

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF HARVEST RIDGE VILLAGE TOWNHOMES**

THIS DECLARATION, made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Harvest Ridge Village, LLC, a Colorado limited liability company, under the laws of the State of Colorado, hereinafter referred to as “Declarant”.

WHEREAS, Declarant is the owner of certain real property described in Exhibit A, attached hereto and made a part hereof, hereinafter referred to as “Harvest Ridge Village Townhomes”, and

WHEREAS, Declarant desires to construct and shall construct on the subject property four (4) buildings (each a “Building”) that will contain a total of twelve (12) town home units, herein referred to individually as a “Unit” and collectively as the “Units”, which Units within each Building are separated by common walls; and

WHEREAS, the Units shall be located within a common interest community known as “Harvest Ridge Village Townhomes”; and

WHEREAS, Declarant desires to insure the attractiveness of Harvest Ridge Village Townhomes to prevent nuisances, to preserve, protect and enhance the values and amenities of the common community and to provide for the maintenance of the Common Areas therein. To accomplish these purposes, Declarant (a) desires to subject the real property described in Exhibit A, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said real property and each Owner thereof; and (b) has caused to be incorporated Harvest Ridge Village Homeowner’s Association, Inc. (hereinafter referred to as “Association”), as a non-profit corporation under the laws of the State of Colorado for the purpose of exercising the powers and functions granted to it by this Declaration and the Association’s Articles of Incorporation and Bylaws.

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit A, attached hereto, and such additions thereto as may hereafter be made, shall be held, transferred, sold, conveyed, improved and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, which shall run with the real property in Harvest Ridge Village Townhomes and be binding on all parties having any right, title or interest in Harvest Ridge Village Townhomes or any additions thereto or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

## **ARTICLE 1. Definitions.**

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

“Act” shall mean the Colorado Common Interest Ownership Act, §38-33.3-101 et seq., C.R.S., as the same may be amended from time to time.

“Annual Assessment” shall be as defined in Section 5.3 and shall constitute an Assessment against each Lot established by the Board of Directors to cover the anticipated Common Expenses for the applicable Assessment period.

“Architectural Review Committee” shall refer to the committee appointed by the Board of Directors pursuant to this Declaration for the purpose of administering the architectural approval and design review provisions contained herein.

“Articles” shall mean the Articles of Incorporation for Harvest Ridge Village Homeowner’s Association, Inc., a Colorado non-profit corporation, as filed with the Colorado Secretary of State on October 25, 2007, under Entity Identification Number 20071490532, and any amendments which may be made to those Articles from time to time.

“Assessments” shall mean the all assessments which may be levied against the Owners pursuant to this Declaration or any other provision of the Governing Documents.

“Association” shall mean and refer to Harvest Ridge Village Homeowner’s Association, Inc., a Colorado nonprofit corporation, organized under the laws of the State of Colorado, and its successors and assigns.

“Board of Directors” or “Executive Board” shall mean the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.

“Building” shall mean each building on the Property consisting of either two (2) or four (4) Units.

“Bylaws” shall mean the Bylaws adopted by the Association, as amended from time to time.

“Common Area” or “Common Elements” shall mean all real property owned by the Association for the common use and enjoyment of the Owners, together with all improvements located thereon, but excluding the Units. The Common Area shall include all of Tract A and all private streets located within the Community (i.e. Harvest Ridge Heights and a portion of New Crossings Point), as the same are depicted on the Plat.

Common Area shall also include the easements depicted on the Plat.

“Community” or “Common Interest Community” shall mean the planned community created by this Declaration, as amended and restated by this Declaration, consisting of the Property, Common Area, and any improvements constructed on the Property and the Common Area.

“Common Expenses” shall mean (i) all expenses expressly declared to be common expenses by this Declaration, or the Bylaws of the Association; (ii) all other expenses of administering the Association, and administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Area or any other items for which the Association is responsible for maintaining; (iii) insurance premiums for the insurance carried under this Declaration; and (iv) all expenses lawfully determined to be common expenses by the Board of Directors of the Association.

“Declaration” means this Declaration.

“Declarant” shall mean Harvest Ridge Village, LLC, a Colorado limited liability company.

“Default Assessment” shall be the Assessment imposed against a Lot in accordance with Section 5.5.

“First Lien Security Interest” or “First Mortgage” shall refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of El Paso, Colorado, having priority of record over all other recorded liens except those governmental liens and Assessment liens made superior by statute.

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

“Governing Documents” shall mean this Declaration, the Articles of Incorporation, the Bylaws, the Plat for the Property, and any procedures, rules, regulations, or policies adopted under such documents by the Association.

“Limited Common Elements” means those portions of the Common Area, if any, designated by the Association for the exclusive use of one or more but fewer than all of the Units.

“Lot” shall mean and refer to the twelve (12) Lots reflected on the Plat upon which a Unit shall be constructed and maintained.

“Lot Specific Assessment” shall be the Assessment imposed against a Lot in accordance with Section 5.2.

“Member” shall mean and refer to every person or entity that holds membership in the Association.

“Owner” shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

“Period of Declarant Control” shall mean the earlier of: (i) Sixty (60) days after conveyance of seventy five percent (75%) of the Lots to Owners other than Declarant; or (ii) Two (2) years after Declarant has last conveyed a Lot in the ordinary course of business.

“Plat” shall mean the subdivision plat of the Community recorded in the real property records of El Paso County, Colorado, on January 11, 2006, at Reception Number 206712219, depicting the Property and Common Area subject to this Declaration, as the same may be amended from time to time.

“Property” shall mean and refer to that certain real property described on Exhibit A attached hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

“Special Assessment” shall be the Assessment imposed on a Lot for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, expected or unexpected repair or replacement of improvements within the Common Area or any area which the Association maintains, or for any other expense incurred or to be incurred as provided in this Declaration as provided in Section 5.4.

“Unit” shall mean the residential dwelling improvements constructed on a Lot.

## **ARTICLE 2. Submission/Names/Division Of Real Property.**

**Section 2.1 Submission of Property to Declaration.** The Property shall be held or sold, and conveyed subject to the easements, restrictions, covenants, and conditions included in this Declaration. The Association and Owners further declare that this Declaration is made for the purpose of protecting the value and desirability of the Community and the Property, that this Declaration shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall find and be for the benefit of each Owner.

**Section 2.2 Name.** The type of Common Interest Community is a Planned Community. The name of the Planned Community is “Harvest Ridge Village Townhomes.” The name of the Association is “Harvest Ridge Village Homeowner’s Association, Inc.” The Community is located in the County of El Paso, State of Colorado.

**Section 2.3 Utility and Plat Map Easements.** Easements for utilities and other purposes over and across the Lots and Common Areas may be as shown upon the recorded Plat of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

**Section 2.4 Easements for the Association.** Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) to allow for the Association's performance of obligations in this Declaration. For the purpose of performing obligations of the Association and inspections related thereto, the Board of Directors, through its duly authorized agents, contractors, employees or the Architectural Review Committee, shall have the right, after reasonable notice to the Owner or occupants thereof, to enter upon any Lot or any Unit, and improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Board of Directors or its agents, contractors or employees, may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its actions, except on account of its willful misconduct.

**Section 2.5 Emergency Easements.** A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

**Section 2.6 Encroachment Easements.** A nonexclusive easement for the benefit of the Association shall exist over each Lot for any encroachment by a structure, monument or landscaping for which the Association is responsible.

**Section 2.7 Easement for Common or Party Walls.** Each Owner, their agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon adjacent Lots and in and upon adjacent Units for purposes of common or party wall maintenance and repair, in accordance with the party wall provisions contained in this Declaration, upon reasonable notice to the Owners of the common or party wall.

**Section 2.8 Number of Lots.** The Property consists of twelve (12) Lots, together with all improvements thereon and all easements and rights located thereon or appurtenant thereto as provided herein, and the Common Area. There will be one Unit constructed upon each Lot for a total of twelve (12) Units to be located within the Community.

### **ARTICLE 3. Membership And Voting Rights; Association Operations.**

**Section 3.1 Membership.** Every Owner and Declarant shall be a Member of the Association. If any Unit is owned by more than one individual or entity, the joint Owners of a Unit shall, at the time of purchase, designate for the Association one address to which all notices to such joint or common Owners shall be sent.

**Section 3.2 Classes of Membership: Voting Rights.** Each Owner of a Unit shall be entitled to one (1) vote for each Unit owned, provided that all Assessments due the Association for such Unit have been paid in full. Notwithstanding the foregoing, Declarant shall not be required to pay Assessments on Lots owned by Declarant and held for sale to third party purchasers.

**Section 3.3 Joint or Common Ownership.** If any property interest is held jointly or in common by more than one (1) person the vote for such Unit shall be cast as a unit and neither fractional votes nor split votes shall be allowed. Any joint or common Owner shall be entitled to cast the vote or votes belonging to the joint or common Owners unless another joint or common Owner shall have delivered to the Secretary of the Association prior to the election a written statement to the effect that the Owner wishing to cast the vote has not been authorized to do so by the other joint or common Owner or Owners. In the event that such joint or common Owners are unable to agree among themselves as to how their vote or votes shall be cast as a unit, they shall lose their right to cast their vote or votes on the matter in question.

**Section 3.4 Proxies.** A Member may cast an eligible vote in person or by proxy at any meeting of the Members.

**Section 3.5 Transfer of Membership.** An Owner shall not transfer, pledge, or alienate their membership in the Association in any way, except upon the sale or encumbrance of their Lot and then only to the purchaser or mortgagee of their Lot.

**Section 3.6 General Purposes and Powers of the Association.** The Association, through its Board of Directors, shall perform functions and manage the Community as provided in this Declaration so as to further the interests of the residents, occupants, tenants and guests of the Community and Members of the Association. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

**Section 3.7 Authority of the Association.** The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, its Articles of Incorporation, the Bylaws, the plat and any rules and regulations adopted by the Board of Directors, as all of the same may be amended from time to time. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility.

**Section 3.8 Specific Powers.** The Association shall have the powers, authority and duties as necessary and proper to manage the business and affairs of the Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act. The Association shall also have the power to assign its right to future income, including the right to assign its right to receive Assessments, but only upon the affirmative vote of at least fifty-one percent (51%) of the Owners present or represented at a meeting called for that purpose.

**Section 3.9 Liability for Assessments; Allocated Interests.** Liability for Assessments (other than Lot Specific Assessments or assessments levied pursuant to Section 4.4) and votes in the Association shall be on an equal basis for all Lots in the Community. Cumulative voting shall not be permitted.

**Section 3.10 Compliance with Governing Documents.** Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Governing Documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Lot for the benefit of all other Lots.

**Section 3.11 Manager.** The Association may employ or contract for the services of a Manager to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The employment shall be by written contract having a term of no more than three years and shall be subject to cancellation by the Association on thirty (30) days notice, with or without cause, and without a cancellation fee. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board. All fees or compensation payable to a Manager shall be considered a Common Expense and included in the Assessments.

**Section 3.12 Implied Rights and Obligations.** The Association may exercise any right or privilege expressly granted to the Association in the Governing Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Governing Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Governing Documents, and every other duty or obligation implied by the express provisions of the Governing Documents or necessary to reasonably satisfy any such duty or obligation.

**Section 3.13 Non-Liability of Officials.** To the fullest extent permitted by law, the Board of Directors, the Architectural Review Committee, or any other committees or any Members thereof, shall not be liable to any Owner or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence, or the like made in good faith and which the Board of Directors, or such committees or officers reasonably believed to be within the scope of their respective duties.

**Section 3.14 Indemnification.** To the full extent permitted by law, each officer, director and committee member of the Association shall be and are hereby indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director or committee member of the Association, or any settlements thereof, whether or not they are an officer or director of the Association at the time such expenses are incurred; except in such cases wherein such officer, director or committee member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association.

#### **ARTICLE 4. Property Rights.**

**Section 4.1 Lot Boundaries.** The planes defined by the Lot boundary lines on the Plat for the Property are designated as boundaries of each Lot, as depicted on the Plat. Each Lot includes the spaces and improvements lying within the boundaries described above, and also includes the utilities and utility meters and communications, television, telephone and electrical receptacles and boxes serving that Lot exclusively, whether or not in the boundaries or contiguous to the Lot, unless the same are maintained by a governmental agency or entity. The Common Areas are excluded from each Lot and any utilities or other facilities running through or within any Lot for the purpose of furnishing utility and other service to other Lots and/or the Common Areas is also excluded.

**Section 4.2 Association Responsibility.** The Association shall provide exterior maintenance upon each Unit and Lot as follows:

- (a) Paint, repair, replace, maintain and care for exterior building surfaces; maintain, repair and replace the roofs, gutters, and downspouts, (excluding those exterior components which are designated as the Owner's responsibility below, and glass surfaces, doors, screens, windows, including window screens, which shall be the Owners' responsibility). An Owner shall not paint or change the appearance of the exterior of their Unit. The Association shall paint or re-stain the exterior of all Units as often as reasonably necessary to keep such exteriors in good condition.
- (b) All repair, replacement, improvement and maintenance of the Common Area and all improvements located thereon including without limitation any landscaping, sprinkler system, any roadways, driveways, utility lines (to the extent not maintained by utility companies), Common Area light fixtures, sidewalks and pathways, except that each Owner shall be responsible for cleaning any sidewalk leading to their Unit, including snow removal to the extent it is under the amount of accumulation for which snow removal is provided by the Association.
- (c) All landscape and related maintenance, repair, replacement and improvement of the area of each Lot located outside the boundaries of the Unit located on the Lot, and not a part of the Common Area, except as expressly delegated to or assumed by an Owner as provided for in this Declaration.
- (d) The Association may also undertake, but shall have no obligation to undertake, such emergency repairs as the Board of Directors believes necessary to prevent imminent danger to life or property.

**Section 4.3 Association Discretion.** The Board of Directors may determine the specifications, scope, extent, nature and parameters of the Association's maintenance, repair, replacement and improvement responsibilities of the Common Elements, and landscaping. The Association, in its sole discretion shall determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used.

**Section 4.4 Owner Maintenance.** Each Owner shall be responsible for all maintenance, repair, replacement and improvement within their Lot and on their Unit, except for maintenance, repair, replacement and improvement of the Association, as provided for in this Declaration. Owner maintenance, repair, replacement and improvement shall include any fixtures, furnishings, equipment and appliances located on their Lot. Further, Owners shall be responsible for the foundations, walls, doors, storm doors, shed doors, doors to storage areas, door frames, door hardware, and defective installation of doors, windows, skylights, window and skylight frames, glass, screens, and defective installation of windows or skylights, glass surfaces, sliding glass doors, patio area fences, patio area enclosures, Owner installed Improvements to a patio area, any patio area, concrete pad or concrete slab, doorbells, light fixtures and exterior light bulbs of their Unit. All utilities, fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Lot shall be maintained and kept in repair by the Owner thereof. An Owner is further responsible for the maintenance repair and replacement of all air conditioning and related equipment whether located on the Lot or on Common Area. An Owner shall do no act or any work that will impair any easement or utility service, nor do any act or allow any conditions to exist which will adversely affect the use and enjoyment of the other Lots or the provision utility services to such Lots. No Owner shall, in whole or in part, change the landscaping, exterior additions, alterations and by the addition or removal of any items thereon without the prior written consent of the Board of Directors. If an Owner fails to fulfill their responsibilities under this Section, the Board may, at its option, take such action as it deems appropriate, including without limitation performing the Owner's obligations, after ten (10) days' notice to such Owner, except in emergencies, and any costs resulting there from shall be an Assessment against such Owner and their Lot.

**Each Owner acknowledges that the water necessary to run the sprinkler systems within the Community in order to maintain the landscaping within the Common Area is metered to each individual Unit and not separately metered and billed to the Association. Each Owner agrees to pay the utility bill for their respective Unit which utility bill will include charges relating to the use of water to maintain the landscaping within the Common Area, and that portion of an Owner's utility bill relating to water utilized for maintenance of Common Areas shall be deemed as a Lot Specific Assessment and shall be paid by each Owner pursuant to Article 5.**

**Section 4.5 Negligence.** In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, their family, or guests, or invitees the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Lot is subject.

**Section 4.6 Party Walls and General Rules of Law to Apply.** Each wall which is built as a part of the original construction of a Building and placed on or near the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration and this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(a) The cost of un-insured and reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall in proportion to such use.

(b) If a party wall is destroyed or damaged by fire or other casualty, and if that loss is not covered by the Association's casualty policy, any Owner who has used the wall shall restore it. If the other Owners thereafter make use of the restored wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice. The Owner who caused the restoration may call for a larger contribution from the others for any un-insured costs of repair.

(c) Notwithstanding any other provision of this Declaration and Section, any Owner who by negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of refurbishing the necessary protection against such elements.

(d) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Lot and shall pass to such Owner's successors in title.

**Section 4.7 Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights of a Member for any period during which any Assessment against their Lot remains unpaid, and for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations, after notice and the opportunity for a hearing;

(b) the right of the Association to borrow money for the purpose of improving the Common Area and facilities, and with the written consent of two-thirds (2/3) of the Members entitled to vote, to pledge future Assessments or mortgage the Common Area as security for that purpose, provided, that the rights of such mortgage shall be subordinate to the rights of the Owners;

(c) The right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Areas, to the extent permitted by the Act;

(d) the right of the Association to promulgate and publish rules and regulations which each Member shall strictly comply with; and

(e) the right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements thereon.

**Section 4.8 Delegation of Use.** Any Member may delegate, in accordance with the Bylaws and rules and regulations adopted by the Board of Directors, their right of enjoyment to the Common Area and facilities to the members of their family, their tenants, or contract purchasers who reside on the Property. The Board of Directors shall have the express right to limit Owners' ability to delegate their right to use the Common Area of the Community through rules and regulations.

**Section 4.9 Limited Common Area.** Portions of any Common Areas may be designated as a Limited Common Element to a Lot. The Association may allocate or assign Common Areas or Limited Common Element areas (1) by making such an allocation in a recorded instrument, or (2) by recording an appropriate amendment or supplement to this Declaration or (3) by recording a supplement to the plat map. Such allocations by the Association may be made as a matter of reserved right.

#### **ARTICLE 5. Covenant for Assessments.**

**Section 5.1 Creation of Association Lien and Personal Obligation to Pay Assessments.** Each Lot shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association's Annual Assessments, Special Assessments, Lot Specific Assessments, Default Assessments, and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association's Annual Assessments and such other Assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. No Owner may become exempt from liability for payment of any Assessments by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason. Notwithstanding the foregoing, Declarant shall not be responsible for any Assessments that may accrue during Declarant's ownership of a Unit prior to sale to a third party Owner.

**Section 5.2 Lot Specific Assessments.** The Association shall have the right to add to any Owner's Assessment as provided in this Section those amounts expended by the Association for the benefit of any individual Lot and the Owner thereof, including, but not limited to: fines; Unit casualty insurance; improvement, repair, replacement and maintenance specific to a Lot; improvement, repair, replacement and maintenance caused by the negligent or willful acts of any Owner, their guests, employees, licensees, lessees or invitees; and all other expenditures or charges which the Board of Directors, in its sole discretion, chooses to allocate to a Lot and which are readily determined to be allocable to a particular Lot. That portion of an Owner's utility bill utilized for watering of Common Area shall be deemed as a Lot Specific Assessment.

**Section 5.3 Annual Assessments.** An Annual Assessment to cover anticipated Common Expenses of the Association may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year as established by the Board of Directors. Annual Assessments shall be assessed equally against all Lots and shall be due and payable in monthly installments, in advance on or before the tenth (10th) of each month, unless otherwise determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Annual Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

**Section 5.4 Special Assessments.** In addition to the Annual Assessments authorized by this Section, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, expected or unexpected repair or replacement of improvements within the Common Area or any area which the Association maintains, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments. The Association shall not levy a Special Assessment without the affirmative vote of two-thirds of the Owners present, in person or by proxy, at a meeting of the Members. Notice in writing of the amount of any Special Assessment approved by Owners and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special meeting shall be held for the approval of any Special Assessment as set forth above. Notice of such meeting shall be in compliance with the Bylaws of the Association. In the event a quorum is not obtained at any special meeting called pursuant to this Section, the meeting may be adjourned and rescheduled. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**Section 5.5 Default Assessments.** All monetary fines assessed against an Owner pursuant to the Governing 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 Governing Documents shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

**Section 5.6 Owner's Negligence or Misconduct.** In the event that the need for maintenance, repair, or replacement of the Common Area, or any portion thereof, of a party wall, or of the exterior of any building is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, tenants, servants, guests, or invitees, then the expenses, costs, and fees incurred by the Association or another Owner for such maintenance, repair, or replacement shall be a personal obligation of such negligent or wrongful Owner, and if not repaid to the Association or other Owner within seven (7) days after notice of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration, such expenses, costs, and fees shall automatically become a default Assessment determined and levied against such Lot, and the Association or other Owner may proceed in accordance with the applicable provisions of this Section.

**Section 5.7 Effect of Nonpayment of Assessments.** Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within thirty (30) days after the due date thereof, or as established by the Board of Directors, shall bear interest at a uniform rate of interest as determined by the Board of Directors on a per annum basis from the due date or, if no rate is established, at the fixed rate of 18% per annum, and the Association may assess a reasonable late charge for payments made after the tenth (10th) of each month thereon as determined by the Board of Directors. Failure to make payment within thirty (30) days of the due date thereof shall cause the total amount of such Owner's Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may suspend the voting rights of the Owner during any period of delinquency and may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefore. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or quarterly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

**Section 5.8 Successor's Liability for Assessment.** In addition to the personal obligation of each Owner to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to the fee simple title of a Lot, 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 attorney fees against such 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 Lot. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association under this Section.

**Section 5.9 Lien Priority.** The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a First Lien Security Interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for Real Estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Section is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any First Lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

**Section 5.10 Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Board of Directors or its manager and upon the written request of any Owner, Mortgagee, prospective Mortgagee, title company or prospective purchaser of a Lot, the Board of Directors of the Association through its manager shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance. Unless such statement shall be issued (which shall include posting in the United States Mail) within fourteen (14) days of such written request, all unpaid Assessments which become due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest in the Lot subsequent to requesting such statement. If the request is made by a prospective purchaser, both the lien for the unpaid Assessment and the personal obligations of the purchaser shall be released automatically if: (1) the statement is not furnished within the fourteen (14) day period provided for above; (2) after that period an additional written request is made by such purchaser and is not complied with within ten (10) days; and (3) the purchaser subsequently acquires the Lot.

**Section 5.11 Homestead.** The lien of the Association Assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said Assessment lien.

## **ARTICLE 6. Architectural Approval/Design Review.**

**Section 6.1 Required Approvals of Exterior Improvements and Changes.** The exterior of the Units and buildings shall not be changed or altered nor shall any exterior addition to or change or alteration be made on any Lot (“Improvements”) until complete plans and specifications shall have been first submitted to and approved in writing as to harmony of external design and location in relation to the surrounding structures and topography by the Architectural Review Committee (“Committee”). The Committee may recommend approval or disapproval of the plans and specifications under this Section to the Board of Directors and may also require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure, as well as such other materials and information as may be required by the Design Guidelines. If a building permit is required by the city or county, the Owner shall provide a copy of such permit to the Association.

**Section 6.2 Establishment of the Architectural Review Committee.** An Architectural Review Committee may be appointed by the Board of Directors. In the event an Architectural Review Committee is not established, the Board of Directors shall perform all duties of the Architectural Review Committee as provided in this Section and the governing documents of the Association.

**Section 6.3 Design Guidelines.** The Association, through its Board of Directors, and upon recommendation from the Architectural Review Committee, shall have the power to make, establish and promulgate guidelines, or rules and regulations, relevant to the function of the Architectural Review Committee (“Design Guidelines”), including, but not limited to, minimum design standards, and procedures and fines or penalties for violation of the provisions of this Section.

**Section 6.4 Review Procedures.** The Board of Directors or Committee shall reply to all submittal of plans made in accordance herewith in writing within sixty (60) days after receipt and shall issue a written statement approving, disapproving or conditioning approval. In the event the Board of Directors or Committee fails to approve or disapprove a request within sixty (60) days, the approval of the Board of Directors or Committee shall be deemed given. All communications and submittals shall be addressed to the Board of Directors and the Architectural Review Committee at the office of the management company of the Association. All architectural decisions of the Board of Directors shall be final. In reviewing plans submitted to it, the Board or Committee shall take into consideration the design, style and construction of the proposed alterations or Improvement, the harmony of its design, with the surrounding Lots and shall determine whether such proposed improvement is consistent with the general architecture of other buildings located upon the properties subject to this Declaration and whether or not the construction or alteration of the Improvement will adversely affect or decrease the value of other Lots because of its design, location, height, type of materials or other aesthetic considerations.

**Section 6.5 Prosecution of Work After Approval.** After approval, proposed Improvements shall be accomplished as promptly and diligently as reasonably possible and in complete conformity with the description thereof, any materials submitted to or approved by the Board of Directors and any conditions imposed by the Board of Directors. Failure to diligently prosecute and complete any proposed Improvements within a reasonable time, and in any event within ninety (90) days after the date of approval of the application, or to complete the Improvements in accordance with the description and materials furnished to, and the terms, conditions, and requirements imposed by, the Board of Directors, shall constitute a violation of this Section and the approval of such proposed Improvements previously granted by the Board of Directors shall thereupon be null and void. If the work approved is not completed within the ninety (90) day period, the Owner will be required to apply for new approval.

**Section 6.6 Variances.** The Board of Directors may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in the Design Guidelines. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Property or Common Area nor deviate substantially from the general intent and purpose of this Declaration.

**Section 6.7 Waivers.** The approval or consent of the Board of Directors or appointed representative thereof, to any application for design approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Board of Directors as to any application or other matters subsequently or additionally submitted for approval or consent.

**Section 6.8 Liability.** Neither the Architectural Review Committee nor any member thereof nor the Board of Directors nor any member thereof shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Review Committee's or the Board of Directors' respective duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Review Committee or its member or the Board of Directors or its member, as the case may be. The Architectural Review Committee and the Board of Directors shall not be responsible for reviewing, nor shall its approval of any plans or specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building, zoning or other codes.

## **ARTICLE 7. Use Restrictions and Covenants.**

**Section 7.1 Authority.** All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Existing Owners and their successors and assigns acknowledge that they have been given notice, and that:

(a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.

(b) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.

(c) All fines or penalties imposed are collectible as Assessments.

**Section 7.2 Right of Owners Regarding Rules and Regulations.** Except as otherwise provided below, the Board may not adopt any Rule in violation of the following provisions:

(a) Equal Treatment. Rules and regulations shall be reasonably and uniformly applied. Rules and regulations shall be effective thirty (30) days after delivery of written notice of adoption, amendment or repeal, together with a copy of the currently effective rules and regulations.

(b) Speech. The rights of Owners to display one (1) political sign or symbols in their window of the kinds normally displayed in or outside of Units located in single-family residential neighborhoods which sign shall be removed within forty-eight (48) hours after the election, if applicable, shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners. Political signs shall not be placed on the Common Areas.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations in their Units of the kinds normally displayed in or outside of Units located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners.

(d) Household Composition. No Rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit, which shall include traditional and non-traditional family groups, unmarried couples, and unrelated persons holding title as tenants in common. The Association may limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Lot and its fair share use of the Common Elements.

(e) Activities within Lots. No Rule shall interfere with the activities carried on within the confines of Lots, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, that block the views from other Lots, or that create an unreasonable source of annoyance.

(f) Alienation. No rule shall prohibit transfer of any Lot, or require consent of the Association or Board of Directors for transfer of any Lot.

**Section 7.3 Home Offices, Business and Commercial Uses.** Each Unit is primarily designated for residential use. No business, profession, trade, or similar activity may be conducted upon any Unit or within the Community, except that an Owner may conduct secondary business uses and activities within the Unit so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit (home day care pursuits whether licensed or unlicensed are expressly prohibited); (b) the activity does not involve door-to-door sales or solicitation within the Community; (c) the activity does not involve any visitation of the Unit by clients or customers, including regularly scheduled deliveries by suppliers, or other business invitees; and (d) the activity is consistent with the primary residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners or their family members, guests, tenants, invitees and licensees, as may be determined in the sole discretion of the Board.

**Section 7.4 Restrictions Regarding Leasing.** Any Lot Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Lot Owner may deem advisable, subject to restrictions of this Declaration, subject to restrictions of record and subject to the following:

(a) Short term occupancies and rentals (of less than six (6) months) of Units shall be prohibited, without prior written permission from the Board of Directors.

(b) Any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation and the rules and regulations of the Association. Owners are required to provide tenants with copies of all current Governing Documents. A copy of the lease or rental agreement shall be provided to the Board of Directors upon its request.

(c) All occupancies, leases and rental agreements of Units shall state that the failure of the tenant, renter or guest to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the rules and regulations of the Association shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

(d) All occupancies of Units shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Declaration, the Bylaws of the Association, the Articles of Incorporation or the rules and regulations of the Association.

(e) Leases shall be for the entire Lot and Unit. Rental or leasing of a Unit for hotel or transient purposes is prohibited.

(f) Except as restricted in this Declaration, and such rules and regulations as the Association may promulgate, the right to lease or allow occupancy of a Unit shall not be restricted.

**Section 7.5 Animals.** No undomesticated animals shall be kept or maintained on any Lot, except that Owners may keep a total of two (2) dogs, cats or other domestic household pets, so long as such pets are not kept for commercial purposes and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent property, and are kept in compliance with all existing applicable local ordinances and the rules and regulations. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet and shall clean up all pet waste from Common Areas.

**Section 7.6 Signs.** No advertising or commercial signs of any character shall be erected, placed, permitted or maintained on any Lot, provided, however, that a “for sale” or “for rent” sign consistent with the rules and regulations of the Association or approved by the Board may be placed in a window of the Unit.

**Section 7.7 Common Areas.** There shall be no unreasonable or permanent obstruction of the Common Area. Temporary and reasonable use of the Common Area is permitted and encouraged, subject to regulation of the Association and the terms of this Declaration. No planting or gardening shall be done, and no signs, fences, hedges or walls or other structures shall be erected or maintained upon the Common Area except such as are installed in accordance with the initial construction of the buildings, located thereon or as approved by the Association’s Board of Directors. Further, nothing shall be kept or stored on any part of the Common Area without the prior written approval of the Association and nothing shall be altered on, constructed in, or removed from the Common Area without the prior written approval of the Association.

**Section 7.8 Antenna.** All exterior placement or installation of antenna, satellite dishes and other over the air reception devices less than one (1) meter in diameter designed for reception of video signals within the Property shall be subject to rules and regulations to the extent permitted by federal law. Devices over one (1) meter in diameter and radio reception devices may be installed only with the prior written approval of the Board of Directors.

**Section 7.9 Unsightliness.** No unsightly objects or materials, as further set forth in the rules and regulations, shall be allowed to be placed or to remain upon the Property. Each Lot at all times shall be kept clean and no trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other materials shall be permitted to remain exposed upon any Lot so that the same are visible from the street or from another Unit. No condition shall be permitted within any Unit, patio, deck, porch or enclosed backyard which is visible from other Units or the Common Area and which is inconsistent with the design integrity of the Property as determined by the Board of Directors in its sole discretion, including, but not limited to, articles kept or stored on patios, porches and decks.

**Section 7.10 Vehicular Parking, Storage, and Repairs.**

(a) Any additional parking spaces located within the Common Area, if any, may be used on a first-come, first-served basis subject to rules and regulations established by the Board of Directors.

(b) All vehicles must be parked in compliance with the Association rules and regulations.

(c) Commercial vehicles, house trailers, camping trailers, boat trailers, hauling trailers, running gear, boats, trucks larger than 3/4 ton, vans other than mini-vans and other passenger size vans, self-contained motorized vehicles and other recreational vehicles (excluding sport utility vehicles) shall not be parked within the Community unless otherwise permitted by the Board of Directors, provided that such vehicles may be parked temporarily for loading, unloading, delivery or emergency.

(d) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers, boats, or vans may be performed on any Lot. The foregoing restriction shall not be deemed to prevent washing and polishing or changing of tires of any motor vehicle, together with those activities normally incident and necessary to such washing and polishing or tire changing.

**Section 7.11 Abandoned or Inoperable Vehicles.** No abandoned or inoperable automobiles or vehicles of any kind, except as hereinafter provided, shall be stored or parked on any portion of the Community. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck or motorcycle, which has not been driven under its own propulsion and removed from the Property at least once within any five (5) day period, or any vehicle which does not have an operable propulsion system installed therein or any vehicle which does not have current license plates; provided, however, that the foregoing restrictions shall not include otherwise permitted vehicles parked by Owners while on vacation or during a period of illness.

**Section 7.12 Nuisances.** No noxious or offensive activity shall be carried on upon any Lot or in any portion of the Community, nor shall anything be done or placed thereon which may be, or may become, an nuisance to, or cause annoyance, embarrassment, or disturbance to others.

**Section 7.13 No Annoying Light, Sounds, or Odors.** No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive including, but not limited to, prolonged and uninterrupted barking dogs. Without limiting the generality of the foregoing, searchlights, loud speakers, horns, whistles, bells, music played at volumes which can be heard outside of a Unit or which is excessively loud so as to disturb neighboring Owners, or other light or sound devices shall not be located, used or maintained on any portion of the Community.

**Section 7.14 Hazardous Activities.** No activities shall be conducted on the Property, nor on improvements constructed on the Property, which are or might be unsafe or hazardous to any person or property or might cause the cancellation or diminution of insurance or an increase in insurance premiums. Without limiting the generality of the foregoing, no fireworks or firearms shall be discharged upon any of the Property and no open fires shall be lighted or permitted on the Property except in a contained barbeque unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

**Section 7.15 Garbage and Refuse Disposal.** Regularly scheduled trash pick up service shall be a Common Expense of the Community. No garbage, refuse, or rubbish shall be deposited except in designated trash dumpsters. The burning of trash in outside incinerators, barbeque pits or the like is prohibited. The Association shall be responsible for payment of the trash collection company's bill, and such payment shall be a common expense of the Association.

**Section 7.16 No Restrictions on Sale.** The right of an Owner to sell, transfer or otherwise convey their Lot shall not be subject to any right of first refusal or similar restriction in favor of the Association or other Owners, and such Lot may be sold free of any such restrictions.

**Section 7.17 No Restrictions on Mortgaging.** There are no restrictions on the right of the Owners to mortgage or otherwise encumber their Lot. There is no requirement for the use of a specific lending institution or particular type of lender.

**Section 7.18 Rules and Regulations.** In furtherance of the provisions of this Declaration, and the general plan, rules and regulations concerning and governing the Common Interest Community or any portion thereof may be adopted, amended, or repealed, from time to time, by the Board of Directors, or its successors and assigns. The Board of Directors may establish and enforce penalties for the infraction thereof.

## **ARTICLE 8. Insurance/Condemnation.**

**Section 8.1 Insurance Carried.** The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. All insurance purchased by the Association shall be purchased from companies with ratings of "A" or better, to the extent that insurance is available at reasonable cost to the Association through such companies. The Association shall maintain, to the extent reasonably available and necessary, policies with the following terms or provisions:

(a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Owner and shall provide that such policies may not be canceled or modified without at least forty-five (45) days prior written notice to all of the Owners, holders of First Mortgages and the Association.

(b) If requested, certificates of insurance and renewals thereof, together with proof of payments of premiums, shall be delivered to any First Mortgagees at least ten (10) days prior to expiration of the then current policies.

(c) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, and the officers of the Association, as insureds.

(d) Prior to renewing casualty insurance and not less than every three (3) years, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement cost of the Townhouses and the Common Area, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. All appraisals shall be maintained as part of a permanent record showing that the insurance in any year represents one hundred percent (100%) of the replacement value of each Lot and the facilities in the Common Area. In no event shall any casualty insurance policy contain a co-insurance clause.

(e) Owners are advised to carry other insurance on their Lots and personal property located within their Lots for their benefit and at their expense provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if an Owner has other insurance that covers the same loss or losses as covered by policies of the Association. Owners are further advised to obtain liability coverage for their individual Lots and personal actions.

(f) All policies of insurance shall provide that the insurance thereunder shall not be invalidated or suspended due to an Owner guilty of a breach of warranty, act, omission,

negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy shall not be invalidated or suspended and shall remain in full force and effect.

**Section 8.2 Real Property Insurance on the Units and Common Areas.** The Association shall obtain casualty and hazard insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements, the Common Area, and the other property of the Association in such amounts as it deems adequate to protect the Community. The Association shall also provide insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for the Units and party walls, specifically excluding betterments and improvements of the Units as made by Owners, and specifically excluding, personal property within a Unit and general liability within a Unit, so that the Association has no requirement, duty or obligation for any liability within a Unit. All policies shall contain a standard non-contributory mortgage clause in favor of each First Mortgagee, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such First Mortgagee, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of the El Paso County. The Association may also obtain any additional endorsements which it deems advisable and in the best interests of the Community by the Board of Directors, including but not limited to "inflation guard endorsement", "agreed upon amount endorsement," "Demolition endorsement," "increased cost of construction endorsement," "contingent liability endorsement," and a "code compliance or operation of building laws endorsement." The insurance described in this Section shall be inflation coverage insurance, if such insurance is available, which shall at all times represent one hundred percent (100%) of the replacement value of all facilities in the Common Area except land, foundation, excavation and other items normally excluded from coverage and except for any deductible provisions as permitted under this Article.

**Section 8.3 Liability Insurance.** The Association shall obtain an adequate comprehensive policy of public liability and property damage liability insurance covering all of the Units and the Common Areas, including structural coverage of the Units, in such limits as the Board may from time to time determine, but not in any amount less than One Million Dollars (\$1,000,000) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Lots and the Common Area. The foregoing liability insurance shall name the Association as the insured.

**Section 8.4 Fidelity Insurance.** The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees, volunteers and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustees and employees" shall include any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees. If the Association retains a Managing Agent, the Managing Agent shall also be required

to provide such fidelity insurance covering itself and its employees and naming the Association as the loss payee.

**Section 8.5 Workers Compensation.** The Association shall obtain and maintain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees or uninsured contractors of the Association in the amounts and in forms now or hereafter required by law.

**Section 8.6 Director and Officer Liability Insurance.** The Association shall purchase directors' and officers' professional liability insurance in an amount reasonably necessary to protect the directors and officers.

**Section 8.7 Other Insurance.** The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association's responsibilities and duties.

**Section 8.8 Insurance Premium.** Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the Annual Assessments levied by the Association.

**Section 8.9 Managing Agent Insurance.** The manager or managing agent, if any, shall be adequately insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including workers' compensation, liability and fidelity coverage.

**Section 8.10 Waiver of Claims Against Association.** As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another and the Board, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by these persons.

**Section 8.11 Adjustments by the Association.** Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any First Mortgagee. The Association shall hold any insurance proceeds in trust for the Association, Owners and First Mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, in its sole discretion, shall determine the use of any surplus of proceeds after the damaged property has been completely repaired or restored.

**Section 8.12 Duty to Repair.** Any portion of the Property and Common Area for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Owner.

**Section 8.13 Condemnation and Casualty Insurance Allocations and Distributions.** In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be to the parties as their interests and rights are determined or allocated by record or as set forth in the Act.

**Section 8.14 Insurance Obtained by Owners.** Each Owner shall be responsible for maintaining all insurance which covers personal property within a Unit and general liability within a Unit. Each Owner shall be responsible for maintaining insurance on and for all areas for which the Owner has a maintenance responsibility under the provisions of this Declaration, as well as loss or damage to personal property in his Unit and upon his Lot and liability for injury, death or damage occurring inside his Unit or upon his Lot. Such personal property may include, but is not limited to, all furnishings, fixtures, appliances and equipment within a Unit. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

**Section 8.15 Claims.** The Board may, in its discretion, choose to submit a claim under the Association's insurance policy. If a claim is submitted, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb said deductible for any work, repairs or reconstruction for damage incurred to Common Area or an area for which the Association has a maintenance responsibility, or for damage to Common Area or any area which the Association maintains that originates in the Common Area or an area that the Association maintains, or for damages to the Common Area or an area which the Association maintains which originates from natural causes, unless said damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees.

(b) The Owner shall pay or absorb said deductible for any work, repairs, reconstruction or replacement for damage incurred to his or her Lot, to the Common Area, or to any area that the Association maintains, as the Board of Directors shall, in its sole discretion, determine to be the responsibility of the Owner.

(c) If a Lot or Party Wall is damaged, then the Owner of that Lot or the Owners sharing the Party Wall shall have primary responsibility, either directly or through his insurance company, for handling and paying for, any work, repairs, reconstruction or replacement.

**Section 8.16 Association as Attorney-in-fact.** Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to this Article upon their damage or destruction as provided in this Declaration, or a complete or partial taking or condemnation as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance 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. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.



## **ARTICLE 9. Covenant Violation and Enforcement and Miscellaneous Provisions.**

**Section 9.1 Who May Enforce.** Enforcement of this Declaration shall be by the Association or by an Owner by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision of this Declaration, either to restrain violation and/or to recover damages, and such Owner's Lot shall be subject to foreclosure to enforce any lien created by this Declaration. The omission or failure of the Association or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**Section 9.2 Notice of Violation.** In the event of a failure or refusal to comply strictly with any provision of this Declaration, a notice shall be mailed by the Association, its agent or the Architectural Review Committee to such violator setting forth the nature of the violation. Such notice shall also state the action required by the Owner to cure the violation, the time required for such action and the nature of the action contemplated by the Association if the violation is not cured by the Owner. Any action taken by the Association to correct such violation shall be at the sole cost and expense of such Owner (including any attorney fees incurred in conjunction therewith), and the Association shall charge and assess such Owner for the full cost thereof.

**Section 9.3 Violation of Covenants Creates Liens.** A violation of this Declaration shall create a lien against an Owner's Lot. The Association may elect to prepare and record a Notice of Lien with respect to each such Notice of Violation.

**Section 9.4 Covenant Enforcement - Remedies.** The remedies provided in the Governing Documents for the enforcement of this Declaration are cumulative and the selection of less than all methods of enforcement shall not constitute an election of remedies so as to preclude other methods of enforcement subsequently or simultaneously.

**Section 9.5 Limitations on this Article.** Nothing in this Article is intended to limit or contravene, nor shall any provision thereof be construed to limit or contravene, any appropriate provision of the Governing Documents.

**Section 9.6 Covenant Enforcement — Temporary or Permanent Restraining Orders.** In the event of the recording of a Notice of Violation, the Association may, in addition to other remedies, commence an action for an injunction and for damages and for the issuance of a temporary or permanent restraining order. By acceptance of a conveyance as an Owner, said Owner waives any further notice of application to court for a temporary or permanent restraining order and waives the requirement of the posting of any bond as a condition thereof. The rules of court and statutes of the State of Colorado are expressly waived in the foregoing particulars. The within waiver shall extend to all persons or entities deriving any interest in said land by or through said Owner, including lienors and encumbrances.

**Section 9.7 Term of Declaration.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. All of the covenants, easements, servitudes and provisions contained in this Declaration shall be a burden on the title to all of the lands within the Property, and the benefits thereof shall inure to the Owners of all of the lands within the Property.

**Section 9.8 Termination.** Termination of this Common Interest Community shall be in accordance with the Act.

**Section 9.9 Attorney Fees.** If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any provision of the Governing Documents, the Association or any person or class of persons adversely affected by the failure to comply may require reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. For each claim, including but not limited to counterclaims, cross-claims, and third-party claims, in any legal proceeding to enforce provisions of the Governing Documents, the court shall award to the party prevailing on such claim the prevailing party's reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim.

**Section 9.10 Amendment of Declaration by Lot Owners.** Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least sixty-seven percent (67%) of the votes in the Association. Said votes may be obtained in any method allowed by the Governing Documents of the Association. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of El Paso County, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

**Section 9.11 Repeal of the Act.** In the event that the Act is repealed, the provisions of the Act in effect immediately before its repeal shall control this Declaration.

**Section 9.12 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the administration of the Lots and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

**Section 9.13 Singular Includes the Plural.** Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

**Section 9.14 Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

**Section 9.15 Non-Waiver.** Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

**Section 9.16 Conflict of Provisions.** In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

**Section 9.17 Registration.** Each Owner shall register their mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by first class US mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices and demands intended to be served upon the Board of Directors or the Association shall be sent by certified mail, postage prepaid, to the registered agent of the Association at their address filed with the Secretary of State of the State of Colorado, together with a copy addressed to the President of the Association at their registered address.

**Section 9.18 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

#### **ARTICLE 10. Other Provisions with Respect to Declarant.**

**Section 10.1 Unit Sales and Sale Models.** Notwithstanding any provisions to the contrary herein contained. Declarant shall be allowed to show and sell Units and use Units designated by it as sales models, conducting thereon usual sales activities for a period of ten (10) years from the date hereof. In addition, Declarant may maintain for said period such signs as may be required, in Declarant's discretion, to advertise Units for sale.

**Section 10.2 Construction Work.** Notwithstanding any provision to the contrary herein contained, Declarant shall be entitled to conduct development and construction activities even though such activities would otherwise be in violation of this Declaration.

IN WITNESS WHEREOF, this Declaration has been executed the day and year first above written.

Harvest Ridge Village, LLC, a Colorado  
limited liability company

By: \_\_\_\_\_ Rod  
Combest, Manager

STATE OF COLORADO )

) ss.

COUNTY OF EL PASO )

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2007, by Rod Combest, Manager of Harvest Ridge Village, LLC, a Colorado limited liability  
company.

Witness my hand and official seal.

Notary Public

My commission expires:

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 1-12, inclusive, Tract A, and those private roadways known as New Crossings Point, and Harvest Ridge Heights, all as depicted on the plat for Harvest Ridge Subdivision Filing No. 2, recorded on January 11, 2006, at Reception Number 206712219, El Paso County, Colorado