declaration, Declarant may agree under the terms of the transfer, and subject to the limitations of the Act, that the Association may be required to contract with the Master Association or other organizations operating within or in the vicinity of the Project, to allow use of all or part of the Common Area under such terms and for such charges as may be acceptable to Declarant and such association or other organizations.

Any use of the Common Area by Owners and their families, tenants and guests, and such
other persons permitted access to the Common Area will be subject to any applicable rules governing the Common Area, as provided in Section 5.4.

5.3.7. **Owner’s Negligence.** In the event that the need for maintenance, repair or replacement of all or any portion of the Common Area is caused through or by the negligent or willful act or omission of an Owner, or any Guest of an Owner, then the expenses incurred by the Association for such maintenance, repair or replacement shall be a personal obligation of such Owner. If the Owner fails to repay the expenses incurred by the Association within 30 days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Section, and such expenses shall automatically become a Default Assessment enforceable in accordance with Article XI, below.

5.4. **Rules and Regulations.**

5.4.1. **Board’s Power.** From time to time and subject to the provisions of the Association Documents, the Board of Directors may adopt, amend and repeal rules and regulations governing among other things and without limitation, the use of the Townhome Lots and the use of the Common Area. A copy of the rules in effect will be distributed to each Member, and any change in the rules will also be distributed within a reasonable time following the effective date of the change.

5.4.2. **Enforcement.** The Board of Directors will provide for enforcement of the Association rules as set forth in the Bylaws. Without limiting the generality of the foregoing, the Board may suspend the voting rights of a Member after notice and hearing as provided in the Bylaws for an infraction of the rules.

5.5. **Cooperation with Master Association and Project Associations.** The Board will assist the Master Association in the performance of its duties and obligations under its governing documents, and the Association will cooperate with the Master Association so that each of those entities may most efficiently and economically provide its respective services to Owners. It is further contemplated that from time to time each of the Association and the Master Association or the association of another project in the Corporate Area may use the services of the other in the furtherance of its respective obligations, and each may contract with the other to better provide for such cooperation. In the case of any such agreement between the Association and the Master Association, the payment for such contract services or a variance in services provided may be reflected in an increased assessment by the Master Association for the Owners (and the members of any other association in the Corporate Area similarly benefitted by the contract) or by an item in the Association’s budget which will be collected through Assessments by the Association and remitted to the Master Association.

5.6. **Delegation by Association Board.**

5.6.1. **Delegation to Master Association Board.** Without limiting the generality of the provisions in Section 5.1, the Board of Directors may delegate certain of its powers to the board of directors of the Master Association as the Board may specify by resolution and as the
board of directors of the Master Association may accept from time to time, including the power
to adopt and amend budgets for revenues, expenditures and reserves and collect assessments for
common expenses from Owners and the other powers set forth in Section 38-33.3-302 of the
Act. After the Period of Declarant Control, the board of directors of the Master Association will
be elected in accordance with the requirements of Section 38-33.3-220 of the Act.

5.6.2. **Delegation to Manager.** The Association, acting through the Board, may
employ or contract for the services of a Manager to act for the Association and the Board and the
officers according to the powers and duties delegated to the Manager pursuant to the Bylaws or
resolution of the Board. Neither the Board nor any officer of the Association will be liable for
any omission or improper exercise by a Manager of any such duty, power or function so
delegated by written instrument executed by or on behalf of the Board.

5.6.3. **Committees.** The Association, acting through the Board, may delegate
any of its rights, duties or responsibilities to any committee or other entity that the Board may
choose to form.

5.6.4. **Limitation.** Any delegation by the Board under this Article V is subject
to compliance with the Act and the Bylaws and the requirement that the Board, when so
delegating, will not be relieved of its responsibilities under the Association Documents and the
Act.

5.7. **Ownership of Personal Property and Real Property for Common Use.** The
Association, through action of the Board of Directors, may acquire, hold and dispose of real
property and personal property, including without limitation any fee, leasehold or other property
interests within the Project conveyed to the Association by Declarant. The beneficial interest in
any such property shall be deemed to be owned by the Owners in undivided shares allocated
equally among the Townhome Lots subject to this Declaration from time to time. Such interests
shall not be transferable except with the transfer of a Townhome Lot. The conveyance of a
Townhome Lot shall transfer ownership of the transferor’s beneficial interest in such personal
property without any reference to it. EachOwner may use all such property in accordance with
the purposes for which it is intended, without hindering or encroaching on the rights of other
Owners. The transfer of title to a Townhome Lot under foreclosure shall entitle the purchase to
enjoy the interest in such property associated with the foreclosed Townhome Lot.

5.8. **Roads and Streets.** If Declarant elects to include roads or streets in the Common
Area from time to time, the Association will be responsible for them, subject to any shared use
agreements or other arrangements that may be established between the Association and the
Master Association, other associations operating in the Corporate Area, or other third parties
permitted to use the Common Area, as provided in this Declaration. In any case, such
maintenance will include periodic maintenance of the surface and regular snow, ice, and trash
removal from all drive areas. The Board will cooperate with traffic and fire control officials as
appropriate to post public and private drives, roads and streets with traffic control, fire lane, and
parking regulation signs.
5.9. Books and Records. The Association will make available for inspection by Owners and Mortgagees, upon request, during normal business hours or under other reasonable circumstances, current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. Any Owner or Mortgagee may make a written request to the Association for a copy of the Association's financial statements for the preceding year. The Association may charge a reasonable fee for copying such materials.

5.10. Reserve Account. The Association will have the right to establish and maintain an adequate reserve fund for Common Expenses from Assessments levied pursuant to Article XI, below.

5.11. Implied Rights and Obligations. The Association will perform all of the duties and obligations imposed on it expressly by the Association Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Documents or reasonably necessary to satisfy any such duty or obligation. The Association may exercise any other right or privilege (i) given to it expressly by the Association Documents, (ii) reasonably to be implied from the existence of another right or privilege given expressly by the Association Documents, or (iii) reasonably necessary to effectuate any such right or privilege.

ARTICLE VI - ARCHITECTURAL CONTROL COMMITTEE

6.1. Composition of Architectural Control Committee. The Architectural Control Committee shall consist of no fewer than three (3) members appointed by the Board. A majority of the Architectural Control Committee may designate a representative to act on its behalf. It shall be the duty of the Architectural Control Committee, and it shall have the power, by the exercise of its best judgment, to assure that all Improvements upon, under or above the Property, and their design, construction, reconstruction, alteration, appearance and maintenance conform in all respects to the requirements of this Declaration and the other Association Documents (including any rules, regulations, policies or procedures adopted by the Architectural Control Committee).

6.2. Authority to Adopt Rules, Regulations, Policies and Procedures. The Architectural Control Committee may adopt whatever rules, regulations, policies and procedures it may deem reasonable and prudent in its sole and absolute discretion in the performance of its duties hereunder so long as the same do not expressly contradict the provisions of this Declaration.

6.3. Approval Required. No Improvement shall be made to, or placed, erected, installed or permitted to occur or exist on, any portion of the Property, nor shall the visible appearance of any existing Improvement be altered or changed in any way, nor shall any construction or installation of any Improvement be commenced, unless and until all plans and specifications for such Improvement have been submitted to, and approved in writing by, the Architectural Control Committee, and otherwise comply in every respect with the provisions of this Declaration and
the Association Documents. Matters which require the approval of the Architectural Control Committee include, but are not limited to:

(a) the original placement, construction, installation or erection of any Improvement;

(b) the demolition or destruction, by voluntary action, of any Improvement;

(c) any other grading, excavation, filling or similar disturbance to the surface of the Property; and

(d) any change, alteration, reconstruction, renovation or expansion of any previously constructed, installed or approved Improvements, including any change of Landscaping, exterior appearance, finish material, color or texture of any Residence or other Structure or Improvement (interior renovations to a previously completed Residence, Structure or Improvement which do not change or alter the exterior appearance and which are not otherwise restricted by the terms of this Declaration shall not require the approval of the Architectural Control Committee).

6.4. Content of Plans. All building plans and specifications, architectural plans and specifications, landscaping and/or grading plans and specifications, samples and other materials to be submitted to the Architectural Control Committee shall be complete and submitted in duplicate. The minimum scale of all plans shall be one-twentieth of an inch equals one foot. The plot plan shall show the location of all Residences and Structures (plotted horizontally and vertically), drives, walks, walls, windbreaks, fences, Landscaping and any other Improvements. Proposed new contours throughout the Townhome Lot and abutting street elevations on all sides shall be shown as well. Plans for Residences and other Structures shall show all exterior elevations, exterior design, style, height, building materials and color scheme thereof, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. If requested, a soils report for the Townhome Lot shall be supplied. Landscaping and/or grading plans shall show the location of all landscaping elements, including grass, ground cover, shrubs, trees and other landscape materials for the entire area of the Townhome Lot not to be covered by Improvements or other Structures. The size (as planted and at maturity) and type of all new plant materials shall be indicated. All plans, samples and other materials as may be requested by the Architectural Control Committee shall be prepared, obtained and furnished at the sole cost and expense of the Owner.

6.5. Mandatory Approval of Plans; Approval Procedures.

6.5.1. Submittal of Plans. In order to avoid unnecessary hardships, all Owners contemplating such construction, reconstruction, remodeling, landscaping, planting or alteration shall submit in duplicate preliminary drawings of the proposed work to the Architectural Control Committee in order to obtain tentative action thereon before causing the preparation of detailed or complete drawings, plans or specifications, or incurring substantial expense.
6.5.2. **Approval of Plans.** The Architectural Control Committee shall approve or disapprove requests, plans, specifications, details and samples within thirty (30) days from delivery thereof to the Architectural Control Committee in proper and complete form. One set of all plans, specifications and details, with the approval or disapproval endorsed thereon, shall be returned to the person submitting same, and the other copy thereof shall be retained by the Architectural Control Committee. In the event there is no action taken to approve or disapprove such requests, plans, specifications, and details within thirty (30) days after the delivery thereof to the Architectural Control Committee in proper and complete form, and no action has been instituted to enjoin the performance of the proposed work, the provisions of this Section shall be deemed satisfied. The Architectural Control Committee shall maintain written records of all applications submitted and all action taken.

6.5.3. **Approval Considerations.** In approving or disapproving the requests, plans, specifications, details and samples submitted to it, the Architectural Control Committee shall take into consideration, among other factors, the design, style and construction of the proposed Improvement or alteration, its location on the Townhome Lot, the harmony of its design, architecture and location with the terrain and surrounding neighborhood, its impact on traffic and noise levels within the Project, whether such proposed Improvement or alteration is consistent with the general terrain, the architecture of other Improvements located within the Property, whether the construction or alteration of said Improvement will (or may be likely to) adversely affect or decrease the value of the Property, the other Townhome Lots and/or Improvements located thereon, and its compliance with this Declaration and the other Association Documents. The Architectural Control Committee may make reasonable requirements of the Owner, including the submission of additional plans, to ensure conformance of such Improvement or alteration when erected with these restrictions and covenants and with the plans submitted and approved. The Architectural Control Committee may require such changes as may be necessary to conform to the general purposes herein expressed.

6.5.4. **Variances.** The Architectural Control Committee shall have authority to grant variances from the provisions of this Declaration in case of irregularly shaped Townhome Lots, unusual terrain, or other conditions wherein the strict enforcement of these restrictions would result in unusual hardship, or where required by practical necessity; provided, however, the granting thereof shall not be materially detrimental or injurious to the Property and shall not operate against the general intent and purpose of this Declaration. The Architectural Control Committee shall be the sole and exclusive judge of whether or not such hardship exists. The Architectural Control Committee shall, within sixty (60) days after its receipt of the request for the variance, determine whether to grant or deny the variance. If the Architectural Control Committee fails to act on the request for the variance within sixty (60) days, the variance shall be deemed denied. If a variance is denied, another application for a variance for the same Townhome Lot may not be made for a period of one (1) year.

6.5.5. **Explanation for Disapproval.** Whenever the Architectural Control Committee disapproves of any request or any proposed plans, specifications details or samples, it shall state in writing its reason for such disapproval with sufficient explanation to guide the Owner in proposing changes or alterations in plans which will satisfy the objections of the
6.5.6. **Broad Authority.** It is the intent hereof that the Architectural Control Committee shall exercise broad discretionary powers and that its decisions shall be final and conclusive, except for an arbitrary abuse of its discretion or an excess of its authority. The Architectural Control Committee shall resolve all questions of interpretation hereunder, and this Declaration shall be interpreted in accordance with its general purpose and intent as herein expressed.

6.5.7. **No Liability for Defects.** Neither the Declarant nor the Architectural Control Committee, nor any architect or agent of the Declarant or Architectural Control Committee, shall be responsible or liable in any way for any defects in any requests, plans, specifications, details or samples submitted, revised or approved in accordance with the foregoing, nor for any structural or other defects in any work done according there to.

6.5.8. **No Liability for Mistake.** Neither Declarant, nor any other entity acting as the Architectural Control Committee, nor any member thereof, shall be liable in damages or otherwise to anyone submitting plans to them for approval or requesting a variance, or to any Owner by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve any plans, specifications or variance. Approval by the Architectural Control Committee shall not mean that plans and specifications are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, and it shall be the responsibility of the Owner or other person submitting plans to the Architectural Control Committee to comply with all codes, ordinances and regulations.

6.5.9. **Fees.** The Architectural Control Committee may charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to this Declaration, not including reimbursement or compensation to the members of the Architectural Control Committee for their services.

6.5.10. **Expiration of Approvals.** Approvals of all plans and specifications for an Improvement will automatically expire within one (1) year after approval, and if approval so expires, the applicant must resubmit a request for approval of the Improvement.

**ARTICLE VII - DESIGN, CONSTRUCTION AND ALTERATION OF IMPROVEMENTS**

7.1. **Notice of Restrictions.** This provision serves as notice that this Declaration and the other Association Documents (including any rules, regulations, policies or procedures adopted by the Association or the Architectural Control Committee) govern all of the designs and plans of the Project including, among other things, the right of an Owner or other party to place, install, construct, reconstruct, refinish, alter or maintain any Improvement upon, under, or above any of the Property, to make or create any excavation or fill on the Property, to make any...
change in the natural or existing surface contour or drainage, to install any utility line or conduit on or over the Property, and to park or store any vehicles and other equipment on the Property.

7.2. **General Restrictions.** Architectural, design and construction standards are established and imposed to the end that the Property may benefit from the natural advantages of its particular location. While the standards for architectural style are flexible in that variances may be granted under proper circumstances, compatibility of design within the Property, is of foremost importance.

7.3. **Improvements.** No Improvement shall be erected on any Townhome Lot except one single-family Residence and other Improvements which have been approved by the Architectural Control Committee. Other than a Residence, no Improvement, trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No Improvement may be placed on any Townhome Lot before completion of the Residence upon such Townhome Lot except with the permission of the Architectural Control Committee.

7.4. **Rentals.** No room or rooms in, or a portion of, any Residence or any other Improvement on any Townhome Lot may be rented or leased and no paying guests shall be quartered in any Residence. Nothing contained in this provision, however, shall be construed as preventing the renting or leasing of an entire Townhome Lot, together with its Residence or other Improvements, as a single unit to a single person or family.

7.5. **No Separate Estates.** Ownership of a Townhome Lot shall never be separated from ownership of any Improvement placed thereon.

7.6. **Temporary Structures.** No temporary house, trailer, tent, camping quarters, barn, treehouse, garage, outbuilding or other temporary structure shall be placed or erected upon any Townhome Lot. No Residence or other Structure or Improvement placed or erected on any Townhome Lot shall be occupied in any manner at any time during the course of original construction prior to its being fully completed in accordance with approved plans (as hereinafter provided) and until made to comply with all requirements, conditions and restrictions herein set forth; provided, however, during the actual construction or alteration of a Residence or other Structure or Improvement on any Townhome Lot, necessary temporary buildings for administration of construction and storage of materials may, with the consent of the Architectural Control Committee be used, erected and maintained by the contractor doing such work, so long as the same are promptly removed upon completion of construction.

7.7. **Construction Type.** All construction shall be new. No building previously used at another location, nor any building or Improvement originally constructed as a mobile dwelling or manufactured housing, may be moved onto a Townhome Lot except as expressly provided herein for temporary construction buildings. All Residences or other Structures and Improvements shall be constructed, repaired and renovated in conformance with applicable building codes and regulations.

7.8. **Material Storage.** No building materials shall be stored on any Townhome Lot.
except temporarily during continuous construction of a Residence or other Structure or Improvement.

7.9. **Completion of Work.** All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed. The exterior of all Residences or other Improvements must be completed within one (1) year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. For purposes of this Section, "commencement of construction" of a Residence is defined as the obtaining of necessary building permits and the excavation of earth for a foundation, and for all other Improvements is defined as the undertaking of any visible exterior work. If construction is not completed within one (1) year after commencement, or if construction shall cease for a period of sixty (60) days without permission of the Architectural Control Committee, the Architectural Control Committee will give the Owner thereof written notice of such fact. If construction on such Improvement is not thereafter diligently commenced within thirty (30) days after such notice, the unfinished Improvement or unfinished portion thereof shall be deemed a nuisance and may be removed forthwith by and at the cost of the Owner, or the Architectural Control Committee (acting by and through the Association) at its sole option, may choose to remove the same or complete construction as provided in the approved plans for the same at the cost of the Owner and may exercise lien rights as described herein for any costs or expenses it may incur in such event.

7.10. **Construction Debris.** Construction debris may not be dumped or left within the Property. During the period of construction of a Residence or other Improvement on a Townhome Lot, the Owner of the Townhome Lot or his contractor shall control dirt and dust, keep surrounding properties and streets reasonably clean and keep construction debris confined in a trash receptacle. All construction debris which is blown by the wind onto nearby properties or streets shall be collected and placed in the trash receptacle on a daily basis. Trash shall be removed from the Townhome Lot at least once a week during the construction period. Contractors, subcontractors and construction personnel shall have the right to enter upon unimproved Townhome Lots and the Common Area to pick up and retrieve construction debris, but shall not enter upon any improved Townhome Lot for such purpose without the express permission of the Owner of such Townhome Lot.

7.11. **Trees and Boulders.** No trees, surface boulders, or natural vegetation, or other surface feature of a Townhome Lot shall be removed from any Townhome Lot, except those that would unreasonably interfere with the actual construction of a Residence. Each tree removed shall be replaced with a tree or trees of similar size, unless otherwise approved by the Architectural Control Committee.

7.12. **Drilling Structures.** No derrick or other Improvement designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Townhome Lot, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under any Townhome Lot.
7.13. **Underground Utilities.** All utilities, including electric, cable television, radio and telephone transmission lines, but excluding lighting standards and customary service devices for access, control or use of utilities as permitted by the Architectural Control Committee, shall be installed underground. No overhead utility lines shall ever be installed or maintained on any portion of the Property except during the construction of a Residence when the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

7.14. **Driveways.** All driveways and off-street parking areas shall be improved with hard-surface paving or concrete.

7.15. **Compliance with Setback Requirements and Other Requirements of Zoning, Building and Subdivision Regulations.** All Residences and other Improvements shall be constructed and located in such a manner as to comply with all setback requirements imposed by zoning ordinance or conditions attached to Development Plan or Plat approval, as amended from time to time. If, upon completion of construction, it is disclosed by survey that a minor violation or infringement of a setback line(s) has occurred, such violation or infringement shall be deemed waived by Owners of Townhome Lots within the Property. Nothing herein contained shall prevent the prosecution of a suit for any other violation of the restrictions contained in this Declaration. A "minor violation" for the purpose of this provision is a violation of not more than one (1) foot beyond the required setback lines. This provision shall apply only to original construction and shall not be applicable to any alterations or repairs. All construction must also conform to the building code, zoning code and subdivision regulations of the City of Colorado Springs, which regulations may vary from the provisions of this Section and other provisions of this Declaration.

7.16. **Styles of Residences.** All Residences constructed on the Townhome Lots shall be of a style approved by the Architectural Control Committee as being consistent with the design theme of the Property.

7.17. **Garages.** Every Residence constructed on any Townhome Lot shall include a one-car fully enclosed garage which must be either attached to the Residence as an integral part thereof or attached thereto by arbor or breezeway and conforming to the architectural design of the Residence. Garage doors shall be wood or wood composition (or other material approved by the Architectural Control Committee) of a compatible design, and shall be equipped with automatic garage door openers with remote control operating devices.

7.18. **Kitchens.** No more than one room in each Residence may contain kitchen facilities, except where permitted by the Architectural Control Committee as a "wet-bar" area or as part of a den, playroom or entertainment area.

7.19. **Foundation Elevation, Grading and Drainage.** The elevation of the top of the foundation of any Residence built, erected or placed upon any Townhome Lot, as well as the finished grading and drainage patterns, shall be as approved by the Architectural Control Committee.
7.20. **Minimum Sizes of Residences.** All Residences shall contain a minimum of two thousand seven hundred (2,700) square feet of heated floor area devoted to living purposes (i.e., exclusive of roofed or unroofed porches, patios, terraces, basements or garages) on the main level.

7.21. **Construction Standards.** All Residences and other Structures and Improvements shall conform to material and appearance standards approved by the Architectural Control Committee.

7.22. **Rebuilding or Restoration.** Any Residence or other Structure or Improvement which may be destroyed in whole or in part by fire, windstorm or from any other cause or act of God must be promptly rebuilt or all debris must be removed and the Townhome Lot restored to a sightly condition, such rebuilding, restoration or renewal to be completed with reasonable promptness in accordance with the terms and conditions of the Association Documents and in any event within six (6) months from the time the damage occurred.

7.23. **Construction Methods.** Additional specific rules regarding construction methods, including but not limited to excavation, drainage, utility lines, loading areas, waste storage, trash removal, materials storage, and transformers and meters, may be set forth in rules, regulations, policies or procedures adopted by the Architectural Control Committee, and all Owners shall comply with the same.

**ARTICLE VIII - PROPERTY USE AND MAINTENANCE RESTRICTIONS**

8.1. **Notice of Restrictions.** This provision serves as notice that this Declaration and the other Association Documents (including any rules, regulations, policies or procedures adopted by the Association or the Architectural Control Committee) govern all of the use and maintenance activities within the Project including, among other things, the right of an Owner or other party to place, install, construct, reconstruct, refinish, alter or maintain any Improvement upon, under, or above any of the Property, to make or create any excavation or fill on the Property, to make any change in the natural or existing surface contour or drainage, to install any utility line or conduit on or over the Property, to park or store any vehicles and other equipment on the Property, and to otherwise make any use of the Property and any Townhome Lot.

8.2. **General Restrictions.** The Property and each Townhome Lot and Residence will be used only for the purposes set forth in this Declaration and the other Association Documents, and in compliance with the Plat and other applicable laws, rules, regulations, codes and ordinances of federal, state, local and/or municipal governmental or quasi-governmental authorities, and any other recorded covenants, conditions, easements and restrictions affecting all or part of the Property. Any and all uses of the Property, a Townhome Lot and/or Residence shall be subject to any licensing and approval requirements imposed by such authorities, and may in addition be limited or restricted by the Architectural Control Committee in its sole and absolute discretion after consideration of factors including, without limitation, the effect of such activities on traffic and noise levels within the Project and the Corporate Area, and compliance
8.3. **Residential Use of Townhome Lots and Residence**. In order to protect and enhance the residential character of the Property, all Townhome Lots in the Property shall be used exclusively for private residential purposes, and no Residence erected or maintained within the Property shall be used or occupied for any purpose other than for a private, single-family dwelling. No business, profession or other commercial enterprise of any nature shall be conducted on any Townhome Lot or in any Residence, Structure or other Improvement located thereon; provided, however, a "home office" activity conducted in accordance with the minimum standards set forth in this Section (or as adopted from time to time by the Architectural Control Committee pursuant to the provisions of this Section) may be permitted.

A "home office" activity is a secondary or incidental use of a Residence. It is anticipated that a home office activity would be based predominately upon computer, telecommunications or other similar technologies with minor, if any, visual or traffic impact upon the Property. The following minimum standards shall apply to any home office activity conducted from any Residence:

(a) only a service business shall be permitted to be conducted from a home office, and no sale of goods, supplies, inventory or other products shall be permitted, no matter how marketed;

(b) such activity shall be clearly incidental or secondary to the use of the Residence for residential purposes, and the use of the Residence for such purposes shall not cause or result in any visual or other essential change in the residential character of the Property;

(c) no person employed, contracted with or consulted in connection with such activity shall participate in business operations at, or conduct business from, the home office, such activity to be conducted only by a person or persons residing at the Residence;

(d) the home office activity shall be contained entirely within the Residence, and the total area of the Residence used for such activity shall not exceed eighteen percent (18%) of the minimum square footage of heated floor area devoted to living purposes;

(e) the operation of a home office activity shall not result in the elimination of the Residence's kitchen or all of its bedrooms;

(f) there shall be no advertising of the home office activity visible outside of the Residence;

(g) the home office activity shall not bring more than one client to the Residence at any one time and shall ordinarily not result in repeated, recurring or ongoing
visits by clients, suppliers, associates or others;

(h) the home office activity shall not ordinarily involve shipping, receiving or delivery activities to or from the premises;

(i) the home office activity shall be conducted in compliance with all building, fire, health and environmental laws, codes and regulations;

(j) the home office activity shall not result in foot traffic or vehicular traffic or parking not ordinarily associated with normal residential use of the Property;

(k) no activity associated with the home office activity shall be allowed which results in detrimental visual impact upon the surrounding neighborhood; and

(l) any mechanical, electrical or electronic machinery or equipment used in the home office activity must be operated in a fashion so that no noise, vibration, glare, fumes, odors, heat or electrical interference are detectible to the normal senses beyond the boundary line of the Townhome Lot, and in no case shall any equipment be allowed which involves the use of hazardous, explosive or highly flammable substances or which produces hazardous, explosive or highly flammable wastes or products.

Nothing herein shall be deemed to limit or restrict the right, power and authority of the Architectural Control Committee to interpret or promulgate additional or substitute minimum standards, rules, regulations or procedures with respect to home office activities. The Architectural Control Committee shall be the sole authority with respect to home office uses and shall exercise broad discretionary powers in this regard. Without limiting the generality of these provisions above, no exterior signs or storage will be allowed in connection with any business conducted from a Residence.

8.4. Maintenance by Owners. Each Owner shall be required to perform repair, replacement and maintenance activities with respect to such Owner's Townhome Lot and Structures, Improvements and Landscaping installed or existing on such Owner's Townhome Lot not otherwise the responsibility and obligation of the Association as provided in Article IX of this Declaration. A Townhome Lot Owner shall not paint, restain or otherwise engage in maintenance of items which are the maintenance responsibility of the Association, without the prior written approval of the Architectural Control Committee. If an Owner fails to properly perform maintenance activities which are the responsibility of such Owner, Declarant or the Architectural Control Committee (acting by and through the Association) may, after giving thirty (30) days' prior written notice, effect such repairs and maintenance as it deems necessary in its judgment to maintain the standards of the Property. Entry to effect such repairs and maintenance shall not be deemed a trespass and the Owner shall be liable for all costs incurred in connection with the repairs and maintenance.

8.5. Unsightly Conditions. Each Townhome Lot at all times shall be kept in a clean,
sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other materials shall be permitted to remain exposed upon any Townhome Lot so as to be visible from any nearby properties or streets, except as necessary during a period of construction and as permitted hereunder.

8.6. **Garage Doors.** Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

8.7. **Maintenance Equipment.** All maintenance equipment shall be stored in an enclosed building or otherwise adequately screened so as not to be visible from nearby properties or streets.

8.8. **Clotheslines.** No outdoor clothes poles, clotheslines and other facilities for drying or airing of clothing or household goods shall be placed on any Townhome Lot.

8.9. **Swingsets, Playhouses and Play Areas.** No recreational structure, playhouse, swingset, jungle gym, slide or other similar apparatus shall be constructed or placed upon any Townhome Lot.

8.10. **Refuse.** No unsightly objects or materials, including but not limited to ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any nearby properties or streets, except during refuse collections.

8.11. **Nuisances.** No noxious or offensive activity shall be carried on upon any Townhome Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on within any Townhome Lot or in any Residence. No annoying lights, sounds or odors shall be permitted to emanate from any Townhome Lot or Residence.

8.12. **Sound Devices.** No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Improvement or within any Townhome Lot without the prior approval of the Architectural Control Committee.

8.13. **Exterior Lighting.** All exterior lighting installed on any Townhome Lot shall either be indirect or of such control, focus and intensity so as not to disturb the occupants of residences on nearby properties.

8.14. **Landscaping.** Within six (6) months after completion of a Residence or other Structure or Improvement, or within any extension of that period granted by the Architectural Control Committee, all yards and open spaces, except as prevented by subsequent construction activities, shall be landscaped and thereafter maintained in lawn or landscape. Landscape should include areas of natural vegetation, and preservation of existing trees, scrub oak and other natural vegetation is intended. No existing trees, surface boulders, or scrub oak shall be
removed from any Townhome Lot unless required by construction activity and unless approved by the Architectural Control Committee. The use of gravel and small rocks as landscaping materials is not desirable and only will be permitted by the Architectural Control Committee in very limited quantities. Any Owner who installs private gardening or special plantings (with or without the approval of the Architectural Control Committee) shall be responsible for the care and watering of the same, and is deemed to acknowledge and understand that the same may or may not successfully coexist with watering quantities or schedules implemented by the Association. Each Owner is hereby deemed to acknowledge and agree that trees and other vegetation within or without the Property (including the adjoining golf course property) can be expected to grow from year to year and view and other encroachments can therefore be expected.

8.15. **Weeds.** Each Townhome Lot shall at all times be kept free from weeds and other unsightly growth and plants or weeds infected with noxious insects or plant diseases (including mistletoe and pine beetle) and from weeds which are likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which causes undue danger of fire.

8.16. **Mowing and Pruning.** In order to effect insect, weed and fire control and to prevent and remove nuisances, the Owner of any Townhome Lot upon which a building has not been constructed shall mow, cut, prune, clear and remove from the premises unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulate on the Townhome Lot.

8.17. **Transmitters.** No electronic or radio transmitter of any kind other than garage door openers and remote control devices for televisions, stereos, video cassette recorders and similar equipment shall be operated in or on any Improvement or Townhome Lot.

8.18. **Animals.** No animals, except two (2) domesticated dogs (each not larger than sixty (60) pounds and not exceeding sixteen (16) in height at the withers) or two (2) domesticated cats, shall be permitted on any Townhome Lot, excepting fish or domesticated birds which may be kept in greater numbers. **No animal of any kind shall be permitted which makes an unreasonable amount of noise or odor or otherwise is a nuisance to neighbors or the neighborhood.** No animal shall be kept, bred, or maintained within the Property for any commercial purposes. All animals must be on a leash or under Owner control at all times when outside of the Owner's Residence. Animals shall not be permitted to run loose. If an animal should run loose, the Owner thereof shall be responsible for all costs associated with the animal being picked up or brought under control. No dogs or other pets shall be chained, kenneled or kept or restrained in any other manner on a Townhome Lot outside of the Residence, except the Architectural Control Committee, in its sole discretion, may approve dog runs or enclosures. In the event of an Owner's or Owner's Guest's repeated violations of these provisions or any other rules or regulations implemented by the Association with respect to pets, the Association may, in its sole and absolute discretion, order the permanent restraint or removal of the pet from the Owner's Townhome Lot and/or the Property.
8.19. **Vehicles.**

8.19.1. **Regulation.** The Association may impose reasonable regulations upon the driving, parking and other conduct or use of motor vehicles within the Property.

8.19.2. **Overnight Storage and Parking.** No motor vehicle, boat, trailer (whether for boating, camping, hauling or otherwise), camper (on or off supporting vehicle), tractor, commercial vehicle, mobile home, house trailer, recreational vehicle, motor home, self-contained motorized vehicle, off-road vehicle, motor-driven cycle, towed trailer unit, shall be stored or parked overnight on any street or within any Townhome Lot (except in a Residence’s garage).

8.19.3. **Parking on Streets.** Parking on the private streets within the Property shall be allowed subject to the foregoing restrictions so long as the vehicle is parked only temporarily in connection with a social function or while engaged in actual transportation or delivery to or from a Townhome Lot or Residence.

8.20. **Inoperative Vehicles.** No unused, stripped down, partially wrecked or inoperative motor vehicle or part thereof shall be permitted to be parked on any street or on any Townhome Lot (other than in a Residence’s garage). An unused vehicle shall be any vehicle which is not properly licensed or registered or has remained immobile for more than a week as determined by the Association.

8.21. **Vehicle Repairs.** No maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle/boat, machine or device may be carried on except within a completely enclosed Improvement which screens the sight and sound of the activity from nearby property and streets.

8.22. **Inflammables.** No Owner shall use or permit to be brought into or stored on any Townhome Lot any inflammable oils or fluids such as gasoline, kerosine, naphtha or benzene in large enough quantities to be deemed hazardous to life, limb or property.

8.23. **Fuels; Incinerators; Barbecues.** No coal or other type of fuel which gives off smoke shall be used for heating, cooking or any other purpose; provided, however, the foregoing restriction shall not be deemed to apply to the occasional burning of wood in a fireplace or charcoal or other fuel in a barbecue. No trash or garbage shall be burned on the Property. No barbecue or other outdoor cooking appliance or area shall be located in such a manner as to causes a nuisance to any nearby Residence.

8.24. **Storage Tanks.** No elevated tanks of any kind shall be erected, placed or permitted upon any part of a Townhome Lot. Any tanks for use in connection with any Residence constructed on a Townhome Lot, including tanks for the storage of gas, or oil, must be below ground.

8.25. **Signs.** The only signs permitted on any Townhome Lot or Improvement shall be:
(a) signs for identification of the Property as a whole installed by, or with the permission of, Declarant;

(b) signs as may be necessary to advise of rules and regulations or to warn of danger or give direction;

(c) signs and other marketing devices such as banners, streamers and the like utilized by Declarant in connection with the marketing of Townhome Lots/Residences by the Declarant (whether through the use of model homes or otherwise);

(d) signs in aid of sale or rental of any Townhome Lot/Residence by its Owner, subject to approval by the Architectural Control Committee; and

(e) such other signs as may be required by law.

All signs must be professionally painted, lettered and constructed and shall be placed only on the Townhome Lot to which they pertain.

8.26. Antennae and Satellite Dishes. All aerial mast, antennae and similar equipment is prohibited except with the written consent of the Architectural Control Committee. Satellite dishes will be allowed only if located or affixed in an unobtrusive manner approved by the Architectural Control Committee.

8.27. Walls and Fences. No wall, fence, coping or screening shall be allowed except with the approval of the Architectural Control Committee.

ARTICLE IX - EXTERIOR MAINTENANCE AREA

9.1. Association Responsibility. In order to maintain a uniform appearance and a high standard of maintenance within the Project, the Association shall maintain all Exterior Maintenance Areas including, but not limited to, decks and porches that adjoin a Residence, lawns, trees, shrubs and other Landscaping (but excluding any private plantings or other Improvements made by an Owner) within the Exterior Maintenance Area, and sidewalks, walkways, private streets and common/shared driveways within the Exterior Maintenance Area (subject to the Owners’ obligations with respect to snow and ice removal as described below). Maintenance duties shall include the painting or staining of exterior surfaces, and roof repair. The maintenance provided under this Section shall be performed at such time and in such a manner as the Association shall determine, subject to the requirements of this Declaration and the Association Documents.

9.2. Owner Responsibility. Notwithstanding the provisions of the foregoing Section, each Owner shall be responsible for repair or replacement of broken window panes, for removal of snow and ice from decks, porches and patios which are part of, or which serve, such Owner’s Residence, and for the repair, maintenance and/or replacement of any approved
sunscreens/awnings attached to the exterior of the Owner’s Residence. The Association shall be entitled to reimbursement for cost of repair from any Owner who causes, or whose Guest causes, damage to the Exterior Maintenance Area by a negligent or deliberate act or omission. Any such sum not reimbursed to the Association within 30 days after the Association notifies the Owner of the amount due, will bear interest at the Default Rate from the date of the expenditure until payment in full. Such charges will be a Default Assessment enforceable as provided in Article XI.

ARTICLE X - PARTY WALLS

10.1. **General Law.** To the extent not inconsistent with this Declaration or superseded by the Act, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to the Party Walls.

10.2. **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of the Party Wall.

10.3. **Easement.** The Owner of each Residence that shares a Party Wall with an adjacent Residence shall have a perpetual easement in and to that part of the adjacent Residence upon which the Party Wall is located for any purpose reasonably necessary for the maintenance, repair or inspection of the Party Wall. In addition, as utility lines and other installations serving a Residence may lie within a Party Wall, this easement shall be reserved also for the purpose of maintaining, repairing, inspecting or replacing such installations that serve a Residence bounded by a Party Wall. In the event of a dispute among the Owners with respect to the scope of the easement reserved in this Section, the decision of the Board of Directors shall be final.

10.4. **Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty or by physical deterioration, the Owner of either Residence bounded by the Party Wall may restore it, and the Owner of the other Residence shall contribute equally to the cost of restoration, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions.

10.5. **Weather Proofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the Party Wall to be exposed to the elements or excessive heat or cold shall bear the whole cost of furnishing the necessary protection against such elements or heat or cold, and of repairing the Party Wall from damage caused by such exposure.

10.6. **Right to Contribution Runs With the Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner’s successors in title, shall constitute a lien upon the land until paid, and shall run with the land and bind the parties and their heirs and successors in title.
10.7. **Arbitration.** In the event of any dispute concerning a Party Wall or otherwise arising under the provisions of this Article, each Residence bounded by the Party Wall in question shall be represented by one arbitrator chosen by the Owner of the Residence, and the two arbitrators shall choose one additional arbitrator, and the dispute shall be decided by a majority of the three arbitrators. Should either Owner refuse to appoint an arbitrator within ten days after receipt of a written request therefor, the Board of Directors shall select an arbitrator for the refusing Owner. The arbitration shall be conducted in El Paso County, Colorado, in accordance with the rules of the American Arbitration Association, and the decision of the panel shall be conclusive and binding on the parties and enforceable in a court of competent jurisdiction. The cost of the arbitration shall be allocated equally to each Residence involved in the arbitration.

10.8. **Mechanic’s Liens.** Each Owner of a Residence which shares a Party Wall with an adjacent Residence agrees to indemnify and hold harmless the Owner of the adjacent Residence for any claims, causes of action, losses, costs, expenses (including reasonable attorneys’ fees and legal assistants’ fees), damages, judgments and mechanics’ and materialmen’s liens arising in connection with any material supplied or services rendered to make repairs or replacements for which the first-mentioned Owner is responsible.

**ARTICLE XI - ASSESSMENTS**

11.1. **Creation of Lien and Personal Obligation for Assessments.** Declarant, for each Townhome Lot owned within the Property, hereby covenants and agrees to pay, and each Owner of any Townhome Lot, by accepting a deed for a Townhome Lot, is deemed to covenant and agree to pay to the Association (i) Annual Assessments imposed by the Board of Directors as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Area and the Exterior Maintenance Area and to generally carry out the functions of the Association; (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (iii) Default Assessments which may be assessed against a Townhome Lot for the Owner’s failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

All Assessments, together with fines, interest, costs, reasonable attorneys’ (and legal assistants’) fees and other charges allowed under the Act, shall be a charge on the land and shall be a continuing lien upon the Townhome Lot against which each such Assessment is made until paid.

Each such Assessment, together with fines, interest, costs, and reasonable attorneys’ (and legal assistants’) fees and other charges allowed under the Act, shall also be the personal and individual obligation of the Owner of such Townhome Lot as of the time the Assessment falls due, and two or more Owners of a Townhome Lot shall be jointly and severally liable for such obligations. No Owner may exempt himself from liability for any Assessments by abandonment of his Townhome Lot or by waiver of the use or enjoyment of the Common Area. Suit to
recover a money judgment for unpaid Assessments and related charges as listed above may be maintained without foreclosing or waiving the Assessment liens provided in this Declaration.

11.2. **Purpose of Assessments.** The Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of the Project, for maintenance of the Exterior Maintenance Area, and for the improvement and maintenance of the Common Area, as more fully set forth in this Article below.

11.3. **Annual Assessments.**

11.3.1. **Calculation of Annual Assessments.** The Board of Directors shall prepare a budget before the close of each fiscal year of the Association and submit the budget to the Association as required by the Act. Annual Assessments for Common Expenses shall be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance and operation of the Common Area and Exterior Maintenance Area; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Association; snow removal, landscaping, care of grounds, common lighting within the Common Area and Exterior Maintenance Area; routine renovations within the Common Area and Exterior Maintenance Area; wages; common water and utility charges for the Common Area and Exterior Maintenance Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any deficit remaining from a previous Assessment period; and the supplementing of the reserve fund for general, routine maintenance, repairs, and replacement of Improvements within the Common Area and Exterior Maintenance Area on a periodic basis, as needed.

11.3.2. **Apportionment of Annual Assessments.** Generally, each Owner shall be responsible for that Owner’s share of the Common Expenses, which, except as specifically provided in this Declaration, shall be divided equally among the Townhome Lots included in the Project under this Declaration from time to time. Accordingly, at any given time an Owner’s share of Common Expenses generally shall be determined as a fraction, the numerator of which is the number of Townhome Lots owned by the Owner, and the denominator of which is the number of Townhome Lots then platted and incorporated in the Project. The foregoing is subject to the qualifications of subsection 5.3.7 and the following: first, any Common Expenses (including, but not limited to, costs of maintenance, repair, and replacement relating to the Limited Common Area, the Exterior Maintenance Area and common/shared driveways on fewer than all of the Townhome Lots) which benefit fewer than all of the owners may be assessed exclusively against the Townhome Lots benefitted; and second, the costs of insurance may be assessed in proportion to risk, and the costs of utilities may be assessed in proportion to usage.

11.3.3. **Collection.** Annual Assessments shall be collected in periodic installments as the Board may determine from time to time, but until the Board directs otherwise, they shall be payable monthly in advance on the first day of each calendar month. The Association shall have the right, but not the obligation, to make pro rata refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year. Any such excess funds
not refunded will be applied to the next installment(s) of Annual Assessments due.

11.3.4. **Date of Commencement of Annual Assessments.** The Annual Assessments shall commence as to each Townhome Lot no later than the first day of the month following the date of the first conveyance by Declarant of the Lot to an Owner. At closing of such conveyance the purchaser shall pay to the Association the first monthly installment of the Annual Assessment. The first Annual Assessment shall be prorated according to the number of months remaining in the calendar year. The Annual Assessments shall commence for Townhome Lots contained in each phase of Expansion Property incorporated in the Property on the first day of the month following the date of recording of the Declaration of Annexation incorporating them into the Property, and shall be prorated according to the number of months remaining in the calendar year.

11.4. **Special Assessments.**

11.4.1. **Determination by Board.** Subject to the budget procedures required by the Act, the Board of Directors may levy in any fiscal year one or more Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement within the Common Area or the Exterior Maintenance Area, including the necessary fixtures and personal property related to it, or to make up any shortfall in the current year’s budget.

11.4.2. **Apportionment and Collection of Special Assessments.** The Board will apportion Special Assessments among the Townhome Lots and collect payment according to the same guidelines as set forth for Annual Assessments in Section 11.3.

11.4.3. **Notice.** Notice of the amount and due dates for such Special Assessments must be sent to each Owner at least 30 days prior to the due date.

11.4.4. **Member Approval.** If any of the Special Assessments levied pursuant to this Section are to be used for the construction of new facilities (as opposed to repair and reconstruction of existing facilities in the Project), and if the total amount of the Special Assessments levied for such construction exceeds 10% of the gross annual budget for the Association for that year, then the use of Special Assessments for that construction will require the approval of Owners representing at least 67% of the votes in the Association. The use of Special Assessments pursuant to this Section for constructing any Common Area shall not apply to the construction of any Common Area to be completed by Declarant in development of the Project.

11.5. **Default Assessments.** All monetary fines, penalties, interest or other charges or fees levied against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, and any expense (including without limitation attorneys’ fees) incurred by the Association as a result of the failure of an Owner to abide by the Association Documents, constitutes a Default Assessment, enforceable as provided
in this Declaration and in accordance with the Act.

11.6. **General Remedies of Association for Nonpayment of Assessment.** Any installment of an Annual Assessment or a Special Assessment which is not paid within 30 days after its due date shall be delinquent. If such an Assessment installment becomes delinquent, or if any Default Assessment is levied, the Association, in its sole discretion, may take any or all of the following actions:

(a) assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;

(b) charge interest from the date of delinquency at the Default Rate;

(c) suspend the voting rights of the Owner during any period of delinquency;

(d) accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

(e) bring an action at law or in equity against any Owner personally obligated to pay the delinquent Assessment charges; and/or

(f) file a statement of lien with respect to the Townhome Lot and foreclose as set forth in more detail below.

The remedies provided under this Declaration shall not be exclusive, and the Association may enforce any other remedies to collect delinquent Assessments as may be provided by law.

11.7. **Assessment Liens.** Any Assessment chargeable to a Townhome Lot shall constitute a lien on the Townhome Lot, effective the due date of the Assessment. To evidence the lien, the Association may, but shall not be required to, prepare a written lien statement setting forth the name of the Owner, the legal description of the Townhome Lot, the name of the Association and the delinquent Assessment amounts then owing. Any such statement shall be duly signed and acknowledged by the President or a Vice President of the Association or by the Manager, and the Association shall serve the notice upon the Owner by mail to the address of the Townhome Lot or to such other address as the Association may have in its files for such Owner. At least 10 days after the Association mails the statement to the Owner, the Association may record the same in the Office of the Clerk and Recorder of El Paso County, Colorado. The Association shall have the power to bid on a Townhome Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the Townhome Lot.

11.8. **Successor’s Liability for Assessment.** All successors to the fee simple title of a Townhome Lot, except as provided in Section 11.9, below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys’ fees and legal assistants’ fees against such Townhome
Lot without prejudice to any such successor’s right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor’s fee simple interest in the Townhome Lot. In addition, such successor shall be entitled to rely on the statement of status of Assessments given by or on behalf of the Association under Section 11.12, below.

11.9. Waiver of Homestead Exemption; Subordination of the Lien. The lien of the Assessments shall be superior to and prior to any homestead exemption provided now or in the future by any federal law or the laws of the State of Colorado, and to all other liens and encumbrances except the following:

(a) liens and encumbrances recorded before the date of the recording of this Declaration;

(b) liens for real estate taxes and other governmental assessments or charges duly imposed against the Townhome Lot by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

(c) the lien for all sums unpaid on a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent, including any and all advances made by the First Mortgagee, even though some or all of such advances may have been made subsequent to the date of attachment of the Association’s lien; all subject, however, to the limitations of the Act.

With respect to Section 11.9(c), above, any First Mortgagee who acquires title to a Townhome Lot by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, shall take the Townhome Lot free of any claims for unpaid Assessments, interest, late charges, costs, expenses, and attorneys’ (and legal assistants’) fees against the Townhome Lot which accrue prior to the time such First Mortgagee or purchaser acquires title to the Townhome Lot, except as provided in the Act.

All other persons not holding a lien not described in Sections 11.9(a) through 11.9(c) shall be deemed to consent that any such lien or encumbrance shall be subordinate to the Association’s future liens for Assessments, interest, late charges, costs, expenses and attorneys’ (and legal assistants’) fees, as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

11.10. Reallocation of Assessments Secured by Extinguished Lien. The sale or transfer of any Townhome Lot to enforce any of the liens to which the lien for Assessments is subordinate shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer to the extent provided in the Act. The amount of such extinguished lien may be reallocated and assessed to all Townhome Lots as a Common Expense at the direction of the Board of Directors. However, no such sale or transfer shall relieve the purchaser
or transferee of a Townhome Lot from liability for, or the Townhome Lot from the lien of, any Assessments made after the sale or transfer.

11.11. Exempt Property. The following portions of the Property shall be exempt from the Assessments, charges, and liens created under this Declaration:

(a) all properties to the extent of any easement or other interest therein dedicated and accepted by the City of Colorado Springs and devoted to public use;

(b) all utility lines and easements; and

(c) Common Area, if any.

11.12. Statement of Status of Assessments. The Association shall furnish to an Owner or his designee or to any Mortgagee a statement setting forth the amount of unpaid Assessments then levied against the Townhome Lot in which the Owner, designee or Mortgagee has an interest. The Association shall deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party within 14 calendar days after the registered agent of the Association receives the request by personal delivery or by certified mail, first class postage prepaid, return receipt requested or as otherwise required by the Act. The information contained in such statement, when signed by the Treasurer of the Association or the Manager, shall be conclusive upon the Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith.

11.13. Protection of Association’s Lien. With the approval of the Board of Directors, the Association may protect its lien for Assessments against any Townhome Lot by submitting a bid at any sale held for delinquent taxes payable with respect to the Townhome Lot.

11.14. Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner as Assessment notice will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association in accordance with any budget procedures as may be required by the act.

ARTICLE XII - EASEMENTS AND OTHER PROPERTY RIGHTS OF OWNERS

12.1. Easements. The Property shall be subject to, and all Owners of Townhome Lots, by accepting a deed for a Townhome Lot, shall be deemed to take title subject to, the easements described below.

12.1.1. Owner’s Easements of Access and Enjoyment. Every Owner has a perpetual, non-exclusive easement for access to and from his Townhome Lot and for the use of
enjoyment of the Common Area, which easement is appurtenant to and shall pass with the title to every Townhome Lot, subject to the provisions set forth in this Article. Any Owner may delegate his rights of access and enjoyment described herein to his Guests, but only in accordance with the applicable rules of the Association and the other Association Documents.

12.1.2. Easements of Record and of Use. The Property will be subject to all easements shown on any recorded Plat of the Property and to any other easement of record or of use pertaining to the Property as of the date of recordation of this Declaration, including those listed on the attached Exhibit C.

12.1.3. Easement for Repair and Maintenance of Common Installations. Supplementing Section 10.3, above, the Townhome Lot beneath and surrounding a Residence, as well as the area between the interior planes that comprise a Party Wall, may contain utility lines and other installations that serve another Residence. Accordingly, each Owner and the Association is granted an easement, to be exercised by the Association as the Owner’s agent, for access to the other Residences in the building containing the first Owner’s Residence, from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of such utility lines or other installations serving the first Owner’s Residence, or for making emergency repairs to prevent damage to the first Owner’s Residence or to any other Improvements. In the event of a dispute between the Owners with respect to the scope of the easement reserved in this Section, the decision of the Board of Directors shall be final. Subject to the provisions of subsections 5.3.7 and 9.2.2 and Section 10.1, damage to a Residence resulting from the exercise of this easement shall be a Common Expense.

12.2. Combination of Residences. The Owner of a Residence bounded by a Party Wall may acquire title to the adjacent Residence bounded by the same Party Wall and combine the two Townhome Lots and Residences into one Townhome Lot and Residence, subject to the requirements of this Declaration and the Association Documents, the Act and other applicable laws and regulations of the locale in which the Project is located. Every agreement and recorded instrument for the combination of Townhome Lots will make adequate provision for the preservation of easements previously established with respect to the Townhome Lots. Further, each such agreement and instrument will adjust the voting rights and liability for payment of Assessments related to such Townhome Lots allocating to the newly combined Townhome Lot the total of the voting rights and Assessments allocated to Townhome Lots combined into the single parcel.

12.3. Partition or Subdivision of Townhome Lots. No more than one Residence shall be erected or maintained within any Townhome Lot. Except as otherwise provided herein, no part of a Townhome Lot may be replatted, partitioned or otherwise subdivided unless the Townhome Lot being subdivided was created by a combination pursuant to Section 12.2, above, of two Townhome Lots which, as originally platted by Declarant, were separate but contiguous Townhome Lots with Residences joined by a Party Wall.

12.4. No Partition of Common Area. The Common Area will be owned by the Association, and no Owner will bring any action for partition or division of the Common Area.
By acceptance of a deed or other instrument of conveyance or assignment, each Owner will be
demed to have specifically waived such Owner’s rights to institute or maintain a partition
action or any other action designed to cause a division of the Common Area, and this Section
may be pleaded as a bar to any such action. Any Owner who institutes or maintains any such
action will be liable to the Association, and hereby agrees to reimburse the Association for its
costs, expenses and reasonable attorneys’ (and legal assistants’) fees in defending such action.

ARTICLE XIII - SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED
RIGHTS

13.1. General Provisions. Until the expiration of the Special Declarant Rights Period,
Declarant will have the Special Declarant Rights described below with respect to all of the
Property (including the Expansion Property).

13.1.1. Completion of Improvements. Declarant reserves the right to complete
Improvements as indicated on any Plat or map filed with respect to the Property or this
Declaration.

13.1.2. Development Rights. Declarant reserves the right to exercise all
development rights as defined from time to time in the Act ("Development Rights"), including
without limitation the right or combination of rights hereby reserved by Declarant to:

(a) annex all or any part of the Expansion Property to the Project or add other
unspecified real estate to the Project, in accordance with Article XVIII;

(b) create (by replat or amendment or supplement to the Plat, or otherwise)
Townhome Lots, Common Area and/or Limited Common Area within the
Project, subject to the limitations of Section 1.5;

(c) subdivide, replat or reconfigure Townhome Lots and/or convert
Townhome Lots into Common Area and/or Limited Common Area,
subject to the limitations of Section 1.5; and

(d) withdraw real estate from the Project, as provided in Article XVIII.

13.1.3. Sales Activities. Subject to any requirements imposed by the City of
Colorado Springs, Declarant reserves the right to maintain sales offices, management offices,
signs advertising the Project and model residences on the Common Area, if any, and on
Townhome Lots owned by Declarant, whether contained within the Property initially subject
to this Declaration, or within the Expansion Property. The offices, model residences and signs will
be of sizes and styles governed by this Declaration and the other Association Documents, and
may be relocated by Declarant from time to time. At all times, the offices, model residences and
signs will remain the property of Declarant and may be removed from the Project by Declarant
at any time during or promptly after the expiration of the Special Declarant Rights Period.
13.1.4. **Easements.** Declarant reserves the right to use easements through the Common Area on the Property (including the Expansion Property) for the purpose of making improvements on the Property (and the Expansion Property).

13.1.5. **Subject to Master Declaration/Association.** Declarant reserves the right to subject the Property to the terms and conditions of a master declaration governing the Corporate Area and/or make the Project subject to a master association.

13.1.6. **Merger and Consolidation.** Declarant reserves the right to merge or consolidate the Project (and the Association), with or without this Project/Association being the survivor.

13.1.7. **Association Directors and Officers.** Declarant reserves the right to appoint officers and directors of the Association as provided in this Declaration or the Bylaws, but subject to the limitations of the Act.

13.2. **Order of Exercise of Declarant's Rights.** Declarant makes no representations and gives no assurances regarding the legal description or the boundaries of any phase of the Expansion Property or the order in which the phases of the Expansion Property may be developed or incorporated in the Project. Further, the fact that Declarant may exercise one or more of Declarant's Development Rights or other Special Declarant Rights on one portion of the Property (including the Expansion Property) will not operate to require Declarant to exercise a Development Right or other Special Declarant Right with respect to any other portion of the Property (including the Expansion Property).

13.3. **Supplemental Provisions Regarding Declarant's Rights.** Without limiting the generality of the foregoing, certain of these Special Declarant Rights are explained more fully in this Article below. Further, Declarant reserves the right to amend this Declaration and amend, supplement, vacate and/or replat any Plat in connection with the exercise of any Development Rights or any other Special Declarant Rights to the extent permitted by the Act, and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.

13.4. **Utility Easements.** Declarant hereby reserves for itself and its successors and assigns a general easement upon, across, over, in, and under the Property for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, and electrical, cable and other communications systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such services to install, maintain, repair and replace necessary equipment, wires, circuits, and conduits under and over the Property. No water, sewer, gas, telephone, electrical, communications or other utility or services lines, systems or facilities may be installed or relocated on the surface of the Property unless approved by Declarant prior to the expiration of the Special Declarant Rights Period, or by the Association after such expiration. These items may be temporarily installed above ground during construction, if approved by Declarant, or after the Special Declarant Rights Period, if approved by the Association, subject to the

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requirements, if any, of the City of Colorado Springs or any other authority having jurisdiction
over the Property.

13.5. **Drainage and Irrigation Easements.** Declarant reserves for itself and its
successors and assigns an easement to enter on any portion of the Property for the purpose of
modifying the grade of any drainage channels on the Property to improve the drainage of water.

Declarant also reserves the right to use or delegate the use of any irrigation ditches
existing on the Property on the date this Declaration is recorded, and Declarant reserves for itself
and its successors and assigns the right to construct, access and maintain additional irrigation
ditches and lines on the Property for the maintenance of the Common Area and the Exterior
Maintenance Area and for such other purposes as Declarant may from time to time deem
appropriate. Any Owner of a Townhome Lot over which such ditches cross shall be prohibited
from taking or diverting water from the ditches or constructing any Improvements within the
easements established for such ditches without the prior written consent of the entity to whom
Declarant grants the right to control the ditches in question.

13.6. **General Provision.** Any entity using these general easements provided under
Sections 13.4 and 13.5, above, shall use its best efforts to install and maintain the easements for
utilities, drainage, or irrigation ditches without disturbing the uses of the Owners, the
Association and Declarant; shall prosecute its installation and maintenance activities as promptly
as reasonably possible; and in the case of utility work, shall restore the surface to its original
condition as soon as possible after completion of its work. Should any entity furnishing a
service covered by these general easements request a specific easement by separate recordable
document, either Declarant or the Association shall have, and are hereby given the right and
authority to grant such easement upon, across, over, or under any part or all of the Property
without conflicting with the terms of this Declaration. This general easement shall in no way
affect, avoid, extinguish, or modify any other recorded easement affecting the Property.

13.7. **Declarant’s Rights Incident to Construction.** Declarant, for itself and its
successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress
and egress over, in, upon, under, and across the Common Area, together with the right to store
materials on the Common Area and to make such other use of the Common Area as may be
reasonably necessary or incident to the construction of Residences on the Townhome Lots or
other Improvements on the Property. However, no such rights shall be exercised by Declarant in
a way which unreasonably interferes with the occupancy, use, enjoyment, or access to the
Project by the Owners.

13.8. **Reservation for Construction and Expansion.** Declarant hereby reserves for itself
and its successors and assigns and for Owners in all future phases of the Project a perpetual
easement and right-of-way over, upon, and across the Property, including the Expansion
Property, for construction, utilities, drainage, and ingress and egress, and for use of the Common
Area, including any Common Area located within the Expansion Property. The location of these
easements and rights-of-way may be made certain by Declarant and the Association by
instruments recorded in El Paso County, Colorado.
Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, reservations, exceptions and exclusions necessary or convenient for the development, use and operation of any other property of Declarant, as long as such action does not hamper the enjoyment of the Project by the Owners.

13.9. **Reservation of Easements, Exceptions, and Exclusions.** Declarant reserves for itself and hereby grants to the Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area, for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions for the best interests of all the Owners and the Association, in order to serve the Owners within the Project.

13.10. **Maintenance Easement.** An easement is hereby reserved to Declarant, and granted to the Association and any member of the Board of Directors or the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, including the right to enter upon Townhome Lot for the purpose of performing maintenance of the Exterior Maintenance Area of each Townhome Lot, as required by this Declaration.

13.11. **Easements Deemed Created.** Any and all conveyances made by Declarant to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants.

13.12. **Bike Path and Hiking Easements.** Any bike path, hiking or other recreation areas that are located on easements within the boundary of a Townhome Lot will be insured by the Association pursuant to Article XIV in the same manner as the Common Area is insured by the Association.

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

**ARTICLE XIV - INSURANCE AND FIDELITY BONDS**

14.1. **Authority to Purchase.** Except as provided in Section 14.13, below, all policies of casualty insurance relating to the Property, and all insurance policies of any kind relating to the Common Area, shall be purchased by the Board of Directors or its duly authorized agent. The Board of Directors, the Manager and Declarant shall not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if
such coverage is available only at demonstrably unreasonable cost.

14.2. **Notice to Owners.** The Board of Directors shall promptly furnish to each Owner written notice of adverse changes in, or termination of, insurance coverages obtained on behalf of the Association under this Article, such notice to be delivered to all Owners by such methods as required by the Act. The notice (which may be issued in the form of a sub-policy relating to a master policy, if the Board of Directors obtains a master policy), shall specify the insurance coverage in effect on the Owner’s Improvements.

14.3. **General Insurance Provisions.** All such insurance coverage obtained in accordance with this Article shall conform to any minimum requirements of the Act, and, to the extent not inconsistent with the Act, the following provisions:

14.3.1. **Declarant.** As long as Declarant owns any Townhome Lot, Declarant shall be protected by all such policies in the same manner as any Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this Article shall not be deemed to protect or be for the benefit of any general contractor engaged by Declarant, nor shall such coverage be deemed to protect Declarant for (or waive any rights with respect to) warranty claims against Declarant as the developer of the Project.

14.3.2. **Deductible.** Depending on the area within the Property (whether Common Area or one or more Residences) damaged or destroyed and covered by an insurance claim submitted on behalf of the Association, the deductible amount, if any, on any insurance policy purchased by the Board of Directors may be treated as a Common Expense payable from Annual Assessments or Special Assessments allocable to all of the Townhome Lots or to only some of the Townhome Lots, if the claims or damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners, or as an item to be paid from working capital reserves established by the Board of Directors. The Association may enforce payment of any amount due from an individual Owner toward the deductible in accordance with Sections 11.5 and 11.6, above. Except as otherwise set forth in this Article, the maximum deductible amount shall be the lesser of $10,000 or one percent of the policy face amount.

14.3.3. **Premiums.** Except as otherwise provided in this Declaration, insurance premiums for the insurance coverage obtained by the Board of Directors pursuant to this Article shall be a Common Expense to be paid by regular Annual Assessments. In accordance with subsection 11.3.2, above, the Board of Directors shall make appropriate allocations of the cost of any insurance carried by the Association for the benefit of a particular Owner.

14.4. **Physical Damage Insurance on Common Area.** The Association shall obtain and maintain in full force and effect physical damage insurance on all insurable Improvements on the Property in an amount equal to full replacement value (i.e., 100% of the current “replacement cost” exclusive of land, foundation, excavation, depreciation on personal property and other items normally excluded from coverage). The Improvements on the Property to be insured by the Board of Directors under this Section include without limitation the Residences and, unless the Board of Directors directs otherwise, the attached floor coverings, fixtures, heating
equipment and other service machinery initially installed in the Residence (and replacements of those items and fixtures up to the value of those initially installed by Declarant); provided, however, the property to be insured by the Board does not include furniture, wall coverings, window coverings, improvements, additions or other personal property supplied or installed by Owners. The insurance obtained by the Board will cover the interests of the Owners and their Mortgagees, as their interests may appear. Such insurance shall afford protection against at least the following:

(a) loss or damage caused by fire and other hazards covered by the standard extended coverage endorsement with the standard “all-risk” endorsement covering sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage;

(b) in the event the Common Area contains a steam boiler, a broad form policy of repair and replacement boiler and machinery insurance in the lesser of (i) the amount of the insurable value of the building housing the boiler, or (ii) $2,000,000 (or such other amount as the Board deems advisable); and

(c) such other risks as shall customarily be covered with respect to projects similar in construction, location and use to the Project.

The Board shall obtain physical damage insurance covering any personal property owned by the Association. If there are no Improvements within the Common Area, no physical damage insurance need be obtained by the Association with respect to the Common Area.

14.5. Provisions Common to Physical Damage Insurance. In contracting for the policy or policies of insurance obtained pursuant to Section 14.4, above, the Board of Directors shall make reasonable efforts to secure coverage, if the Board deems such coverage advisable, which provides the following:

(a) a waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to this Declaration not to do so; and

(b) the following endorsements (or equivalent): (i) “cost of demolition;” (ii) “contingent liability from operation of building laws or codes;” (iii) “increased cost of construction;” (iv) “agreed amount” or elimination of co-insurance clause; and (v) “inflation guard” (if available).

Prior to obtaining any policy of physical damage insurance or any renewal thereof, and at such other intervals as the Board of Directors may deem advisable (but in any event, at least once every three years), the Board of Directors shall obtain an appraisal from a general contractor or such other source as the Board may determine, of the then current replacement cost of the property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage) subject to insurance carried by the Association, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be
secured pursuant to this Article.

A certificate evidencing coverage under the policy of physical damage insurance, together with proof of payment of premiums and any notice issued under Section 14.2, above, shall be delivered by the insurer to any Mortgagee requesting same. The Mortgagee of a Residence shall also be entitled to receive upon request a certificate confirming the renewal of any existing physical damage insurance at least 10 days before the expiration of the then current policy, and to receive notice promptly of any event giving rise to a claim under such policy arising from damage to such Residence.

14.6. Liability Insurance. The Association shall obtain and maintain in full force and effect commercial general liability insurance (including bodily injury, libel, slander, false arrest and invasion of privacy coverage) and property damage insurance with such limits as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Association, the Manager, each Owner, and the employees and agents of the Association and the Manager against any liability to the public or the Owners (and their Guests) arising out of or incident to the ownership, existence, operation, management, maintenance or use of the Common Area and streets and roads within the Project and any other areas under the control of the Association. Declarant shall be included as an additional insured in Declarant’s capacity as an Owner or Director. The Owner shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area.

Such comprehensive policy of public liability insurance shall include the following:

(a) coverage for contractual liability, liability for non-owned and hired automobiles, and, if applicable, host liquor liability, employer’s liability, and such other risks as shall customarily be covered with respect to developments similar to the Project in construction, location, and use;

(b) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another insured; and

(c) a “severability of interest” endorsement which shall preclude the insurer from denying liability coverage to an Owner because of the negligent acts of the Association or another Owner.

The Board of Directors shall review the coverage limits at least once every two years, but, generally, the Board shall carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to the Projects and in no event shall such coverage be less than $1,000,000 for all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of “umbrella” liability insurance in excess of the primary limits shall also be obtained in an amount not less than $2,000,000.
At the election of the Board of Directors, the Board may also contract for comprehensive
general liability insurance covering each Owner with respect to the ownership and use of the
Townhome Lots and Residences, as necessary or convenient to allow the Board, the Manager
and the Association to perform their respective duties in connection with the Common Area.
Notice of such coverage shall be given to the Owners as necessary to keep the Owners currently
informed.

14.7. Fidelity Insurance. To the extent obtainable at reasonable cost, fidelity bonds
shall be maintained by the Association to protect against dishonest acts of the part of its officers,
Directors, trustees, and employees and on the part of all others who handle or are responsible for
handling the funds belonging to or administered by the Association. In addition, if responsibility
for handling funds is delegated to a Manager, such bond shall be obtained for the Manager and
its officers, employees, and agents, as applicable. Such bonds shall contain waivers by the
issuers of all defenses based upon the exclusion of persons serving without compensation from
the definition of “employees,” or similar terms or expressions. Such bonds shall cover the
maximum funds that will be in the custody of the Association or any Manager at any time when
the bond is in force.

14.8. Flood Insurance. If any habitable structure on the Common Area are located in a
Special Flood Hazard Area which is designated A, AE, AH, AO, AI-30, A-99, V, VE or VI-30
on a Flood Insurance Rate Map, the Association shall obtain a policy of flood insurance in an
amount equal to 100% of the insurable value of the Improvements, if any, on the Common Area
or the maximum coverage available under the Appropriate National Flood Insurance
Administration program. The maximum deductible amount shall be the lesser of $5,000 or one
percent of the policy face amount.

Insurance and Flood Insurance. Any insurance coverage obtained by the Association under the
provisions of this Article above shall be subject to the following provisions and limitations:

(a) the named insured under any such policies shall include Declarant, until all the
Townhome Lots have been conveyed, and the Association, as attorney-in-fact for
the use and benefit of the Owners, or the authorized representative of the
Association (including any trustee with whom the Association may enter into an
insurance trust agreement, or any successor trustee, each of which is sometimes
referred to in this Declaration as the “Insurance Trustee”) who shall have
exclusive authority to negotiate losses and receive payments under such policies;

(b) each Owner shall be an insured person with respect to liability arising out of the
Owner’s interest in the Common Area or membership in the Association;

(c) in no event shall the insurance coverage obtained and maintained pursuant to this
Article be brought into contribution with insurance purchased by the Owners or
their Mortgagees;
(d) the policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Owner (including any Owner’s Guests) when such act or neglect is not within the control of the Association; or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control; or (iii) conduct of any kind in the part of an Owner (including the Owner’s Guests) or any Director, officer, employee or Manager of the Association, without prior demand to the Association and a reasonable opportunity to cure the matter;

(e) the policies shall contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located, and provide that coverage may not be cancelled in the middle or at the end of any policy year or other period of coverage or substantially modified or reduced (including cancellation for nonpayment of premiums) without at least 30 days’ prior written notice mailed to the Association and to each Owner and First Mortgagees to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses;

(f) the policies shall contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Board of Directors, the Association, the Manager, and any Owner or their respective agents, employees, or tenants, and in the case of Owners, members of their households; and of any defenses based upon co-insurance; and

(g) the policies described in this Article shall provide that any “no other insurance” clause shall expressly exclude individual Owners’ policies from its operation so that the physical damage policy or policies purchased by the Board shall be deemed primary coverage, and any individual Owners’ policies shall be deemed excess coverage.

14.10. **Personal Liability Insurance of Officers and Directors.** To the extent obtainable at a reasonable cost, appropriate officers’ and directors’ personal liability insurance shall be maintained by the Association to protect the officers and Directors from personal liability in relation to their duties and responsibilities in acting as such officers and Directors on behalf of the Association.

14.11. **Workers’ Compensation Insurance.** The Association shall obtain workmen’s compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

14.12. **Other Insurance.** The Association may obtain insurance against such other insurable risks of a similar or dissimilar nature as it deems appropriate with respect to the Association’s responsibilities and duties.

14.13. **Insurance Obtained by Owners.** Each Owner shall have the right to obtain
insurance for such Owner’s benefit, at such Owner’s expense, covering the Owner’s Townhome Lot and Residence, personal property and personal liability. However, no such insurance coverage obtained by the Owner shall operate to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association resulting from insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a Default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company’s right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Townhome Lot.

ARTICLE XV - ASSOCIATION AS ATTORNEY-IN-FACT

15.1. Attorney in Fact. Each Owner hereby irrevocably appoints the Association as the Owner’s true and lawful attorney-in-fact in such Owner’s name, place and stead for the purposes of dealing with any Improvements covered by insurance written in the name of the Association pursuant to Article XIV upon their damage or destruction as provided in Article XVI, or a complete or partial taking as provided in Article XVII below. Acceptance by a grantee of a deed or other instrument of conveyance from Declarant or any other Owner conveying any portion of the Property shall constitute appointment of the Association as the grantee’s attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE XVI - DAMAGE OR DESTRUCTION

16.1. Damage or Destruction of Common Area.

16.1.1. Estimate of Damage or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Common Area, unless such damage or destruction shall be minor, the Board of Directors shall obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. “Repair and reconstruction” as used in this Article shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed immediately prior to the damage or destruction.

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

16.1.3. Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair and reconstruction. If the proceeds of the Association’s insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Section 11.4, above, levy, assess, and collect in advance from the Owners a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction.

16.1.4. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, or if no Special Assessments were made, then in proportionate shares on the basis of the allocation to the Owners of Common Expenses under subsection 11.3.2, first to the Mortgagees and then to the Owners, as their interests appear.

16.1.5. Decision Not to Rebuild Common Area. If Owners representing at least 80% of votes in the Association, including the vote of every Owner of Improvements that will not be rebuilt and including, during the Special Declarant Rights Period, the vote of Declarant, and any other votes required by the Act, agree in writing not to repair and reconstruct Improvements within the Common Area and if no alternative Improvements are authorized, then and in that event, the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with subsection 16.1.4.

16.2. Damage or Destruction Affecting Townhome Lots. In the event of damage or destruction to the Residence or other Improvements located on any Townhome Lot, the Owner thereof will promptly repair or restore the damaged Improvements or Residence to their condition existing immediately prior to such damage or destruction. If such repair or restoration is not commenced within 180 days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than 90 days, then the Association may, after notice and hearing as provided in the Bylaws, impose a fine accruing at the rate of $100 per day or such other rate imposed by the Board in compliance with the Act, charged against the Owner of the Townhome Lot until repair and reconstruction is commenced, unless the Owner can prove to the satisfaction of the Association that such failure is due to circumstances beyond the Owner’s control. Such fine will be a Default Assessment and lien against the Townhome Lot as provided in Section 11.5, above.
ARTICLE XVII - CONDEMNATION

17.1. Rights of Owners. Whenever all or any part of the Common Area shall be taken by any authority having power of condemnation or eminent domain, or whenever all or any part of the Common Area is conveyed in lieu of a taking under threat of condemnation by the Board of Directors acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveyance. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

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

(a) if the taking involves a portion of the Common Area on which Improvements have been constructed, then, unless within 60 days after such taking, Owners who represent at least 67% of the votes in the Association, including, during the Special Declarant Rights Period, the vote of Declarant, otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available for such restoration or replacement in accordance with plans approved by the Committee and the City of Colorado Springs, if required, and/or any other authority having jurisdiction in such matters (and if such Improvements are to be repaired or restored, the provisions in Article XVI, above, regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply); and

(b) if the taking does not involve any Improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed as provided in subsection 16.1.4.

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

ARTICLE XVIII - EXPANSION AND WITHDRAWAL

18.1. Reservation of Right to Expand. Until the expiration of the Special Declarant Rights Period, Declarant reserves the right, but shall not be obligated, to expand the effect of this Declaration to include all or part of the Expansion Property. The consent of the existing Owners and Mortgagees shall not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option. Declarant shall have the unilateral right to
transfer to any other person this right to expand by an instrument duly recorded. Declarant shall pay all taxes and other governmental assessments relating to the Expansion Property as long as Declarant is the owner of such property.

18.2. **Right to Add Additional Property.** Until the expiration of the Special Declarant Rights Period, Declarant reserves the right to add additional unspecified real estate to the Property, subject to the limitations of the Act.

18.3. **Declaration of Annexation.** Such expansion or addition may be accomplished by recording a Declaration of Annexation and one or more supplemental plats or replats in the records of the Clerk and Recorder of El Paso County, Colorado, on or before the expiration of the Special Declarant Rights Period. The Declaration of Annexation shall describe the real estate to be added, submit it to the covenants, conditions, and restrictions contained in this Declaration and provide for voting rights and Assessment allocations as provided in Sections 4.4, 11.3 and 11.4 of this Declaration. Such Declaration of Annexation shall not require the consent of Owners. Any such expansion or addition shall be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion or addition may be accomplished in stages by successive supplements or in one supplemental expansion or addition.

Upon the recordation of any such Declaration of Annexation, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Project as expanded. Such Declaration of Annexation may add supplemental covenants peculiar to the annexed property, or delete or modify provisions of this Declaration as it applies to the annexed property. However, this Declaration may not be modified with respect to that portion of the Property already subject to this Declaration, except as provided below for amendment.

18.4. **Withdrawal of Property.** Until the expiration of the Special Declarant Rights Period, Declarant reserves the right to withdraw from the jurisdiction of this Declaration any portion of the Property, subject to the limitations of the Act. After withdrawal of any parcel from the regime of this Declaration, the Common Expenses and votes attributable to the Townhome Lots remaining in the Project will be allocated in accordance with Sections 4.4, 11.3 and 11.4, above.

**ARTICLE XIX - MORTGAGEE PROTECTIONS**

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

19.2. **Percentage of Eligible Mortgage Holders.** Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgage Holders is required, it shall mean the approval or consent of Eligible Mortgage Holders under Mortgages encumbering
Townhome Lots which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Townhome Lots then subject to Mortgages held by Eligible Mortgage Holders.

19.3. Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgage Holder of the following:

(a) any condemnation loss or any casualty loss which affects a material portion of the Common Area or any Townhome Lot in which an interest is held by the Eligible Mortgage Holder;

(b) any delinquency which remains uncured for 60 days in the payment of Assessments by an Owner whose Townhome Lot is encumbered by a Mortgage held by such Eligible Mortgage Holder;

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

(d) any proposed action which would require the consent of Eligible Mortgage Holders as required in Section 19.4, below; and

(e) any judgment rendered against the Association.

19.4. Consent Required.

19.4.1. Document Changes. No amendment of any material provision of this Declaration described in this subsection may be effective without the vote of at least 67% of the Owners in the Association (subject to Section 25.6, below) and the approval in writing of at least 51% of the Eligible Mortgage Holders. “Material” provisions include any provision affecting the following:

(a) Assessments, Assessment liens, or the subordination or priority of Assessment liens;

(b) voting rights;

(c) reserves for maintenance, repair and replacement of the Common Area;

(d) responsibility for maintenance and repairs;

(e) rights to use the Common Area;

(f) expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project, except as provided in Article XVIII, above;
(g) insurance or fidelity bonds;

(h) imposition of any restrictions on an Owner’s right to sell or transfer his Townhome Lot;

(i) restoration or repair of the Property after hazard damage or partial condemnation in a manner other than that specified in this Declaration;

(j) termination of this Declaration after the occurrence of substantial destruction or condemnation; and

(k) the benefits of Eligible Mortgage Holders.

19.4.2. Actions. The Association may not take any of the following actions, except as such rights have been specifically reserved by Declarant under the provisions of this Declaration, without the approval of at least 51% of the Eligible Mortgage Holders:

(a) conveyance or encumbrance of the Common Area (provided, however, that the granting of easements for public utilities, for construction and maintenance of roads within the Project, or for other public purposes not inconsistent with the use of the Common Area by the Owners shall not be deemed a transfer within the meaning of this clause);

(b) restoration or repair of the Property (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;

(c) termination of this Declaration for reasons other than substantial destruction or condemnation, as permitted with the approval percentages specified in Articles XVI and XVII, above;

(d) merger of the Project with any other common interest community;

(e) the granting of easements, leases, licenses or concessions through or over the Common Area (excluding, however, any such grants for public utilities or other public purposes not inconsistent with the use of the Common Area by the Owners);

(f) the assignment of the future income of the Association, including its right to receive Assessments; and

(g) any action not to repair or replace the Common Area except as permitted under Articles XVI and XVII, above.

19.5. Notice of Objection. Unless an Eligible Mortgage Holder provides the Secretary of the Association with written notice of its objection, if any, to any proposed amendment or
action outlined above within 30 days following the receipt of notice delivered by certified or registered mail, return receipt requested, of such proposed amendment or action, the Eligible Mortgage Holder shall be deemed conclusively to have approved the proposed amendment or action.

19.6. **First Mortgagees’ Rights.**

19.6.1. **Payment of Taxes and Insurance.** First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area. First Mortgagees making such payments shall be owed immediate reimbursement from the Association.

19.6.2. **Payment of Assessments.** Eligible Mortgage Holders shall be entitled to cure any delinquency of the Owner of the Townhome Lot encumbered by the Eligible Mortgage Holder in the payment of Assessments of which the Eligible Mortgage Holder has received notice under subsection 19.3(b), above. In that event, the Eligible Mortgage Holder shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

19.7. **Title Taken by First Mortgagee.** Any First Mortgagee who obtains title to the Townhome Lot pursuant to the remedies provided in the First Mortgage, including foreclosure of the First Mortgage, shall be liable for all Assessments due and payable as of the date title to the Townhome Lot vests in the First Mortgagee under the statutes of Colorado governing foreclosures. Except as provided in the Act, such First Mortgagee shall not be liable for any unpaid dues and charges attributable to the Townhome Lot which accrue prior to the date such title vests in the First Mortgagee.

**ARTICLE XX - ENFORCEMENT OF COVENANTS**

20.1. **Violations Deemed a Nuisance.** Every violation of this Declaration or any other of the Association Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement or correction of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of this Declaration will be available.

20.2. **Compliance.** Each Owner or other occupant of any part of the Property will comply with the provisions of the Association Documents as the same may be amended from time to time.

20.3. **Failure to Comply.** Failure to comply with the Association Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws will be given to the delinquent party prior to commencing any legal proceedings.
20.4. **Who May Enforce.** Any action to enforce the Association Documents may be brought by Declarant, the Board, the Architectural Control Committee, or the Manager in the name of the Association on behalf of the Owners. If, after a written request from an aggrieved Owner, none of the foregoing persons commences an action to enforce the Association Documents, then the aggrieved Owner may bring such an action.

20.5. **Remedies.** In addition to the remedies set forth above in this Article, any violation of the Association Documents shall give to the Board, the Architectural Control Committee, the Manager or Declarant, on behalf of the Owners, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest of the Owners and meaning of the Association Documents. If the offense occurs in any easement, walkway, Common Area or the like, the cure shall be at the expense of the Owner or other person responsible for the offending condition.

20.6. **Nonexclusive Remedies.** All the remedies set forth herein are cumulative and not exclusive.

20.7. **No Waiver.** The failure of the Board of Directors, Declarant, the Manager, or any aggrieved Owner to enforce the Association Documents will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Association Documents at any future time.

20.8. **No Liability.** No member of the Board of Directors, the Declarant, the Architectural Control Committee, the Manager or any Owner will be liable to any other Owner for the failure to enforce any of the Association Documents at any time.

20.9. **Recovery of Costs.** If legal assistance is obtained to enforce any of the provisions of the Association Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Association Documents or the restraint of violations of the Association Documents, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees (and legal assistants' fees) as may be incurred, or if suit is brought, as may be determined by the court.

**ARTICLE XXI - RESOLUTION OF DISPUTES**

21.1. **Resolution by Board.** If any dispute or question arises between Members or between Members and the Association or relating to the interpretation, performance or nonperformance, violation, or enforcement of the Association Documents, such dispute or violation may be subject to a hearing and determination by the Board in accordance with the procedures set forth in the Bylaws.
ARTICLE XXII - MASTER PLAN

22.1. **Master Plan.** The Property is subject to an overall Master Plan which has been approved by the City of Colorado Springs. The Master Plan is a general proposal for future development and is not meant to be exact and may be subject to some modifications. Ownership of a Townhome Lot hereunder implies a knowledge and acceptance of the existing Master Plan and an acquiescence in its future modification so long as said modification does not substantially increase the overall density under the original Master Plan.

ARTICLE XXIII - MASTER ASSOCIATION

23.1. **Master Association.** The Master Association, Kissing Camels Property Owners Association is a "master" association created by the Declarant in 1960 to be responsible for private road and common area maintenance, security protection, covenant enforcement and such other services for and on behalf of all owners and properties within the Corporate Area as may be deemed necessary or appropriate. The Master Association currently performs such services and will continue to perform such services for all properties within the Corporate Area, whether currently existing in a developed state or to be developed in the future. The decisions and actions of the Master Association shall be as determined by its officers acting pursuant to the direction and policies of its board of directors/trustees.

23.2. **Membership in Master Association.** Every Owner of a Townhome Lot shall be a Member of the Master Association. Membership shall be appurtenant to and may not be separated from ownership of any Townhome Lot. No Owner, whether one or more persons, will have more than one membership per Townhome Lot owned, but all of the persons owning each Townhome Lot will be entitled to rights of membership and use and enjoyment appurtenant to such ownership. An Owner shall not transfer, pledge, or alienate his membership in the Master Association in any way, except upon the sale or encumbrance of his Townhome Lot and then only to the purchaser or Mortgagee of his Townhome Lot.

23.3. **Voting Rights.** Each Member shall be entitled to vote in Master Association matters pursuant to this Declaration and/or the Master Declaration on the basis of one vote for each Townhome Lot owned, as each Townhome Lot is originally platted by Declarant. The number of votes will be determined by reference to the Plat as originally recorded by Declarant.

When more than one person holds an interest in any Townhome Lot, all such persons shall be Members. The vote for such Townhome Lot shall be exercised by one person or alternative persons as the Owners among themselves determine. If more than one of the multiple Owners are present at a meeting in person or by proxy, the vote allocated to their Townhome Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is a majority agreement if any one of the multiple Owners casts the vote allocated to his Townhome Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Townhome Lot.
Any Owner of a Townhome Lot which is leased may assign his voting right to the tenant, provided that a copy of the instrument of assignment is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right.

23.4. **Rules and Regulations.** The Master Association may from time to time promulgate reasonable rules and regulations governing the Property, which rules and regulations shall not be inconsistent with the terms of this Declaration, and all Owners shall be required, and hereby acknowledge and agree, to conduct themselves in accordance with, such rules and regulations.

**ARTICLE XXIV - CLUB FACILITIES**

24.1. **Kissing Camels Golf Club; Garden of the Gods Club.** The Kissing Camels Golf Club and the Garden of the Gods Club, and their respective clubhouse, dining, recreational, parking and other facilities, are and shall remain private property. Ownership of a Townhome Lot within the Property does not and will not imply permission to use any of those facilities, and the use in any manner without express permission will constitute a trespass and is no way authorized or permitted hereunder.

24.2. **Community Recreation Center at Kissing Camels Estates.** Ownership of a Townhome Lot within the Property shall entitle the Owner of such Lot to use the Community Recreation Center at Kissing Camels Estates so long as such Owner otherwise complies with all terms and conditions of this Declaration. Notwithstanding the foregoing, however, it is recognized and acknowledged that said Community Recreation Center is presently separately owned by the Declarant and operated and managed under contract from the Declarant. It is further recognized and acknowledged, that usage of the Community Recreation Center may be conditioned upon payment by such Owner of any usage or membership fees imposed from time to time by the Declarant, and may also be conditioned upon compliance with all rules and regulations in effect from time to time with regard to usage of such facilities.

24.3. **Golf Course Operations.** Each Owner of a Townhome Lot or Residence, by acceptance of a deed therefor (whether or not it shall be so expressed in said deed), is deemed to understand and acknowledge that a private golf course known as the Kissing Camels Golf Course (the "Golf Course") is operated adjacent to and nearby the Property, and is further deemed to understand and acknowledge that the proximity of the Property, and in particular certain of the Lots and Residences within the Property, to the Golf Course creates an inherently dangerous condition and subjects the Owner (and the Owner’s Guests or other persons who may from time to time be present on the Owner’s property) to certain hazards, risks, injuries, damages and liabilities in the nature of, but not limited to, personal injury, death, damage and/or loss of enjoyment or use of property incident to golfing activities (including, but not limited to, golfers, errant or misdirected golf shots, golf balls, golf carts or other golf equipment, spectators and media) and/or incident to Golf Course maintenance and operational activities (including, but not limited to, the acts or omissions of Golf Course employees, agents and/or contractors, noise, dust,
debris, inconvenience or disturbance related to maintenance carts/vehicles, grass cutting, de-thatching, sprinkling, watering, irrigation and flooding (whether with potable or nonpotable water), fertilization, effluent application, insect, pest and varmint control and abatement and pesticide application).

Each Owner of a Townhome Lot or Residence, by acceptance of a deed therefor (whether or not it shall be so expressed in said deed), is further deemed to knowingly accept and assume the hazards, risks, injuries, damages and liabilities of the nature described above and/or associated generally with the operation or maintenance of a golf course amenity and/or the design and layout of the Golf Course and its related facilities, and to agree to be alert to, and take precautions against, such risks and hazards and further to warn and protect their Guests and other persons who may from time to time be present on their property of and against such risks and hazards.

Declarant hereby disclaims any representation or warranty regarding any current or future ownership, use, zoning, development of or activity to be conducted on or in connection with the Golf Course which may affect the Property or any Townhome Lot, or any Residence located or to be located on any Lot. Owner hereby assumes and releases Declarant from any responsibility or liability for, and on behalf of itself and its successors and assigns, waives and releases any and all claims against, Declarant and Declarant's successors and assigns, relating to any and all hazards, risks, liabilities, effects, damages or injuries arising from any current or future ownership, use, zoning or development of, or any activity conducted on or in connection, with the Golf Course, regardless of the nature, timing or character of the same, including without limitation any injury or damage to Owner (and Owner's Guests or other persons who may from time to time be present on the Owner's property).

ARTICLE XXV - DURATION OF THIS DECLARATION AND AMENDMENT

25.1. Term. This Declaration and any amendments or supplements hereto will remain in effect from the date of recordation until amended or revoked in the manner set forth below or as otherwise allowed by law.

25.2. Pre-Sale Amendments. Until the first Townhome Lot has been conveyed by Declarant by recorded deed, any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.

25.3. Technical Amendments. Amendments to this Declaration to correct clerical, typographical, technical or other errors, or to make revisions which do not substantively change the rights and obligations of the parties, may be made by Declarant and/or the Board without consent of the Owners.

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25.4. **Mortgage Market Amendments.** Amendments to this Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, or the federal national mortgage association may be made by Declarant without consent of the Owners.

25.5. **Other Amendments; Termination.** This Declaration, or any provision of it, may be extended, modified or amended, or revoked as to the whole or any portion of the Property, upon the written consent of Owners holding 67% or more of the votes in the Association, and upon compliance with Article XIX, above, as appropriate. This Declaration may be terminated or revoked as to the whole or any portion of the Property upon the written consent of Owners holding 90% or more of the votes in the Association, and upon compliance with Article XIX, above, as appropriate. Amendments made pursuant to this Section will inure to the benefit of and be binding upon all Owners and their Guests, and their respective heirs, successors, and assigns. A certificate of a licensed abstract or title company showing record ownership of the Property and a certificate of the Secretary of the Association documenting votes held and voting rights exercised on the basis of such homeownership records will be evidence of such ownership and voting representation for the purposes of any such amendment.

25.6. **Declarant’s Approval.** Notwithstanding the provisions of Section 25.5, (i) no termination, extension, modification, amendment or restatement of this Declaration will be effective in any event during the Period of Declarant Control, unless the written approval of Declarant is first obtained; and (ii) no termination, extension, modification, amendment or restatement of this Declaration may be made during the Special Declarant Rights Period to impair any of the Special Declarant Rights or Declarant’s other rights under Article XIII or this Article unless the written approval of Declarant is first obtained.

25.7. **Notice of Amendment.** Except in the case of amendments as described in Sections 25.2, 25.3 and 25.4, above, no amendment or revocation of this Declaration will be effective unless a written notice of the proposed amendment is sent to every Owner reasonably in advance of any action taken or purported to be taken and such Owner has been given the opportunity to vote or give its consent thereto.

25.8. **Effective on Recording.** Any modification, amendment or revocation made in accordance with this Declaration will be immediately effective upon recording in El Paso County, Colorado, a copy of such amendment, modification or revocation executed and acknowledged by the necessary number of Owners (and by Declarant, as required), accompanied by either a certificate of a licensed abstract or title company as to ownership, or a duly authenticated certificate of the Secretary of the Association stating that the required number of consents of Owners were obtained, based on a certificate of a licensed title or abstract company or other authoritative evidence of compliance with the requirements of this Declaration regarding such matters, which will be placed on file in the office of the Association.
ARTICLE XXVI - MISCELLANEOUS PROVISIONS

26.1. **Severability.** This Declaration, to the extent possible, will be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable will be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

26.2. **Construction.** In interpreting words in this Declaration, unless the context will otherwise provide or require, the singular will include the plural, the plural will include the singular, and the use of any gender will include all genders.

26.3. **Headings.** The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of this Declaration.

26.4. **Waiver.** No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy will operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver will be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.

26.5. **Limitation of Liability.** Neither the Association nor any officer or member of the Board will be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Association Documents if the action or failure to act was made in good faith. The Association will indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.

26.6. **Conflicts Between Documents.** In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration will control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

26.7. **Other Applicable Laws.** Unless properly excepted from the terms thereof by the express language of this Declaration, the development, construction, use and occupancy of the Property shall be subject to all applicable local, state and federal laws, rules and regulations. In the event the terms and conditions of this Declaration conflict with applicable zoning laws or subdivision ordinances, then the higher standard shall control.

26.8. **Assignment.** Subject to the requirements and limitations of the Act, Declarant may assign all or any part of the Special Declarant Rights or any of Declarant’s other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Clerk and Recorder of El Paso County, Colorado.
26.9. Counterparts. This Declaration and the required approvals and joinders to it, may be executed in two or more counterparts which, taken together shall evidence the agreement of Declarant and all such parties approving or joining in this Declaration.

26.10. Mergers or Consolidation. The Association may merge with another incorporated or unincorporated entity to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property together with the covenants and restrictions established upon any other property, as one plan.

26.11. Acceptance of Deed. Each Owner of a Townhome Lot included within and subject to this Declaration, by acceptance of a deed conveying the same, shall be deemed to accept title thereto upon and subject to all of the restrictions, conditions, covenants and agreements contained herein, and the jurisdiction, rights and power of the Association, and by such acceptance shall for such Owner and such Owner’s heirs, personal representatives, successors and assigns (and for such Owner’s guests, invitees, family members, tenants, employees, agents or other persons who may from time to time be allowed on the Property at the request of the Owner or due to relationship or acquaintance with the Owner), covenant, agree and consent to and with the Association and the grantees and subsequent Owners of each of said other Townhome Lots, to keep, observe, comply with and perform each of said restrictions, covenants, conditions and agreements.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the date and year set forth below.

DECLARANT:

HILL DEVELOPMENT CORPORATION
a Delaware corporation

By: ______________

Its: ______________

Date: __________________

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ATTEST:

By: Donald C. Hill

Its: VICE PRESIDENT

Date: September 5, 2001

STATE OF COLORADO

) ss

COUNTY OF EL PASO

STATE OF COLORADO

) ss

COUNTY OF EL PASO

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 5th day of September, 2001, by Lyen Hill, as President, and by Donald C. Hill, as VICE PRESIDENT, of HILL DEVELOPMENT CORPORATION.

WITNESS MY HAND AND OFFICIAL SEAL:

Notary Public

My Commission Expires: 1/28/04

[notary public seal]
EXHIBIT A

Legal Description of the Property

Lots 1 and 3, THE GREENS AT KISSING CAMELS ESTATES FILING NO. 1, El Paso County, Colorado, according to the Plat thereof dated August 31, 2000, and recorded September 20, 2000, in the real estate records of the El Paso County Clerk and Recorder at Reception No. 200113948.
EXHIBIT B

Expansion Property

Lot 2, THE GREENS AT KISSING CAMELS ESTATES FILING NO. 1, El Paso County, Colorado, according to the Plat thereof dated August 31, 2000, and recorded September 20, 2000, in the real estate records of the El Paso County Clerk and Recorder at Reception No.200113948
EXHIBIT C

Recorded Basements and Licenses

List of Title Exceptions

1. All covenants, conditions, restrictions, exceptions, easements and other encumbrances and matters of record.

2. All covenants, conditions, restrictions, exceptions, easements and other encumbrances reflected on or imposed by that certain Plat of THE GREENS AT KISSING CAMELS ESTATES FILING NO. 1, El Paso County, Colorado, dated August 31, 2000, and recorded September 20, 2000, in the real estate records of the El Paso County Clerk and Recorder at Reception No. 200113948

3. Any and all right, title or interest of Kissing Camels Property Owners Association by virtue of that certain Certificate of Incorporation of Kissing Camels Property Owners' Association filed of record with the Colorado Secretary of State on or about May 23, 1960.

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