

Article I - Definitions	2
Article II - Property Rights In The Common Area	5
Article III - Membership And Voting Rights	8
Article IV - Covenant For Assessments	9
Article V - Maintenance	13
Article Vi - Architectural Control	15
Article Vii - Restrictions	18
Article VIII - Insurance	21
Article Ix - Damage, Destruction, Condemnation And Merger	23
Article X - Phased Development	25
Article XI - Additional Restrictions	27
Article XII - General Provisions	29
EXHIBIT "A"	32

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE CARRIAGES AT CHARLESTON PLACE**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE CARRIAGES AT CHARLESTON PLACE, made and entered as of the date shown below, by Elite Properties of America, Inc., a Colorado corporation, hereinafter called "Declarant" for itself, its successors and assigns.

WITNESSETH:

WHEREAS, the Declarant is the Owner of the real property described on Exhibit "A" attached hereto (hereinafter called the "Property"), and

WHEREAS, the Declarant desires to submit the Property to tile covenants, terms and provisions hereof.

WHEREAS, that certain Declaration of Covenants, Conditions and Restrictions of the Carriages at Charleston Place was recorded at Reception No. 98185716 of the records of El Paso County, Colorado (the "Initial Covenants");

WHEREAS, Declarant desires to amend and restate the Initial Covenants to reflect certain changes and modifications to the Initial Covenants.

WHEREAS, the Declarant desires to create a common interest community in and on the Property subject to and in accordance with the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-01, et seq., as amended from time to time (the "Act"). The name of the Common Interest Community created by this Amended and Restated Declaration is "The Carriages at Charleston Place, a Common Interest Community."

NOW, THEREFORE, the Initial Covenants are hereby amended and restated in their entirety as set forth in this Amended and Restated Declaration and of no force and effect as originally recorded and the Declarant hereby declares that all of the Property, as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns. Tile Declarant further declares that the Project shall be created pursuant to the Colorado Common Interest Ownership Act (C.R.S. 38-33.3-01 et seq.) and any amendments, repeals or modifications of that Act (the "Act").

Article I - Definitions

The terms used herein shall have the meanings stated in the Act, except as otherwise provided herein:

Section 1.1 "Architectural Control Committee" shall mean the committee of three or more persons appointed by the Declarant or Association to review and approve the plans for all improvements constructed on the Property.

Section 1.2 "Association" shall mean and refer to Carriages at Charleston Place Homeowners Association, Inc., a Colorado non-profit corporation, which has been or shall be organized under the laws of the State of Colorado prior to the conveyance of the first Lot in the Project, its successors and assigns.

Section 1.3 "Board" means the Board of Directors of the Association and shall also be the "executive board" as defined under the Act. Except as specified herein, or in the Association's Articles of Incorporation or Bylaws or C.R.S. 38-33.3-303(3), the Board may act on behalf of the Association without any vote or consent of tile members.

Section 1.4 "Common Area" shall mean and refer to all of the Property, together with all improvements located thereon and all common property owned by the Association, but excluding the Lots, together with all improvements and property located on the Lots and shall include any Common Area located upon any real property which is hereafter annexed to the Project pursuant to Article X hereof. Notwithstanding any contrary provision, any items described in C.R.S. 38-33.3-202 and any shutters, awnings, window boxes, parking spaces, driveways, doorsteps, balconies, decks, fenced areas, chimneys, utility lines, porches, patios, entryways, stairs, or sidewalks leading solely to a Townhome, whether located upon the Common Area or upon any Lot, may be assigned or allocated as a "Limited Common Area" by the Declarant for the exclusive use of the Owners of the Townhomes to which they are assigned, allocated or attached, and they shall be cleaned and kept in good condition by the Association as a common expense, any such allocation or assignment may be made by plat, surveyor's statement, deed or any document recorded by the Declarant or by the Association after the Period of Declarant Control. These terms shall have the same meaning as "common elements" and "limited common elements" under the Act and may be reallocated pursuant to C.R.S. 38-33.3-207 and C.R.S. 3833.3-208.

Section 1.5 "Declarant" shall mean and refer to Elite Properties of America, Inc., a Colorado corporation, its agents, employees, contractors, successors and assigns to whom it expressly transfers all or any part of its rights as Declarant hereunder, in compliance with C.R.S. 38-33.3-304. The Declarant hereby reserves any and all "special declarant rights" and "development rights" as created or set forth in the Act and any other rights as set forth herein. Any such rights shall apply to the Property and Expansion Property and shall terminate upon the earlier of ten (10) years from the date of recording hereof or as otherwise provided herein. The "Period of Declarant Control" means that period during which the Declarant, or person designated by Declarant, may appoint and remove the officers and members of the Board as set forth in Article III hereof.

Section 1.6 "Declaration" means this Amended and Restated Declaration as contained herein and as it may be amended or supplemented from time to time as herein provided, which shall be indexed in the grantee's index in the name of the Project and the Association and in the grantor's index in the name of tile Declarant executing this Amended and Restated Declaration. A copy of the Declaration shall be delivered to tile assessor of the county in which the Property is located after recording

Section 1.7 "Expansion Property" shall mean and refer to any part of that certain real property described on Exhibit "B" hereto, which may be annexed to the Project (defined in Section 1.16) Pursuant to Article X hereof, together with all appurtenances thereto and all improvements now or hereafter thereon.

Section 1.8 "First Mortgagee" shall mean a Mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgagee" means a mortgagee whose encumbrance is a First Mortgage. Nothing contained in this Declaration shall prohibit a mortgagee under a single mortgage from being a "First Mortgagee" upon more than one (1) Lot and from maintaining and exercising all First Mortgagee voting rights, approvals and/or consents with respect to each applicable Lot for which it is First Mortgagee.

Section 1.9 "Improvements" shall mean and refer to all structures, grading which affects the exterior vegetation or exterior appearance of the Property, and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, hot tubs, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, private streets, driveways, parking areas, concrete, paving, fences, screening walls, retaining walls, plantings, planted trees and shrubs, poles, signs, mailboxes, exterior tanks, solar equipment, satellite dishes, and exterior air conditions and water softener fixtures, and any alterations changes or modifications to the foregoing. "Improvements" shall also mean an excavation or fill the volume of which exceeds two cubic yards, and any excavation, fill ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow or any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

Section 1.10 "Lot" shall mean and refer to any lots shown on any recorded plat or plats of the Property (which plats are incorporated herein by this reference and which may be recorded herewith, together with any certifications or other documents), together with all appurtenances thereto and improvements now or hereafter thereon and shall include any lot located upon any real property which is hereafter annexed to the Project pursuant to Article X hereof. This term shall have the same meaning as "unit" under the Act. The boundaries of (lie Lots shall be shown on any recorded plat of the Property which shall be incorporated herein by this reference. The boundaries of any Lot may be relocated pursuant to C.R.S. 38-33.3-212.

Section 1.11 "Maintenance Area" shall mean and refer to that portion of each Lot which is located outside of the exterior building surfaces of a Townhome and, therefore, not within the Common Area, but which is to be repaired, improved, maintained and regulated by the Association as provided in this Declaration. The "Maintenance Area" shall refer to that area shown by way of illustration by crosshatching on Exhibit "D" attached hereto and incorporated herein by this reference, which Exhibit shall be supplemented from time to time by Declarant at such time as additional units shall be constructed. In general, the Maintenance Area shall include by illustration, the landscaping, sprinkler system, sidewalk, porch, utility lines or other improvements located within the designated area. The Maintenance Area shall be repaired, improved, maintained and regulated by the Association as provided in this Declaration.

Section 1.12 "Member" shall mean and refer to every person or entity who holds membership in the Association or, following termination of the Project, all former unit Owners entitled to distributions of proceeds under C.R.S. 38-33.3-218, or their heirs, personal representatives, successors or assignees.

Section 1.13 "Mortgage" means and refers to any mortgage, deed of trust or other assignment or comparable security instrument recorded in the real property records of the office of the Clerk and Recorder of El Paso County, Colorado, and by which a Lot or any part thereof is encumbered. The term shall include a "security interest" as defined by the Act. "Mortgagee" shall also include any executory land sales contract in which the Administrator of Veterans Affairs ("Administrator"), an officer of the United States of America, is, the original seller, whether such contract is recorded and regardless of whether such contract is owned by the said Administrator, the Administrator's assignee, or a subsequent assignee who has notified the Board in writing of such assignment. If the executory contract in which the Administrator is the original seller is not recorded then written notice of the contract shall be provided to the Board.

Section 1.14 "Mortgagee" means any person or entity, or any successor or assign thereof, that holds or owns a Mortgage. "Mortgagee" shall also mean the Administrator of Veterans Affairs, an officer of the United States of America, and the Administrator's assigns under any executory land contract in which the Administrator is identified as the seller, regardless of whether such contract is recorded. If such executory contract is not recorded, written notice of the contract thereof shall be delivered to the Board. "Mortgagor" shall mean a Person who mortgages his or its property to another (i.e., the maker of a Mortgage), including the Grantor of a Deed of Trust. The term "Grantor" shall be synonymous with the term "Mortgagor" and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

Section 1.15 "Owner" means any person, corporation, partnership, association, contract seller or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one or more Lots. Owner shall also include the purchaser under any executory land sales contract in which the Administrator of Veterans Affairs is seller, regardless of whether such executory contract is recorded, and whether it is owned by said Administrator or his assigns. The term "Owner" shall further include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee as herein defined or other person or entity having an Ownership interest in any Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. This term shall have the same meaning as "unit Owner" under the Act.

Section 1.16 "Owner's Proportionate Share" or "Proportionate Interest" means that percentage of the total which is equal to such Owner's fractional or percentage interest as set forth in "Exhibit C" attached hereto and incorporated herein by this reference and which is subject to adjustment in the event that the Project is expanded as herein provided. The percentage shall be based upon each Owner's share of the total number of Townhomes, based upon the number of Townhomes owned by each Owner. These terms shall have the same meaning as "allocated interest" under the Act.

Section 1.17 "Project" means all of the Property, together with improvements and rights, and improvements located on the Property and all rights, easements and appurtenances belonging thereto, and shall include any portion of the Expansion Property which is subsequently annexed or added to the Project pursuant to Article X of this Declaration. The term "Project" shall have the same meaning as the terms "common interest community" and "planned community" under the Act.

Section 1.18 "Property" shall mean and refer to that certain real property described on Exhibit "A" hereto, together with all appurtenances thereto and all improvements now or hereafter thereon and shall include any real property which is hereafter annexed to the Project pursuant to Article X of this Declaration, which shall be known as The Carriages at Charleston Place.

Section 1.19 "Townhome" shall mean the residential dwelling improvement constructed and located upon a Lot and shall include any Townhome which is hereafter annexed to the project pursuant to Article X hereof.

Section 1.20 "Act" shall mean the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, et seq., as amended.

Section 1.21 "Period of Declarant Control" shall mean that period during which the Declarant, or a person designated by Declarant, may appoint and remove the officers and members of the Board as set forth in Article 111 hereof.

Article II - Property Rights In The Common Area

Section 2.1 Title to the Common Area. Subject to the limitations and restrictions of this Declaration, title to the Common Area shall be conveyed in fee simple, free and clear of all encumbrances, by the Declarant to the Association, prior to the conveyance of the first Lot in any phase.

Section 2.2 Non-Division of Common Area. The Common Area shall remain undivided and shall not be subject to partition. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Area. Each Owner specifically agrees not to institute any action therefor. Further, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorney fees, costs and other damages the Association incurs in connection therewith. It is agreed by all Owners that the foregoing restrictions are necessary to preserve the rights of all Owners regarding the operation and management of the Common Area. Nothing contained herein shall be construed as a limitation of the right of legal partition of a Lot between the Owners thereof, but such legal partition shall not affect any other Lot, nor shall any such partition sever any part thereof from such Lot as a whole.

Section 2.3 Owners' Common Area Easement of Enjoyment. Subject to the limitations and restrictions of this Declaration, every Owner shall have an equal, nonexclusive right and easement of enjoyment in and to the Common Area, including without limitation the right of ingress and egress to and from the Owner's Lot, his parking area, any private street, or any recreational facilities completed upon the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot without the necessity of additional reference.

Section 2.4 Extent of Owners' Common Area Easement. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to enforce the restrictions contained in Article VII of this Declaration and to promulgate and publish rules and regulations which every Owner, his invitees, guests, tenants, and contractors shall strictly comply with, including, but not limited to, the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area if deemed necessary;

(b) The right of the Association, as provided in its Articles of Bylaws, to suspend an Owner's voting rights and the right to use the Common Area for any period during which such Owner is in default under this Declaration, including without limitation the non-payment of any assessments levied by the Association, and

to make such suspensions for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to consent to or otherwise cause the construction of additional Improvements on the Common Areas and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Common Areas for the benefit of the Members of the Association. Further, the additional right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area. The Association shall have the right to grant easements under, over, across, through and upon the Common Area as long as the easements granted do not interfere with the use of a Unit;

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes, subject to the provisions of Article XI hereof and C.R.S. 38-33.3-312, and subject to such conditions as may be imposed by the public entity; for example, if any interior streets are private and have not been built to city or county specifications and so might not be accepted by them;

(e) The rights of the Association as set forth in the Association's Articles of Incorporation and Bylaws, including, without limitation, to borrow money for the purpose of improving the Common Area and, subject to the provisions of Article XI and C.R.S. 38-33.3-312, to mortgage said property as security for any such loan;

(f) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

(g) The right of the Declarant (until termination of the Period of Declarant Control) or the Association's Board (after termination of the Period of Declarant Control) to assign or allocate any part of the Common Area to be a Limited Common Area, for the exclusive use of a particular Owner.

(h) No Owner shall be allowed to use the Common Area to conduct the business without the prior written permission of the Association.

Section 2.5 Other Easements. In addition to the Owners' Common Area Easement, the Property shall be subject to the following:

(a) Utility Easements. Notwithstanding any provision of this Declaration to the contrary, Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Property for the purpose of installing, maintaining, repairing and placing any utilities or related services, including but not limited to any gas, electric, water or sewer line, mains or laterals, any telephone and cable television lines, any heating or cooling installations, any master television antenna system, or for other public purposes consistent with the intended use of the Property under this Declaration. The foregoing easements shall include, without limitation, the right of ingress and egress, the right to erect and maintain the necessary pipes, wires, poles and other equipment, subject to the restrictions of Section 7.18, and the right to enter into agreements relating to such utility services and easements; all of which shall be binding upon the Association and the Owners. Should any person or party furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the Property without conflicting with the terms hereof. The foregoing easements shall be in addition to any other recorded easements on the Property, including, but not limited to, any easements granted in the recorded subdivision map. Notwithstanding any other provision contained in this Section 2.5(a), no easements shall be granted pursuant to this Section 2.5(a) which shall unreasonably interfere with an Owner's use of his or her lot. The rights reserved herein for Declarant shall pass to the Association upon the termination of the Period of Declarant Control, and any and all of the covenants, terms, provisions, rights and duties arising from such easements granted by the Declarant and any related agreements. shall thereupon pass to the Association and be assumed by it in place of the Declarant. Any consideration for any such easement shall be delivered to and become the property of the Association, whether the grant of easement was made by, the Declarant or by the Association.

(b) Association Easement. A non-exclusive easement is hereby granted to the Association, their respective officers, agents, employees and assigns upon, across, over, in and under the Common Area and any Lot as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration or otherwise, including without limitation ally maintenance required or permitted hereunder, any of Declarant's rights, inspection, maintenance, repair, replacement, construction or reconstruction of any facilities or utilities on or within the Common Areas and Maintenance Areas; provided, however, that entry into any Townhome in non-emergency situations shall only be made after

service of reasonable written notice and during regular business hours, and, uncle' emergency circumstances, shall only be made after such notice, if any, as is reasonable under the circumstances.

(c) Emergency Easement. A non-exclusive easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the Property, including but not limited to all Lots, Maintenance Areas and the and Common Area, in the performance of their duties.

(d) Common Wall Easement. Each Owner, his agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon adjacent Lots and in and upon adjacent Townhomes for purposes of common wall repair or maintenance, in accordance with Section 5.5 of Article V, upon reasonable notice to the Owners thereof. Any damage occasioned to the adjacent Lot or improvements, including the Townhomes, thereon in exercising said easement shall be the responsibility of the Owner whose negligence or wrongful acts or omissions cause such damage.

(e) Exterior Wall Easement. Each Owner, his agents and contractors, are granted a non-exclusive easement in, over, under and upon the adjacent Common Area for the purpose of maintenance, construction, reconstruction and repair of any exterior wall on such Owner's Lot; provided, however, that such Owner shall be liable for any damage to the Common Area, which shall be restored to its condition prior to such work.

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

(g) Easement for Foundations. Owners of adjoining Lots shall have mutual easements of horizontal and vertical support for the foundations on which adjacent walls of their Improvements rest, and similar easements for support from the Common Area, and for the benefit of the Common Area shall also exist.

(h) Easement for Ingress or Egress. Subject to the provisions of this Declaration, each Owner, his agents and guests are hereby granted a perpetual, non-exclusive easement, over any streets, roadways, driveways, and sidewalks, which are located upon the Common Area, for the purpose of vehicular and pedestrian ingress to and egress from such Owner's Lot. If any of the streets or roadways upon the Property are private streets, Declarant shall have the right to relocate any portion of them, but only if it provides all Owners with reasonable access to their Lots, and Declarant may also dedicate any portion of any private street or roadway upon the Property as a public right-of-way, in which case, if accepted by a public entity, the Association's obligations for repair and maintenance of the road shall cease. Furthermore, Declarant hereby reserves a non-exclusive easement across, over and under any such private streets or roadways for ingress, egress and the installation of utilities to any part of the Expansion Property and over, under and through the Common Area for the exercise of any special Declarant right hereunder or under the Act.

Section 2.6 Delegation of Use. Subject to the provisions of this Declaration and any rules or regulations which may be established from time to time by the Association concerning the Common Area, any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests, or contract purchasers who reside on his Lot. Each Owner shall, to the extent permitted by law, be liable for any damage done to the Common Area by his family, tenants, guests, or contract purchasers and for any breach of the Association's rules and regulations by such persons.

Section 2.7 Non-Dedication of Common Area. Declarant, in recording this Declaration, has designated certain areas of land as Common Area intended for the common use and enjoyment of Owners for

recreation and other related activities. The Common Area is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration.

Section 2.8 Recorded Easements. The Property, and all portions thereof, shall be subject to all recorded licenses and easements including, without limitation, any as shown on any plat, recorded now or hereafter, affecting the Property, or any portion thereof, and additionally subject to those recorded easements and matters shown on Exhibit "A-1" attached hereto.

Article III - Membership And Voting Rights

Section 3.1 Association Structure Answers and Duties. The Association has been formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration and its Articles of Incorporation and Bylaws. A, more specifically set forth hereinafter, the Association shall have a Board of Directors, to manage its affairs. The Board of Directors shall be elected by its Members provided, however, that the Declarant shall have the sole right to appoint a majority of members of the Board of Directors during the Period of Declarant Control.

Section 3.2 Membership. The following shall be members of the Association: the Declarant (so long as the Declarant owns a lot) and every Owner of a Lot which is subject to assessment hereunder. Membership shall be appurtenant to and may not be separated from Ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. Except as provided herein, each Lot shall have voting rights based upon that Owner's proportionate Interest. Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint a Board of Directors and to operate the Association until the Period of Declarant Control is terminated, and the Association shall not begin to function through its Members until such time, unless the Declarant otherwise consents in writing.

Section 3.3 Declarant Control. The Association shall have one class of voting membership who shall be the Owners. The Owners shall elect all the members of the Board, following the termination of the Period of Declarant Control, as set forth as follows:

(a) Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint the Board and to control the Association during the Period of Declarant Control. During the Period of Declarant Control, the Declarant, or persons designated by Declarant, subject to certain limitations, may appoint and remove the officers and members of the Board. The Period of Declarant Control shall terminate no later than the earlier of (i) sixty (60) days after conveyance to Owners, other than Declarant, of seventy-five percent (75%) of the Lots that may be created; (ii) two (2) years after Declarant has last conveyed a Lot in the ordinary course of business; or (iii) Two (2) years after any right to add new Lots was last exercised, but not to exceed ten (10) years after the first Lot in the Project is conveyed to a purchaser. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(b) Not later than sixty (60) days after conveyance to Owners, other than Declarant, of twenty-five percent (25%) of the Lots that may be created, at least one (1) member, and not less than twenty-five percent (25%) of the members of the Board, shall be elected by Owners other than a Declarant. Not later than sixty (60) days after conveyance to Owners, other than a Declarant, of fifty percent (50%) of the Lots that may be created, not less than one-third (1/3) of the members of the Board must be elected by Owners other than a Declarant.

(c) Except as otherwise provided above, not later than the termination of any Period of Declarant Control, the Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board shall elect the officers. These Board members and officers shall take office upon termination of the Period of Declarant Control.

(d) Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a sixty-seven percent (67%) vote (based upon Proportionate Interest) of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present following the termination of the Period of Declarant Control, may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

(e) Within sixty (60) days after the Owners, other than Declarant, elect a majority of the members of the Board, the Declarant shall deliver to the Association all property and items described by C.R.S. 38-33.3-303(9).

Section 3.4 Nonliability of Association and Others. The Board of Directors, the officers and committees of the Association and the Declarant, including without limitation, the officers, directors, employees, agents, and representatives of the Declarant, shall not be liable in damages or otherwise to any person whatsoever for any act or omission done as an officer, director, agent or representative on behalf of the Association, except for willful misconduct done in bad faith or gross negligence and shall be indemnified from all such liability as provided in the Association's Bylaws. The Association may enter into cooperative arrangements for provision of services with other homeowners associations in the surrounding area and may assume responsibility for that part of the cost attributable to the Project.

Article IV - Covenant For Assessments

Section 4.1 Creation of the Obligation for Assessments. Each Owner, for each Lot owned within the Property, by acceptance of a deed therefore or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fees, fines and other sums which are described in this Declaration and which shall be both a personal obligation of the Owner and a lien against his Lots provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all assessment, charges, fees and other sums attributable to them and/or their Lot. The personal obligation for delinquent assessments and sums shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees, fines and other sums provided for herein by non-use of the Common Area or the facilities contained therein, by abandonment or leasing of his Lot or by asserting any claims against the Association, the Declarant, or any other person or entity. In addition to the foregoing assessments, charges, fees, fines and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot, as well as all charges for separately metered utilities servicing his Lot. The charges for any utilities which are master metered, if any, shall be included in the annual common expense assessments levied by the Association.

Section 4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and to fulfill the purpose and obligation of the association including, but not limited to, improvement and maintenance of the Project and the Common Area, the Maintenance Area, and the Lots as more specifically provided herein.

Section 4.3 Annual Assessments. The annual assessment shall specifically include, but shall not be limited to, all Common Expenses as defined by the Act and the following:

- (a) expenses of management of the Project and the Association and its activities;
- (b) taxes and special assessments upon the Association's real and personal property including, without limitation, the Common Area and any Limited Common Area;
- (c) premiums for all insurance which the Association maintains as required or permitted under this Declaration together with any expenses of sums expended by the Association for the deductible under such policies as set forth in Article VIII and any other expenses connected with such insurance;
- (d) common lighting, water and other common utility and sewer service charges; and any other common expenses including without limitation snow removal from private streets, driveways and public and private sidewalks to the front door or entry courtyard, and common trash collection if approved by the Board;
- (e) landscaping and care of the Common Area and any recreational or other Association facilities or improvements located thereon;

(f) such repairs and maintenance which are the responsibility of the association.

(g) wages for Association employees;

(h) legal and accounting fees for the Association; any deficit remaining from a previous assessment year;

(j) a working capital fund;

(k) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of those elements of common property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by special assessments;

(l) the creation of reasonable contingency reserves for any applicable insurance deductibles;
and

(m) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration.

(n) The Association shall also have authority, to the extent it deems proper, to provide any other services requested by particular Owners, but only on a contract basis under which those Owners pay the cost thereof. The Association may enter into cooperative arrangements for provision of services with other homeowner associations in the surrounding area and may assume responsibility for that part of the cost fairly attributable to this Project.

Section 4.4 Limit on Annual Assessments. Subject to the provisions of Section 4.6, until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be as shown on Exhibit "C" attached to this Declaration.

(a) Subject to the provisions of Section 4.6, from and after January 1 of the year immediately following the conveyance of the first Lot to an Owner (the "Base Year"), the maximum annual assessment may be increased each year, without a vote of the membership, by not more than the greater of five percent (5%) per annum or the cumulative rise from the Base Year, if any, shown by the most recent annual Consumer Price Index (published by the Department of Labor, Washington, D.C. or any comparable successor index as shown by an average of the following items or more comparable items: Housing -- General Shelter -- Homeowners Costs and Fuel and other Utilities) for the Denver metropolitan area. The increases in assessment shall be permitted on a cumulative basis regardless of whether the incremental increase shall have been made in any prior year.

(b) From and after January 1 of the year immediately following the Base Year, the maximum annual assessment may be increased above the limitation which is set forth in paragraph (a) above pursuant to the procedure set forth in Section 4.6 of this Article.

(c) Subject to the provisions of Section 4.6, the Association's Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4.5 Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of an emergency situation or of any construction, reconstruction, repair or replacement or a capital improvement upon the Common Area, including fixtures and personal property related thereto, and any improvements and fixtures upon any Lot.

Section 4.6 Procedure for Assessments Under Section 4 and 5. Any assessment under Section 4.5 or above the maximum annual assessment provided for in Section 4.4 shall require the approval, pursuant to a meeting described below, of Owners of Lots to which at least sixty-seven percent (67%) of the votes (based upon one vote per Lot) in the Association are attached, who are voting in person or by proxy at that meeting duly called for that purpose. Written notice of any meeting called for the purpose of taking such action shall be sent to all Owners not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such

meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all the votes (based upon one vote per Lot of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.7 Rate of Assessment. Except as provided herein, both annual and special assessments shall be set at the Owner's Proportionate Share as shown on Exhibit "C" attached hereto, sufficient to meet the expected needs of the Association. If an Owner's Proportionate Share is reallocated due to expansion of the Project pursuant to Article X hereof or to other provisions of this Declaration, assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Owner's Proportionate Share. Assessments shall be applicable to all Lots following their annexation to the Project, including those owned by the Declarant.

Section 4.8 Assessment Procedure.

(a) Annual Assessments. No later than thirty (30) days before the beginning of each annual assessment period, the Board of Directors of the Association shall set the total annual assessment based upon anticipated cash requirements needed by it to provide for the administration and performance of its duties during the following assessment year. The annual budget shall be adopted pursuant to C.R.S. 38-33.3-303(4). Any surplus funds of the Association remaining after the payment of or provision for Common Expenses and any prepayment of or establishment of reserves shall be applied as the Board, in its sole discretion, determines appropriate. The Board shall not be required to credit or pay such surplus funds to the Owners. That annual assessment shall be payable in monthly installments on the first day of each successive month, unless the Board otherwise directs. The Association shall cause to be prepared, delivered or mailed to each Owner, at least thirty (30) days in advance of each annual assessment period, a payment statement setting forth the annual assessment. The first annual assessment upon the Lots hereunder shall commence upon the first day of the first month following conveyance of the Common Area within the Property, as provided for in this Declaration, and hereafter as provided for in Article X hereof, as applicable, from the Declarant to the Association. The first annual assessments shall be adjusted according to the number of months remaining in the calendar year; the annual assessment upon any Lot annexed to the Project pursuant to Article X hereof, shall commence upon the first day of the first month following the conveyance of the Common Area within that annexed property from Declarant to the Association; provided however, notwithstanding any contrary provision of this Declaration, the Articles of Incorporation or the Bylaws, the annual and special assessments hereunder shall not commence upon any Lot, whether owned by the Declarant or any other Owner, unless and until a residential dwelling unit has been fully completed on that Lot, but upon full completion of the residential dwelling unit, the Lot, and its Owner shall be liable to pay full assessments as provided in this Declaration, provided further that unless and until full assessments have commenced as provided above, the Lot and its Owner shall not be entitled to receive services from the Association.

(b) Special Assessments and Other Sums. Special assessments and other sums imposed hereunder shall be due and payable on the date specified by the Board in written notice to each Owner, but such (date shall not be less than ten (10) days after such notice is sent. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of any Owner, his family, tenants or guests, or any breach by any of such parties of any of the provisions of this Declaration, the Association's Bylaws or the Association's rules and regulations, and the same is not paid for by insurance, the cost thereof shall be deemed to be a special assessment against such Owner and his Lot and shall be enforceable as provided herein, except that such assessment shall not require any vote of the Members. Any other sum imposed by the Board as provided hereunder shall also be deemed a special assessment but shall not require a vote of the Members.

(c) Notice. Failure of the Board to give timely notice of any assessments provided herein shall not affect the liability of the Owner or his Lot for such assessment, but if notice is not given, the date when payments shall be due shall be deferred to a date after such notice is given.

Section 4.9 Certificate of Payment . Upon the payment of such reasonable fee as may be determined from time to time by the Board of Directors, and upon written request, the Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee , delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board, and every Owner. If no statement is furnished to the Owner or holder of a security interest or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the

inquiring par11, then the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request. Said certificate may be relied upon by all persons acting in good faith, as conclusive evidence of : payment of any assessments therein stated to have been paid.

Section 4.10 Effect of non Payment of Assessments-Remedies of this Association.

(a) General. Any assessments which are not paid when due shall be delinquent. If any assessment is not paid when due, the Association may impose a late charge/administrative fee not to exceed the amount set forth in the Association's rules and regulations. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's Lot, and/or may suspend the delinquent Owner's right to vote and the right to use any recreational facilities within the Common Area for any period during which any assessment against his Lot remains unpaid. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with the expenses, late charges, and costs of the action.

(b) Lien. Any unpaid assessment, charge, fee or other sums assessed against an Owner or his Lot, including without limitation, with interest thereon at the rate of eighteen percent (18%) per annum, late charges, court costs, and other collection costs and reasonable attorneys' fees, an administrative charge of not to exceed the amount set forth in the Association's rules and regulations, shall be a charge on the land and shall be a continuing lien, from and after the levy or assessment thereof, in favor of the Association, upon the Lot against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, the late charge, any costs or fees, and then to the assessment payment first due. The Board may enforce such lien by filing with the Clerk and Recorder of the county in which the Property is located a statement of lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association and the amount of delinquent assessments then owing. The lien statement shall be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof shall be mailed to the Owner of the Lot, at the address of the Lot or at such other address as the Association may then have in its records for the Owner of the Lot. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorneys' fees, administrative charges and interest have been fully paid or otherwise satisfied. Thirty (30) days following the mailing of such notice, the Board may proceed to foreclosure of the lien in the same manner as provided for in the foreclosure of mortgages under the statutes and laws of the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from suing the Owner personally liable therefore or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums which are not fully paid when due. Except to the extent that the lien of the Association is subordinated to the lien of a First Mortgage on a Lot pursuant to Section 4.12 of this Article and except as subordinated by law to the lien of real property taxes, the lien of the Association shall be deemed to have a priority date as of the date of the recording of this Declaration and shall have priority over all other liens and encumbrances against a Lot. Any recorded lien may be released by recording a Release of Lien executed by an officer or authorized agent of the Association. In addition, the Association shall have the right to a statutory lien under C.R.S. 38-33.3-316.

(c) Authority. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of Such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, if acquired by the Association at the foreclosure sale or by deed in lieu of the closure. The Association shall also have the right to the appointment of a receiver for the Lot, ex parte, without notice to the Owner. Such receiver shall have the right to lease the Lot Unit and to collect all rents and profits from the Lot during the pendency of the foreclosure.

Section 4.11 Working Capital. The Association shall require an Owner who purchases a Lot from Declarant to pay to the Association an amount equal to the greater of: two (2) times the amount of the estimated monthly assessment or \$300.00, which sum shall be non-refundable to such Owner and shall be placed in the general revenue account of the Association. Furthermore, payment of such sum shall not relieve an Owner from making the regular payment of assessments as the same become due. Upon termination of the Period of Declarant Control, the Declarant shall pay the working capital for any unsold Lots in the Project, but shall be reimbursed by subsequent purchasers. During the Period of Declarant Control, the Declarant may not use any of

the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits.

Section 4.12 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of a First Mortgage recorded before the delinquent assessment was due. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that sale or transfer of any Lot pursuant to foreclosure of any such mortgage or any such executory land sales contract, or any proceeding in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of assessment charges which became due prior to any acquisition of title to such Lot by the First Mortgagee pursuant to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including without limitation any deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract; no such sale, transfer, foreclosure, or any above described proceeding in lieu or in cancellation thereof, shall relieve any Lot from liability for any assessment charges becoming due after such acquisition of title, nor from the lien thereof, nor the personal liability of the Owner of such Lot for assessments due during the period of his Ownership of such Lot for assessments due during the period of his Ownership nor from the provisions of C.R.S. 38-33.3-316.

Section 4.13 Notice to First Mortgagee and Inspection of Books. Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under this Declaration and/or the Bylaws of the Association, which is not cured within sixty (60) days after the Board has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure such default. The Association shall make available to Owners and Mortgagees current copies of the Declaration, Bylaws, other rules concerning the Project, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The Association shall provide an unaudited, annual financial statement to any First Mortgagee making a written request for it and without expense to such First Mortgagee. The First Mortgagees shall be entitled to have an audited financial statement prepared at their expense if one is not otherwise available; said financial statement shall be furnished within a reasonable time following such request. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against any Association Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area, and First Mortgages making such payments shall be owed immediate reimbursement therefore from the Association. The Association shall keep financial records sufficiently detailed to enable the Association to provide the certificates of assessments described in Article IV hereof.

Section 4.14 Homestead. The lien of the Association assessments shall be superior to any homestead or other exception 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.

Section 4.15 Exempt Property. The Following Property subject to this Declaration shall be exempt from the assessments created herein; (a) all Property dedicated to and accepted by local public authority; and (b) the Common Area.

Article V - Maintenance

Section 5.1 Association Maintenance. Association shall provide such maintenance and repair in a first class condition as follows:

(a) Paint, repair, replace, maintain and care for roofs, gutters, downspouts, driveways, and exterior building surfaces, including without limitation, decks, fences, and patios of the Townhomes, but excluding glass surfaces, exterior light bulbs, doors (except for the Association's repainting of the exterior surface of doors, if applicable, screens and windows, all of which shall be each Owner's responsibility unless otherwise determined in writing by the Association's Board of Directors). An Owner shall not paint or change the appearance of the exterior of his Townhome without the prior written approval of the Board. The Association shall paint or restain the exterior of all Townhomes as often as necessary to keep such exterior from having a weather-beaten.

(b) All repair, replacement, improvement and maintenance of the Common Area and the Maintenance Area, and all improvements located thereon, including without limitation, any landscaping, sprinkler system, any roadways, driveways, utility lines (including any common utilities within a Lot or Townhome which also serve another Townhome, and also any lines located outside of the exterior walls of a Townhome but not including any maintenance which is the responsibility of any public or private utility company

or entity). any drainage structures or facilities of public improvements to the extent applicable and set forth in C.R.S. 38-33.3-307(1.5), all water lines located within the private streets within the Project and other portions of the Common Area, any light fixtures, sidewalks, and pathways, and other improvements located on the Common Area. Except as provided herein, an Owner, shall keep Limited Common Areas cleaned and in good condition; provided, an Owner shall not alter, paint, change, modify, expand, restrict, remove or construct such improvements nor otherwise modify the Common Area or the Maintenance Area or the exterior appearance of the Lot, nor shall any Owner install fences or other improvements on such areas, without the prior written approval of the Architectural Control Committee.

(c) Repair and replacement of any buildings or Improvements upon the Lot insofar as the Association receives insurance proceeds or makes a special assessment to accomplish such repair or replacement.

(d) The Association shall maintain the landscaping, drainage, and sprinkler systems in such a fashion that the soil surrounding the foundations of the buildings and other improvements shall not become so impregnated with water that they cause expansion or shifting or the soil supporting the improvements or other damage to the improvements and do not impede the proper functioning of the drainage, landscaping or the: sprinkler system as originally installed. Such maintenance shall include, where necessary, the removal or replacement of improperly functioning landscaping, drainage, or sprinkler system elements and shall also include preventing ponding and regrading and resurfacing where necessary to provide for adequate drainage and preventing Owners from installing landscaping or using water on the Lots in such a way as to endanger the structural integrity or the stability of any of the landscaping, drainage or sprinkler systems, the Townhome or the other improvements upon the lots or Common Area. The Association shall indemnify the Declarant as to any breach of this provision.

(e) The Association may also undertake, but shall have absolutely no obligation to undertake, such emergency repairs as the Board of Directors believes necessary to prevent imminent danger to life or property

Section 5.2 Willful or Negligent Damage. In the event that the need for maintenance or repair described in Section 5.1 of this Article is caused, in the sole discretionary determination of the Board of Directors, through the willful or negligent acts or omissions of any Owner, his family, guests, tenants, contractors, or invitees, or other persons or parties acting with the consent of any of the foregoing, including without limitation any pets or animals 01 those persons or parties, the cost of such maintenance shall be the personal obligation of such Owner, shall be added to and become part of the assessment to which the Lot of such Owner is subject, and shall become a lien against such Owner's Lot as provided in Article IV of this Declaration.

Section 5.3 Access at Reasonable Hours. For the purpose of performing the maintenance referred to in Section 5.1 of this Article and inspections related thereto, the Board of Directors of the Association, through its duly authorized agents, contractors or employees shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Lot 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 action, except of its gross negligence or willful misconduct.

Section 5.4 Owner Maintenance. Except as provided in Section 5.1 of this Article, the Owner shall be responsible for all other maintenance and repairs, including without limitation maintenance of his Lot, Townhome, any fixtures, furnishings, equipment and appliances located thereon. All utilities, fixtures and equipment installed within a Townhome, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of such Townhome, shall be maintained and kept in repair by the Owner thereof, except for any common utilities serving other Townhomes which shall be the Association's responsibility as provided in Section 5.1 of this Article. An Owner shall do no act nor any work that will impair any easement or utility service, nor do any act nor allow any condition to exist which will adversely affect the use and enjoyment of the other Lots or the provision of utility services to such Lots. No Owner shall, in whole or in part, change the landscaping adjacent to or upon his Lot by the addition or removal of any items thereon, including fences, without the prior written approval 01 the Board. If Owner fails to fulfill his responsibilities under this Section, the Board, at its option, may 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 therefrom shall be an assessment against such Owner and his Lot and shall be due and payable by the Owner thereof.

Section 5.5 Party Walls.

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

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty and if the Association does not restore such wall with Insurance proceeds or a special assessment, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provisions of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

(f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section 5.5, each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decisions shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore by an Owner, the Board of Directors of the Association shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorney's fees.

Section 5.6 Management Agreements and Other Contracts. The Association may enter into agreements for professional management of the Association's business. Each Owner shall be bound by the terms and conditions of any management agreement entered into by the Association. Any agreement for professional management of the Association's business shall provide for termination by either party with or without cause and without payment of a termination fee upon thirty 30 days' prior written notice, and shall have a maximum term of one (1) year. Further, each and every management contract made between the Association and a manager or managing agent during the period when the Declarant or other developer controls the Association shall be subject to review and approval by the Department of Veterans Affairs or the Federal Housing Administration and shall terminate absolutely, in any event, not later than thirty 30 days after termination of the Period of Declarant Control. Furthermore, any contracts and cases during the Period of Declarant Control shall be subject to C.R.S. 38-33.3-305. Professional management has been previously in effect after being required by any holder, insurer or guarantor at that time or later, any decision to terminate professional management and to establish self management by the Association shall require the prior consent of sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each First Mortgagee held) and vote or agreement of Owners in which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy in a meeting duly called for that purpose.

Article Vi - Architectural Control

Section 6.1 Composition of Committee. The Architectural Control Committee shall consist of three (3) persons appointed by the Association's Board of Directors, which may appoint itself to be the Committee; provided, however, that until the Period of Declarant Control terminates, Declarant shall have the right to appoint the Architectural Control Committee. A majority of the Committee may designate a representative to act for it. It shall be the duty of the Architectural Control Committee, and it shall have the power, by the exercise of its best judgment, to determine that all structures, improvements, construction, decoration and landscaping on the Property conform to and harmonize with the existing surroundings and structures. For convenience, the Architectural Control Committee shall hereinafter sometimes be referred to in this Article as the "Committee".

Section 6.2 Review by Committee. After the purchase of a Lot from the Declarant, no Improvements shall be constructed or maintained upon the Property; no alterations to re-staining or repainting of the exterior of a

Townhome or Lot shall be made; no landscaping performed; and no Owner shall enclose, by means of screens or otherwise any balcony, porch or patio, unless the following, if applicable, shall have been submitted to and approved in writing by the Committee: complete plans, specifications, and Lot plans therefor, showing the exterior design, height, square footage, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, walls and windbreaks, and grading plan. A copy of such plans and specifications as finally approved shall be deposited with the Committee. The provisions of Section 6.1, 6.2, and 6.3 of this Article shall not apply in any way or manner whatsoever to the Declarant or any Lot owned by Declarant.

Section 6.3 Procedures.

(a) Any Owner who submits a matter to the Committee for approval shall be required to pay to the Committee, at the time the request is submitted, the then applicable application fee, which fee shall be as established from time to time by the Committee. The application fee shall be \$100.00 as of the date of recording of these Covenants and shall be subject to change by the Committee from time to time. The Committee shall approve or disapprove all plans and requests within sixty (60) days after requests have been submitted. In the event the Committee fails to take action within sixty (60) days after plans have been received by the Committee, approval will not be required, and this Article will be deemed to have been fully complied with. A majority vote of the members of the Committee is required for approval or disapproval or proposed Improvements. The Committee shall maintain written records of all applications submitted to it and of all action taken. In approving or disapproving the plans submitted to it, the Committee shall take into consideration the design, style and construction of the proposed Improvements or alteration, its location upon the Property, the harmony of its design, architecture and location with the terrain and surrounding neighborhood, and shall determine whether such proposed Improvements or alteration is consistent with the general terrain, the architecture of other Improvements located upon the Property subject to this Declaration and whether or not the construction or alteration of said Improvements will adversely affect or decrease the value of other Lots and/or dwellings because of its design, location, height or type of material used in construction. The Committee may make reasonable requirements of the Lot Owner, including the submission of additional plans, to ensure conformance of such Improvements or alteration when erected with these restrictions and covenants and with the plans submitted and approved. All construction or alterations performed on any Lot or the Common Area will conform to the approved plans and specifications. The Committee may require such changes as may be necessary to conform to the general purposes as herein expressed. The Committee shall be responsible for enforcing compliance of the approved plans with these covenants and restrictions.

(b) The Committee shall have authority to grant variances from the provisions of this Declaration in cases of conditions wherein the strict enforcement of these restrictions would result in unusual hardship. The Committee shall be the sole and exclusive judge of whether or not said hardship exists.

(c) Whenever the Committee disapproves of any proposed plans or specifications, it shall state in writing its reason for such disapproval in general terms so that the objections can be met by alterations acceptable to the Committee.

(d) All plans submitted to the Committee shall be left on file with the Committee.

(e) It is the intent of this Declaration that the Committee shall exercise broad discretionary powers hereunder and its decisions shall be final and conclusive except for an arbitrary abuse of its discretion or an excess of its authority.

(f) The Committee shall resolve all questions of interpretation under this Article. They shall be interpreted in accordance with their general purpose and intent as herein expressed.

(g) If the Committee denies or disapproves a request or submission under this Article, such matter may not be resubmitted to the Committee for one (1) year following the date of the denial or disapproval, unless the Committee consents in writing to the resubmittal and, if resubmitted without the approval of the Committee, such request shall be automatically deemed denied. The Committee may in its sole discretion waive this requirement to permit resubmission of plans and specifications with revisions to conform with matters identified by the Committee in its disapproval of the originally submitted plans and specifications.

(h) In the event that a request or submission is approved, construction shall promptly commence and shall be completed within one (1) year after the date of approval. All construction shall be in strict compliance with the approved plans and specifications.

(i) The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not interpreted to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matter subsequently or additionally submitted for approval or consent.

(j) The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder

Section 6.4 Declarant Can Remedy Violations. Until the expiration of the Period of Declarant control, Declarant may, including an assignee or delegate, may give notice to the Owner of the Lot where a violation of these Covenants occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intention the Board or Declarant to invoke this Section unless within a period stated in the notice (not less than ten (10) calendar days) the violation is cured and terminated for appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the Committee or Declarant (whichever gives the notice) may Cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry on Owner's property as necessary for such purpose shall not be deemed a trespass. Each Owner of a Lot hereby grants a license to the Declarant and the Committee for the purpose of entering on a Lot to remedy violations or breaches of these Covenants. The cost so incurred by the Committee or Declarant shall be paid by the Lot Owner and the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen per cent (18%) per annum and costs of collection, shall be a lien on the ownership interest in the Lot (including improvements thereon) and shall in all respects be the personal obligation of the Owner. The Committee or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and costs of collection against the Owner and may bring an action to foreclose the lien against the Lot and improvements subject to the lien and there shall be added to the amount at such obligation the costs of collection, and the judgment in any such action shall include interest as above provided and the costs of collection. The foregoing specified rights and remedies shall not limit the right of any Lot Owner to enforce these Covenants pursuant to Section 12.2 or as otherwise may be provided by law or equity; provided, however, that only the Declarant and the Committee shall have the right to proceed under this Section 6.5. In the event that the Declarant or Committee elect to exercise the right to enter upon a Lot to remedy a violation of these Covenants, they shall not be liable to the Owner of the Lot or any loss or damage occasioned by the entry on the Lot unless damage is caused to the Lot or improvements thereon that is unrelated to the remediation of the breach of the Covenants and is caused by the willful and wanton acts of the Declarant or Committee. In no event shall there be any liability for damage to a structure that is in violation at these Covenants.

Section 6.5 Declarant's Rights to Complete Development of the Property. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development of property within the boundaries of the Property or nearby areas and to subdivide, re-subdivide, or re-zone any portion of such Property; to grant licenses, easements, reservations and rights-of-way; to construct or alter improvements on any property owned by Declarant within the Property; to maintain model homes, offices for construction, sales, management or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Property and to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Property. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant; to make changes or modifications to this Declaration by means of an amendment to this Declaration or addition hereto; to change any landscaping, grading, drainage, vegetation, or view, or to construct, alter, demolish or replace any improvements on any property owned by Declarant, or to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Property, nor shall anything herein be deemed to require Declarant to seek or obtain the approval of the Architectural Control Committee or of the Association for any such activity or improvement to properly by Declarant on any property owned by Declarant or by the Association. Nothing in this section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in this Declaration.

Section 6.6 Provisions Regarding Exercise of Declarant's Reserved right's. Declarant may exercise the reserved right of Declarant as to the Property. The exercise by Declarant of some of the reserved rights of Declarant hereunder shall not require Declarant to exercise any other of Declarant's reserved rights hereunder.

Article VII - Restrictions

Section 7.1 General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Property, all thereof in order to enhance the value, desirability, and attractiveness of the Property and serve and promote the sale thereof.

Section 7.2 Leases. Any lease agreements between an Owner and a tenant shall provide that the term of such lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association, and that any failure by tenant to comply with the terms and provisions of such documents shall be a default under the lease. Further, all the uses shall be in writing, and the Board of Directors may require the use of its approved lease form or the insertion of particular provisions and a copy of any lease shall be provided to it by the Owner. After notice and an opportunity for hearing, the Board may require an Owner to evict any tenant who has repeatedly violated any provision of this Declaration, the Articles of Incorporation or the Bylaws. No short-term leases (i.e., for terms less than month-to-month shall be permitted and no time-sharing or such other forms of interval Ownership shall be permitted.

Section 7.3 Residential Use. Each Lot shall be occupied and used as a private dwelling for the Owner, and members of his family, guests and tenants for residential purposes only, and the Board of Directors may make rules which limit the maximum occupancy permitted upon Lots in the Project and additional rules which restrict the ages of occupants as determined by the Board in its sole discretion. Other than the rental or private dwellings for residential purposes, no Lot shall be used for all business, Manufacturing or commercial purpose; provided, however, if the appropriate zoning so allows and if prior written approval from the Board is obtained, an Owner may use a specifically designated portion of his Lot as a home business office, which approval may thereafter be withdrawn or terminated by the Board at any time.

Section 7.4 Animals. No horses, snakes, insects, birds, reptiles, cattle, sheep, goats, pigs, rabbits, poultry or other animals of any description shall be kept or maintained on any Lot, except that, if specifically permitted by the Board's rules and regulations or written consent, any Owner may keep a reasonable number of bona fide household pets, so long as such pets comply with the Board's rules and regulations, are not kept for commercial purposes, 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 any rules and regulations of the Association. An Owner, family member, tenant or guest is responsible for any damage caused by his pet and shall be obligated to clean up after his pet while it is on the Property. All dogs shall be kept on leash and attended by their Owners when present in the Common Area. The Board may institute such rules as it deems advisable for the control of pets, including without limitation, prohibitions and restrictions, and may impose such fines as are necessary in its sole discretion to enforce such rules and this Declaration.

Section 7.5 Structures. All buildings or structures erected upon the Property shall be of new construction and no buildings or structures shall be moved from other locations onto the Property, and no subsequent buildings or structures other than Townhome buildings joined together by a common exterior, roof and foundation, shall be constructed. No temporary house, trailer tent, garage or outbuilding shall be placed or erected upon any Lot, and no residence placed or erected upon any Lot shall be occupied in any manner at anytime prior to its being fully completed in accordance with approved plans, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth; provided. However, that the forgoing shall not apply to the Declarant. The work of constructing, altering, or remodeling any structure on any part of any Lot shall be prosecuted diligently from the commencement thereof until the completion thereof.

Section 7.6 Signs and Other Miscellaneous Structures. Except as permitted in writing by the Committee or pursuant to its rules, no advertising or signs of any character shall be erected, placed, permitted or maintained on any Lot or within any Townhome other than a name plate of the occupant and a street number; except that the Declarant shall be permitted to use signs such as will not unreasonably interfere with Owners' use of the Common

Area until all Lots are sold by the Declarant. All types of refrigerating, cooling or heating apparatus shall be concealed. except as installed by the Declarant.

Section 7.7 Lots to be Maintained. Each 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 building materials shall be permitted to remain exposed upon any Lot so that same are visible from any neighboring Lot or street, except as necessary during the period of construction by Declarant. No condition shall be permitted within any Townhome, balcony, porch, patio or deck which is visible from other Townhomes or the Common Area and which is inconsistent with the design integrity of the Project as determined by the Board in its sole discretion; such conditions include, but are not limited to, window treatments, draperies, shades and hangings, and articles on balconies, porches, patios, decks or Common Area or visible through a window. The Board may regulate by rule the color and appearance of drapes. shades, blinds and window coverings.

Section 7.8 Lots Not to be Subdivided. No Lot or Lots shall be subdivided, except for the purpose of combining portions with an adjoining Lot, provided that no additional building site is created thereby. No less than one entire Lot, as conveyed, shall be used as a building site. Upon Lots being combined into a single Lot, the Owner thereof shall continue to be responsible for all assessments related to each Lot so combined and not merely the resulting "combined Lot." Such Owner shall also continue to have the votes related to each Lot so combined.

Section 7.9 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others.

Section 7.10 Antennae or Devices. Except with the prior written approval of the Board of Directors or its designated committee, which approval may be withheld in its sole discretion, no outside television or radio aerial or antennae or other device for the reception or transmission of radio or television or other electronic signals shall be erected or maintained on any Lot or upon the exterior of any Townhome or the Common Area appurtenant to any Townhome. The Board of Directors or its designated committee may, in its sole discretion, approve any application for the installation of one (1) television or radio antennae per Lot, including a satellite dish antennae, so long as the application indicates that the installation is for the personal use of the Owner or resident and that the antennae will not be visible from any other Lot or street. In approving such applications. the Board of Directors or its designated committee shall have the power to require such specific forms of screening (fencing or shrubbery or enclosure) as it deems appropriate in order to effectuate the intent of this Section that antennas not be visible from any other Lot or street and in order to render the installation as inoffensive installations as possible to other owners and residents. Must comply with all local zoning requirements and building if applicable.

Section 7.11 No Hazardous Activities. No activities shall be conducted on the Property and on Improvements constructed on the Property which me 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 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 barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or except such camp fire or picnic fires in an area designated for such by the Association.

Section 7.12 No annoying Light, Sounds, or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Lot which is noxious or offensive to others. Any exterior lighting installed on any Lot shall Either be indirect or of such controlled focus and intensity so as not be disturb the residents of the neighboring Townhomes. Ornamental post lights must be approved by the Architectural Control Committee.

Section 7 .13 Restrictions on Parking and Storage. Except as specifically authorized by the Board of Directors, no part of the Property, including but not limited to public or private streets, drives, or parking areas, and no part of the streets adjoining the Property shall be used ,as a parking, storage, .display, or accommodation area far any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, truck larger than 3/4 ton, bus, or sell-contained motorized recreational vehicle" except as temporary expedience

for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Properties which are necessary for the construction of Townhomes or the maintenance of the Common Area or Lots or making deliveries or performing services. No abandoned vehicles shall be stored or parked upon any part of the Property or any street adjoining the Property, but excluding any area designated for such purpose by the Board. In the event that the Board shall determine in its sole discretion that a vehicle is an abandoned vehicle, then a written notice describing the vehicle will be personally delivered to the Owner thereof (if such Owner can be reasonably ascertained) or will be conspicuously placed on the unused vehicle (if the Owner thereof cannot be reasonably ascertained, and if the unused vehicle is not removed within seventy-two (72) hours thereafter, the Board shall have the right to remove the vehicle at the sole expense of the Owner thereof. For the purpose of this Section, an "abandoned vehicle" is any automobile, truck, motorcycle, motor bike, boat, trailer, camper, motor home, house trailer or other similar vehicle which has not been driven under its own propulsion, or has not been moved for a period of five (5) days or longer. The Board of Directors may make rules and restrictions regarding parking and vehicular traffic on the Property, and the Board may also designate any parking spaces as solely for the use of visitors or others, unless such spaces have been previously assigned by Declarant to an owner and requiring that all Owners park their vehicles inside their assigned spaces, rather than in driveways, streets or other parts of the Property. Neither owners, tenants, guests, family nor other invitees shall park within or obstruct any prohibited area, including without limitation, any fire lane. Any vehicle or other item which is parked in violation of any rules or restrictions shall be subject to immediate removal by the Board or its agents at the expense of the Owner of such vehicle. Notwithstanding any other provision contained herein, no vehicles of any type shall be parked on any private street within the Property.

Section 7.14 Clotheslines and Storage. Outside clotheslines, basketball hoops, whether on buildings or free-standing, storage shed, patio covers or similar structures, any wood piles and storage areas shall not be allowed unless approved by the Architectural Control Committee in its sole discretion. All such approved structures shall be located out of view of the street or of any neighboring Townhomes. Service or storage areas shall be so located as not be visible from a street or road; there shall be no storage under any deck, unless enclosed by the Declarant or with the prior written approval of the Committee.

Section 7.15 Garbage and Refuse Disposal. No garbage, refuse, rubbish or cuttings shall be deposited on any street, on the Common Area, or on any Lots unless placed in an appropriate, clean container suitably located, solely for the purpose of garbage pick-up. All trash and refuse containers, except when placed as noted above as the sole purpose of garbage pick-up, will be kept inside the Townhomes. The burning of trash in outside incinerators, barbecue pits or the like is prohibited, it being intended that all refuse, trash, garbage and the like shall be hauled from the Property.

Section 7.16 Repair. 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 unless it is done within completely enclosed structures located on the Lot which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor driven cycle together with those activities normally incident and necessary to such washing and polishing.

Section 7.17 Tanks. No tanks of any kind, either elevated or buried, shall be erected, placed or permitted upon any Lot, except for customary barbecue grill tanks or tanks inside of Townhomes.

Section 7.18 Underground Electric Lines. All electric, television, radio and telephone line installations and connections which shall be placed on the Property following the state of this Declaration shall be placed underground, except for power substations and switching stations which shall be adequately screened from view and except for customary surface devices for access or control and except that during the construction of a residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction and which shall be subject to Declarant's prior written approval.

Section 7.19 Use of Common Area.

(a) No use shall be made of the Common Area which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Area.

(b) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

(c) No use shall ever be made of the Common Area which will deny ingress and egress for a substantial period of time to those Owners having access to a public street, to their Lots, to their parking areas, or to any recreational facilities completed upon the Common Area.

Section 7.20 Sales and Construction Facilities and Activities. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractor shall have all rights set forth in C. R. S 38.33.3-215 shall be permitted to maintain during the period of any construction on and sale of the Lots, upon such portion of the Common Area as Declarant may choose, such uses and facilities as may be reasonably required, convenient or incidental to the construction, sale or rental of Lots, and to the development of the Project, including without limitation, storage of equipment and vehicles, a business office, use of a Lot, or event a clubhouse if applicable, for a sales office storage area, construction yards. signs of any size and type, model Townhomes with typical model flood lights, sales offices, construction office, flags, parking area and lighting and temporary parking facilities for all prospective tenants or purchasers of Lots; the Declarant may promptly remove any of the above items if Declarant ceases to be a Lot Owner. In addition, Declarant, its agents, employees, financiers, any control involved in then construction or sale of said Improvements and lots, or in the development of the Property, shall have all rights set forth in C.R.S. 38-33.3-216, and shall have the right to ingress and egress over the Common Area as in Declarant's discretion may be necessary to complete the Project. Notwithstanding any provision of this Section, no right under this Section shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests, or invitees, to or of that Owner's Lot, his parking area, any public street, or any recreational facility completed upon the Common Area.

Article VIII - Insurance

Section 8.1 Common Insurance. The Association shall obtain and maintain extent reasonably obtainable, insurance policies covering the at all times, to the following risks:

(a) Casualty. A policy of property insurance covering all insurable personal property owned by the Association, and all insurable improvements located upon the Common Area, together with all fixtures and appliances attached thereto except for the value of the land, foundation, excavation and other items normally excluded, with a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and including an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement". The Association may also purchase a "Demolition Endorsement" and "Increased Cost of Construction Endorsement" and/or a "Contingent Liability from Operation 01 Building Laws Endorsement" or the equivalent. Such insurance as maintained by the Association pursuant to this Section shall afford protection against at least the following:

(i) loss or damage by fire and other hazards covered by the standard all risk form including without limitation endorsements for vandalism and malicious mischief, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

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

(b) Public Liability. Comprehensive general liability and property damage insurance in such limits as the Board of Directors of the Association may, from time to time, determine, but not in an amount less than \$500,000 for bodily injury, per person, per occurrence and umbrella liability limits of \$1,000,000 per occurrence covering claims for bodily injury and \$50,000 for property damage arising out of one occurrence or \$1,000,000 combined single limit coverage. To the extent reasonably obtainable, coverage shall include, without limitation, liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Common Area and the Townhomes by the Association, off-premises employee coverage, its officers, directors, agents, employees, representatives and the Owners, water damage liability, contractual liability, and liability for property of others.

(c) Workmen's Compensation. Workmen's Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance. The Association shall purchase, in an amount equal to the maximum amount of funds in the Association's custody at any one time, but not less than the greater of either any sum required under C.R.S. 38-33.3306(3) or the sum of three (3) months' assessments on the entire Project, plus reserves, blanket fidelity insurance covering losses resulting from dishonest or fraudulent acts or omissions committed by the Association's directors, managers, including without limitation, any person employed as an independent contractor for the purpose of managing the Association and any employee thereof, trustees, employees, volunteers, or anyone who manages the funds collected and held for the benefit of the Owners, provided however, any managing agent which handles funds of the Association should be covered by its own fidelity insurance policy, which must provide the same coverage required of the Association. Such policy shall also cover destruction or disappearance of money or securities and forgery. Such policy shall cover any person or entity handling funds of the Association, including but not limited to, employees of the professional manager, which should also be covered by its own fidelity bond and submit evidence thereof to the Association. Such fidelity coverage or bonds shall name the Association as the named insured and as obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(e) Officers' and Directors' Personal Liability Insurance. To the extent obtainable, appropriate officers' and directors' personal liability insurance shall be obtained 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.

(f) Flood. If the Property is located in an area identified by the Secretary of Housing and Urban Development or the Director of the Federal Emergency Management Agency as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Property in an amount which is the lesser of (i) the maximum amount of insurance available under the Act or (ii) the aggregate replacement value of the Improvements located upon the Property.

(g) Other Insurance. In addition, the Board of Directors may obtain any other insurance against such other risks, of a similar or dissimilar nature, which the Board shall deem appropriate with respect to the Property.

(h) Notice Of Unavailability. If any insurance described in this Declaration is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepared by United States mail to all Owners and First Mortgagees as provided herein.

Section 8.2 Annual Review. At least annually and prior to obtaining any insurance policy required under Section 8.1 of this Article, the Board of Directors shall obtain an estimate of the full replacement value of all improvements on each Lot, including all buildings, fixtures, improvements and service equipment located thereon, and of the Common Area Improvements including landscaping and underground facilities, without deduction for depreciation, for the purpose of determining the amount of insurance required under that Section. The amount of such insurance shall be shown in the Association's annual report. Upon written challenge by the Owners of twenty percent (20%) or more Lots that the Association's estimate of maximum replacement value is too low, the Association will secure a certified appraisal of replacement value prepared by an M.A.I. appraiser and will conform the hazard insurance to the value indicated by that appraisal.

Section 8.3 Form of Issuance

(a) The property insurance shall be carried in blanket policy form, shall name the Association (pursuant to Article XI, Section 9.1) as the insured, as trustee and attorney-in-fact pursuant to Article IX hereof, and shall provide that the proceeds shall be paid to the Association for the benefit of and in trust for the Association, the Owner and their First Mortgagees, as their interests may appear, shall additionally insure and identify the interests of each Owner and the First Mortgagee, and shall provide a standard, non-contributory mortgage clause in favor of each First Mortgagee which has given the Association notice of its lien.

(b) To the extent possible, all insurance policies shall:

(i) be obtained from responsible companies duly authorized and licensed to do insurance business in the State of Colorado, and having at least a "B" general policyholder's rating or a financial performance index of six (6) or better in the Best's Key Rating Guide;

(ii) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, its Owners and members of their households;

(iii) provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees and agents;

(iv) provide for a waiver of any defense based on co-insurance;

(v) provide that the policy of insurance shall not be permitted to lapse, be terminated, canceled or materially or substantially changed or modified without at least thirty (30) days' prior written notice to the Association, the Owners and the First Mortgagees which have given notice of their liens;

(vi) acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(vi) there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and

(vii) provide that no assessments therefor may be made against First Mortgagees and any such assessments made against someone other than First Mortgagees shall not become a lien on the Property superior to the First Mortgagee.

(c) On written request the Association shall furnish, by certificate or otherwise, a copy of any insurance policy, identifying the interest of the Owner in question, to any Owner or First Mortgagee, together with proofs of payment of premiums. Further, the Association may require the insurer to furnish to each Owner and First Mortgagee a certificate of insurance.

(d) Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice. Any loss falling within the deductible portion of the policy shall be borne by the Association, except as otherwise provided in this Declaration.

(e) The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claim adjustments. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Lot Owner a pro rata share of any deductible paid by the Association.

Section 8.4 Owners Personal Property and Liability Insurance. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Each Owner shall be solely responsible, at his expense, for all insurance covering all loss or damage to any and all fixtures, appliances, furniture, furnishings or other personal property supplied, maintained or installed by the Owner and covering liability for injury, death or damage occurring within his Townhome. Such insurance shall contain waivers of subrogation and shall be so written that the insurance obtained by the Association shall be affected or diminished thereby. The Association shall have no responsibility regarding the obtaining or continuation of any such insurance. If at any time of any loss under any policy which is in the name of the Association there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy such Association policy shall be primary insurance not contributing with any of such other insurance.

Article IX - Damage, Destruction, Condemnation And Merger

Section 9.1 Attorney-in-Fact. All of the Owners and First Mortgagees irrevocably constitute and appoint the Association as insurance trustee under C.R.S. 38-33.3-313(5) and (9) and under this Declaration and as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Property in the event of their destruction, damage, condemnation, or liquidation of all or a part of the Project or from the termination of the Project, including without limitation the repair, replacement and improvement of any buildings, fixtures, improvements and service equipment located on the Property (but excluding any furniture, furnishings or other personal property installed by the Owners). Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary or its other duly authorized

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

Section 9.2 Damage or Destruction Of Common Area. Any portion of the Project for which insurance is required under C.R.S. 38-33.3-313 which is damaged or destroyed must be repaired or replaced promptly by the Association pursuant to that statutory section.

Section 9.3 Damage or Destruction of Townhomes

(a) In the event of damage to or destruction of a Townhome due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair and restoration of the Improvements. The annual assessments set forth in Article IV shall not be abated during the period of insurance adjustments and repair and reconstruction.

(b) If the insurance proceeds are insufficient to repair and reconstruct any or all of the damaged or destroyed Townhomes, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made only against the Owners of the damaged or destroyed Townhomes and their Lots. Such special assessment shall be made by the Board of Directors without a vote of the Owners and shall be a debt of each such Owner and a lien on his Lot and may be enforced and collected as is provided in Article IV. The Association shall have full authority, right and power as attorney-in-fact to cause the repair, replacement or reconstruction of the Improvements using all of the insurance proceeds or reconstruction of the Improvements using all of the insurance proceeds for such purposes, notwithstanding the failure of an Owner to pay the assessment.

(c) Notwithstanding any provision to the contrary, but subject to C.R.S. 38-33.3-313(9) to the extent applicable, it sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each First Mortgagee held) and by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, have given their prior written approval, the Association shall provide that the Owners and First Mortgagees of any or all of the destroyed or damaged Townhomes may agree that such Townhomes shall forthwith be demolished and all debris and rubble caused by such demolition removed from the Lot, and the Lot regarded and landscaped to the satisfaction of the Board. The cost of such demotion work and landscaping, together with all taxes, liens and encumbrances and any costs in repairing any party walls. shall be paid for by any and all available insurance proceeds, with any deficiency thereof to be paid by the Owner(s) of the applicable Townhome. Any excess insurance proceeds shall then be disbursed to such Owner and his First Mortgagee jointly and said Owner shall convey merchantable title to his Lot to the Association, free and clear of all liens, encumbrances, assessments, and taxes (except a. prorated). for its fair market value as determined by a MAI appraisal, the cost of which shall be paid by the Owner of the applicable Townhome, with the appraiser thereof to be named by the Association.

Section 9.4 Condemnation. If a Lot, or any part thereof, is acquired by eminent domain, the provisions of C.R.S. 38-33.3-107 shall apply. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common area, any part thereof or any interest therein, any improvement thereon, or any interest therein, with a value (including loss of value to the balance of the Common Area and improvements thereon), as reasonably determined by the Association is in excess of \$5,000.00, the Association

shall give prompt notice thereof, including a description of the part of or the interest in the Common Area or Improvement thereon sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, but the Association shall not enter into proceedings pursuant to which the Common Area or any part thereof or any interest therein, is relinquished without giving all First Mortgagees of Lots and all Owners at least fifteen (15) days' prior written notice thereof.

In the event, following such proceedings, there is such a taking in *condemnation* or by eminent domain of a part or all of the Common Area, the award made for such taking shall be paid to the Association as provided by C.R.S. 38-33.3107(3) and after the approval described below, the award shall be applied toward the repair and restoration of the Common Area, the Association shall arrange for the same and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that seventy-five percent (75%) or more of the Owners and at least fifty-one percent (51%) of First Mortgagees do not duly and promptly approve the repair and restoration of such Common Area, the Association shall disburse the net proceeds of such award jointly. to the Owners and their respective First Mortgagees at the rate of one (1) equal share per Lot, except that any award attributable to the acquisition of a limited common element shall be paid solely to the Owner thereof and that Owner's First Mortgagee.

Section 9.5 Repair and Reconstruction. Unless otherwise agreed by sixty seven percent (67%) of the First Mortgagees (based on one (1) vote for each first Mortgage held) and by vote or agreement of Owners of Lots to which at least sixty seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and with the original plans and specifications, and shall restore any Townhome or other improvement partially condemned or damaged by an insurable hazard to substantially the same condition in which it existed prior to such condemnation or damage.

Section 9.6 Excess Insurance Proceeds. With the prior written approval of sixty-seven percent (67%) of the First Mortgagees (based on one (1) vote for each First Mortgage held) and by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, any insurance proceeds remaining after any repairs or reconstruction are completed shall be paid to each Owner and his First Mortgagee jointly at the rate of one (1) equal share per Lot. Without such approval, any excess insurance proceeds shall be placed in the Association's reserves.

Section 9.7 Notice of Loss to First Mortgagee. Provided that a First Mortgagee has, in writing, requested the following information with respect to a Lot upon which said First Mortgagee holds the First Mortgage and has furnished the Association with the address to which said First Mortgagee wants the information sent, then in the event that there shall be any damage to or destruction of: (a) any improvement on the Lot on which such First Mortgagee holds the First Mortgage which, shall be in excess of Five Thousand Dollars (\$5,000.00) and/or (b) the Common Area which shall be in excess of Five Thousand Dollars (\$5,000.00). or in the event of the condemnation of any part of the Common Area as described in Section 9.4 of this Article in excess of Five Thousand Dollars (\$5,000.00), then timely written notice of any such damage, destruction or condemnation shall be given by the Association to such First Mortgagee. Notwithstanding any provision to the contrary, no provision of this Declaration or of any other document relating to the Property shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee in the case of a distribution to an Owner of Insurance proceeds or condemnation awards for loss to or taking of Lots or Common Area or both.

Section 9.8 Merger. The Association may merge with one or more Homeowners' association in the surrounding area on such terms and conditions as may be agreed to by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, and by sixty-seven percent (67%) of all First Mortgagees. The surviving entity in any such merger or affiliation shall be the Association for purposes of this Declaration.

Article X - Phased Development

Section 10.1 Right to Expand. For a period continuing until ten (10) years from the date of the recording of this Declaration, Declarant reserves the right to expand this Project, without the approval of the Owners or First Mortgagees, except as provided in Article XI, Section 11.2, to include additional land and one or more additional buildings located upon all or any part of the Expansion Property; provided, however, that the total number of units in the Project, as expanded, shall not exceed one hundred ten (110) units, any additional buildings to be constructed shall be of comparable or greater cost or size in relation to those buildings existing on the Property at the time of expansion except for such alterations or modifications as may be approved by the Department of Veterans' Affairs or the Federal Housing Administration. By accepting a deed to a Lot, each Owner hereby grants to Declarant a right to expand the Project and to modify the Owner's Proportionate Share and right, title and interest in the Common Area accordingly, as set forth in this Article X and Article XI, Section 11.2 and shall not make or constitute any amendment or modification in this Declaration except as provided in this Article X. Any expansion hereunder shall comply with C.R.S. 38-33.3-209 and 210.

Section 10.2 Procedure for Expansion. Such expansion may be accomplished by the filing for record by Declarant with the Clerk and Recorder of the county in which the Project is located, no later than ten (10) years from the date of this Declaration, an amendment or amendments to this Declaration containing a legal description of the land area to be added to the Project, together with any supplemental plats which may be required. Any such amendment or amendments to this Declaration shall also contain a listing of the number of Lots to be contained in the expanded portion of the Project and shall assign an identifying number to each new Lot thereby created, shall reallocate each Owner's Proportionate Share, and shall describe any Common Areas and, except as otherwise provided herein, any limited Common Areas thereby created and designate the Lots to which each is allocated to the extent required by C.R.S. 38-33.3-208. The expansion may be accomplished in "phases" by successive amendments.

Section 10.3 Effect of Expansion

(a) In the event of such expansion, the definitions used in this Declaration shall automatically be expanded to encompass and refer to the Project as so expanded; e.g., "Property" shall mean the real property described on Exhibit "A" hereto plus any additional real property added by any amendment to this Declaration; similarly, "Common Area" and "Lots" shall include those areas located within the real property described on Exhibit "A" hereto, as well as those so designated on any amendment or supplemental plat relative to any real property which is annexed pursuant to this Article X. References to this Declaration shall mean this Declaration as so amended. Every Owner of a Lot in the area shall, by virtue of such ownership and upon recording of the amendment be a member of the Association and shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other Association member. The recording with the Clerk and Recorder of the county in which the Property is located of an amendment to this Declaration incident to any expansion shall operate automatically to grant, transfer and convey to all of the Owners of the Lots, located within the Property and the part of the Expansion Property added thereby, their respective, appurtenant, undivided rights, titles, interests, privileges, duties and obligations in and to both the existing Common Area and the new Common Area, if any, added to the Property as a result of such expansion; provided, however, assessments for Lots within the annexed area shall commence as set forth in Section 4.8 of Article IV hereof, but no part of the Expansion Property shall be subject to assessments or any provision of this Declaration until the annexation of that part is completed in accordance with this Article X.

(b) Upon recording of the amendment or amendments to Declaration and any supplemental plat with the Clerk and Recorder of the county in which the Project is located, the additional Lots and Common Area shall be subject to the provisions of this Declaration.

(c) At such time, prior to ten (10) years from the date of this Declaration, that the Declarant determines that the Project is completed, he shall record with the Clerk and Recorder of the county in which the Project is located a Certificate of Completion. Said Certificate shall contain a statement of the total number of Lots.

(d) Until the expansion of the Project is accomplished by recording the amendment(s) to this Declaration and supplemental plat(s), the Expansion Property and any improvements constructed thereon shall not be subject to this Declaration in any way whatsoever, including but not limited to consideration for the purpose of apportioning assessments or determining voting rights or privileges. If such expansion does not occur, nothing contained in this Declaration or otherwise shall restrict, impair, hinder, encumber or burden, in any way whatsoever, Declarant's, or its successors' or assigns' sole and complete right, title and interest to the Expansion Property and any improvements constructed thereon. The Declarant alone shall be liable for all expenses of the Expansion Property unless and until annexed hereunder, and shall be entitled to any income and proceeds therefrom. The Declarant's right to annex, and other development rights, may be exercised at

different times and as to different portions of the Property or Expansion Property, and so no assurances are made hereby regarding the boundaries of any portion of real property which may be annexed hereunder nor the order in which said portion may be annexed. If the Declarant exercises any right to annex additional portions, the Declarant is not required to exercise any development rights to any and all portions of the remaining Property or Expansion Property. Any portion of the Property or Expansion Property may be designed as general or limited areas or elements as shown by the plat or map which has been or will be recorded regarding that portion.

Article XI - Additional Restrictions

Section 11.1 Restrictions Upon Association and Owners. Unless at least sixty seven percent (67%) of the First Mortgagees based upon one (1) vote for each Lot encumbered by a First Mortgage and the Owners (other than Declarant by vote or agreement of Owners of Lots of which at least sixty seven percent (67%) of the votes (based upon Proportionate Interests) in the association are attached, have given their prior written approval, neither the Association, nor the Owners shall be empowered or entitled to do any of the following:

(a) by act or omission, seek to abandon or terminate this Declaration or any scheme or architectural control, or enforcement thereof, as set forth in this Declaration, regarding the architectural design, exterior appearance, or exterior maintenance of the Lots, improvements thereon, or the Common Area, or the maintenance of the common property, party walls or common fences and roads, or the upkeep of lawns and plantings in the Project;

(b) by act or omission, seek to abandon, partition, subdivide, mortgage, encumber, sell or transfer any of the Common Area, except for the granting of utility easements as provided by Section 2.5(a) of Article II hereof; any conveyance or encumbrance of the Common Area shall also comply with voting requirements of C.R. S. 38-33.2-312;

(c) fail to maintain full current replacement cost, fire, and extended insurance coverage on the Lots and Common Areas, and such other insurance as is required under this Declaration;

(d) use hazard insurance proceeds for loss to the improvements for other than repair, replacement or reconstruction of such improvements as herein provided;

(e) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner; or

(f) a material change in any of the following provisions of this Declaration: voting rights; assessments, assessment liens or the priority of assessment liens; reserves for maintenance, repairs, and replacement of Common Areas; responsibility for maintenance and repairs; reallocation of interests in the Common Areas, or rights to their use; redefinition of any Lot boundaries; convertibility of Lots into Common Areas or vice versa; expansion or contraction of the Project, or the addition, annexations, or withdrawal of Property to or from the Project; insurance or fidelity bond; leasing of Lots; imposing of any restrictions on an Owner's right to sell or transfer his or her Lot; a decision by the Association to establish self-management when professional management had been required previously by this declaration or by a First Mortgage holder; restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration; any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or any provisions that expressly benefit First Mortgage holder, insurers, or guarantors.

Section 11.2 Additional Restriction and Declarant Control. In addition to the provisions of Section 11.1 of this Article, after the Declarant has obtained evidence of approval for guaranteed or insured loans by Federal Housing Administration or the Department of Veterans' Affairs and continuing until such time as the Period of Declarant Control has terminated, the prior written approval of the Department of Veterans' Affairs or the Federal Housing Administration of the U.S. Department of Housing and Urban Development shall be required for any of the following:

(a) Amendment of this Declaration

(b) Amendment of the Articles of Incorporation of the Association;

(c) Annexation of all or any part of any additional property to this Declaration

(d) including or mortgaging of all or any part of the common Area

(e) granting of utility easements as provided by Section 2.5(a) of Article II hereof; and Dedication of all or any part of the Common Area, except for the

(f) Merger, consolidation or dissolution of the Association. Any merger or consolidation shall also comply with C.R.S. 38-33.3-221.

Section 11.3 Implied Approval by Mortgage. Notwithstanding any provision of this Declaration, any matter requiring Mortgagee approval will be assumed when that Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Any First Mortgagee shall be given notice of any proposed action requiring its consent, if the First Mortgagor has sent a written request to the Association, stating both its name and address and the Lot number or address of the Lot on which it has (or insures or guarantees) the Mortgage.

Section 11.4 Selection of an Alternative Dispute Resolution Process and Rejection of Litigation as a Remedy. By an Owner's purchase of a Townhome and by the Association's receipt of title to any Common Area, the Owner and the Association (which, together with the Declarant, will be referred to in this Declaration as "Party" and "Parties") acknowledge that he is agreeing to submit all disputes arising out of any alleged construction defect within the Project to the Dispute Resolution Process set forth in this Section 11.4, and further that he is waiving certain rights, including rights (1) to proceed in any action against Declarant or its respective former and present employees, agents, officers, directors, partners, successors, assigns, subcontractors and affiliates in any court; (2) to a trial by jury; and (3) to certain types of damages, including exemplary damages, consequential damages and damages for emotional distress and pain and suffering. The parties expressly recognize the many benefits of electing alternative dispute resolution, including potentially reduced costs, and faster resolution of disputes. The Dispute Resolution Process consists of three phases including 1) Notification, Inspection, and Neutral Evaluation, 2) Mediation, and 3) binding Arbitration. Notwithstanding any other provision contained in this Section 11.4, prior to the Association commencing the alternative dispute process described in this Section 11.4, the Association shall obtain the consent thereto of at least 75% of the Owners.

(a) First Phase: Notification, Inspection, and Neutral Evaluation. Notification, Inspection and Neutral Evaluation are condition precedents to mediation and arbitration.

(i) NOTIFICATION. Any Party claiming to have suffered an injury, or claiming to have discovered a defect in the construction of any portion of his Lot or a Common Area shall file a written notice as provided in this section 11.4 a.i. within one hundred eighty (180) days after the date of the discovery of the injury, regardless of whether the Party then knew all of the elements of a claim or of a cause of action for such injury ("Notice"). Compliance with the provisions of this section 11.4 a. i. shall be a condition precedent and prerequisite to any further action brought against the Declarant. Failure of compliance shall forever bar any such action. The Notice shall contain the following:

A. The name and address of the claimant and the name and address of his attorney, if any;

B. A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or event complained of; The name and address of any person responsible, if known; A concise statement of the nature and the extent of the injury claimed to have been suffered or defect claimed; and

C. The name and address of any person responsible, if known;

D. A concise statement of the nature and the extent of tile injury claimed to have been suffered or defect claimed; and

E. A statement of the amount of monetary damages that is being requested, and other remedy sought.

F. Notice " be sent to the Declarant in one of the following manners: by registered mail or upon personal service by an uninterested third party upon the Declarant as provided in the Colorado Rules of Civil Procedure Rule 4.

ii. INSPECTION Within ten (10) days of receipt of Notice, as set out in Section 11.4 a. i., the Declarant shall contact the complaining Party to set up an inspection of the applicable Lot or Common Area. After said inspection, tile Declarant and the complaining Party(ies) shall meet to determine whether they can agree to a course of action to address the concerns in a manner agreeable to all Parties. If the Parties cannot agree on a course of action, the Parties shall proceed to obtain a "Neutral Evaluation," as described in Section 11.4 a. iii below.

iii. NEUTRAL EVALUATION The Parties shall select a neutral third party "evaluator" with expertise in the area in question to come to the applicable Lot or Common Area and inspect and evaluate the claimed defects. If the Parties are unable to agree upon a single "evaluator" each Party shall select one evaluator, and the two evaluators shall select a third. The Parties shall share equally in the evaluator(s)' fees and expenses. After selecting the evaluator(s), the evaluator(s) shall conduct an inspection and make an initial determination including (a) whether there is a defect and (b) the most appropriate remedy for the defect. The Parties shall then meet to determine whether they can agree to a course of action to address the concerns. If the dispute is not resolved, the Parties shall proceed to mediation as provided in Section 11.4 b. below.

b. Second Stage: Mediation. If the dispute cannot be resolved pursuant to the proceedings set forth in Sections 11.4 a above, mediation is a condition precedent to any further action. The Parties shall agree upon a neutral mediator, and attend a mediation with said person. If the Parties cannot agree upon a mediator, either Party may file an action, exclusively to cause the El Paso District Court to appoint a neutral mediator. The Parties shall share equally in the mediator's fees and expenses, arid all costs related thereto.

c. Final Stage: Binding Arbitration If mediation is not successful, and either Party wishes to pursue the dispute further, the Parties shall proceed to binding arbitration. The Parties shall select a neutral arbiter. If the Parties are unable to agree upon a single arbiter, each Party shall select one arbiter, and the two evaluators shall select a third. The Parties shall share equally in the arbiter(s)' fees and expenses. If the two arbiters are unable to select a third arbiter, either Party may file suit for the sole purpose of asking a Court of competent jurisdiction to select the third arbiter. The Court shall be given a list of three arbiters by each Party. Arbitration shall be valid and binding pursuant to C.R.S. 13-22-203. In matters of construction standards, arbitrators will render a decision based upon whether the Declarant has met the NAHB

Residential Construction Performance Guidelines. The arbitrator's decision will be final and binding upon tile Parties who are subject to this Declaration and result in final resolution of the disputed items between the Parties. Judgment upon any award rendered by the arbitrator may be entered by any state or federal court, as appropriate. The decision of the arbitrator shall be final, and not appealable, except for as provided under C.R.S. 13-22-201 et. seq.

Article XII - General Provisions

Section 12.1 Acceptance of Provision of All Documents. The conveyance or encumbrance of a Lot or the improvements thereon shall be deemed to include tile acceptance of all provisions of this Declaration, the Articles of Incorporation of tile Association and tile Association's Bylaws and rules and regulations, all of which shall be binding upon each Owner, his heirs, personal representatives, family, guests, tenants, successors and assigns, and everyone having an interest in the Lot without the necessity of inclusion of an express provision in the instrument of conveyance or encumbrance. Tile Association and the Owners shall obey and perform any protective or other covenants recorded against the Property prior to the recording of this Declaration.

Section 12.2 Enforcement. The Board, the Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board or by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to promulgate rules and regulations to enforce or apply this Declaration, and all Owners and other parties subject thereto shall strictly comply therewith. In addition to all other remedies, the Board of Directors shall have the right, after notice arid an opportunity of hearing, to impose upon any Owner reasonable fines for any breach by that Owner of the provisions of this Declaration, the Bylaws and/or the Association's rules and regulations. All rights and remedies provided in this Declaration are distinct and cumulative

to any other right or remedy hereunder or afforded by law or in equity, and may be exercised concurrently, independently or successively.

Section 12.3 Non-Waiver. Any forbearance or failure to enforce any provision 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 any such provision. The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by law in equity and may be exercised concurrently, independently or successively without effect or impairment upon one another.

Section 12.4 Cumulative. Each of these covenants is cumulative and independent and is to be construed without reference to any other provision dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 12.5 Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 12.6 Conflicts of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 12.7 Duration and Amendment. Each and every provision of this Declaration shall be binding upon each and every Owner, his heirs, successors, assigns and personal representatives and shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as is otherwise provided herein, this Declaration shall not be revoked or terminated unless all of the Owners and all of the First Mortgagees agree to such termination or revocation by an instrument duly recorded and such termination and revocation shall comply with C.R.S. 38-33.3-218. Subject to the provisions of Section 1.8, this Declaration may be amended or modified by written document signed by Owners of Lots to which at least sixty-seven percent (67%) of the Proportionate Interests in the Association are attached and not less than sixty-seven percent (67%) of the First Mortgagees; provided, however, that (a) until the Period of Declarant Control is terminated, and except as otherwise provided below, Declarant shall be permitted to reject any such amendment or modification, (b) that any Section in this Declaration which requires a particular percentage of Owners and/or Mortgagees may be amended only by written consent of that percentage of those parties, (c) that this Section may be amended by an instrument signed by Owners owning not less than ninety percent (90%) of the Lots, and one hundred percent (100%) of the First Mortgagees who have given the Association notice of their lien; and Declarant hereby reserves the right, until the Period of Declarant Control is terminated, but without the vote of the Owners, to make such amendments to this Declaration, the Articles of Incorporation and/or the Bylaws as may be permitted by the Act or as may be necessary to make clarifications which are deemed necessary or advisable by Declarant or as may be approved in writing by Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration or Department of Veterans' Affairs so as to induce any of such organizations to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the Property, and each Owner and Mortgagee by accepting a deed, Mortgage or other instrument affecting a Lot appoints Declarant as his attorney-in-fact for purposes of executing in said Owner's and/or Mortgagee's name and recording any such amendments to this Declaration, and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a consent to the reservation of the power to the Declarant to make, execute and record any such amendments. The consent of any junior Mortgagee shall not be required under the provisions of this Article. In determining whether the appropriate percentage of First Mortgagee approval is obtained, each First Mortgagee shall have one (1) vote for each First Mortgage owned. To be effective, all amendments to this Declaration must be recorded in the office of the Clerk and Recorder of the county in which the Property is located, and an amendment must be indexed in the Grantee's index in the name of the Project and the Association and in the Grantor's index in the name of each person executing the amendment. The amendment shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that Association. All expenses associated with preparing and recording an amendment to the Declaration shall be the sole responsibility of the persons or parties as set forth in C.R.S. 38-33.3217(6). The Association shall notify any First Mortgagee who has requested notice in

writing of any proposed action under this Declaration which would require the consent of a specified percentage of First Mortgagees.

Section 12.8 Registration By Owner of Mailing Address. Each Owner shall register his 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 either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to the registered agent of the Association at his address filed with the Secretary of State of the State of Colorado, together with a copy addressed to the President of the Association at his registered address.

Section 12.9 Assignment of Declarant Rights. The Declarant may assign its rights and authority here, in whole or in part, by express written assignment, duly recorded.

Section 12.10 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 12.11 Captions. The captions to the Articles and Sections are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of the Declaration or the intent of any provisions hereof.

Section 12.12 Association to Resolve Ambiguities. If any doubt or question shall arise concerning the true intent or meaning of any of this Declaration, the Board of Directors of the Association shall, by resolution, determine the proper construction of the provision in question and such resolution shall fix and establish the meaning, effect and application of the provision. However, this provision shall not apply to any such question concerning Declarant, unless Declarant has given its specific prior written authorization for the Board of Directors to make the determination.

Section 12.13 Governing Law. This Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be governed by, and construed in accordance with, the statutes and laws of the State of Colorado.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal as of December 16, 1999.

DECLARANT:

[SEAL]

ELITE PROPERTIES OF AMERICA, INC.,
Colorado corporation, as Manager

ATTEST:

By:

Its: President

By:
Its: Vice President

STATE OF COLORADO)

COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 20th day of September, 1999, by Douglas M Stimple, as President of Elite Properties of America, Inc., a Colorado Corporation.

Witness my hand and official seal.

My Commission Expires:

Christine L Wise
Notary Public

EXHIBIT "A"

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
THE CARRIAGES AT CHARLESTON PLACE

Legal Description of the Property

JR Engineering, Ltd.

EXHIBIT "A"

JOB NO. 8858.50 - 04
OCTOBER 9, 1998
PAGE 1 OF 2

LEGAL DESCRIPTION:

THE CARRIAGES AT CHARLESTON PLACE
FILING NO. 2

THE CARRIAGES AT CHARLESTON PLACE FILING NO. 1, A SUBDIVISION TO BE RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF EL PASO COUNTY, COLORADO.

LEGAL DESCRIPTION STATEMENT:

I, G. LAWRENCE BURNETT, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED UNDER MY RESPONSIBLE CHARGE AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, ARE CORRECT.

G. LAWRENCE BURNETT, PROFESSIONAL LAND SURVEYOR
COLORADO P.L.S. NO. 10376
FOR AND BEHALF OF JR ENGINEERING, LTD.

October 9, 1998
Date

EXHIBIT "A-1"

TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF THE CARRIAGES AT CHARLESTON PLACE

Title Exceptions

Any and all matters of Record in El Paso County, Colorado

ALTA COMMITMENT

(Exceptions)

Our Order No. SB121927

The policy or policies to be issued will contain exceptions to tile following unless the same are disposed of to the satisfaction of the Company:

1. Rights of claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by like public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which me not shown in the Public records.
4. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. Taxes and assessments not yet due or payable and special assessments not yet certified to the treasurer's office.
7. Any unpaid taxes or assessments against said land.
8. Liens for unpaid water and sewer charges, if any.
9. THE RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT OR REMOVE HIS ORE SHOULD THE SAME BE FOUND TO PENETRATE OR INTERESECT THE PREMISES THEREBY GRANTED AS RESERVED IN UNITED STATES PATENTS RECORDED JANUARY 16, 1885 IN BOOK 35 AT PAGE 369, JULY 27, 1885 IN BOOK 72 AT PAGE 8, JULY 27, 1885 IN BOOK 72 AT PAGE 10, AND ANY AND ALL ASSIGNMENTS THEREOF OR INTEREST THEREIN.
10. AN EASEMENT FOR ELECTRIC, TELEPHONE AND/OR TELEGRAPH LINES AND INCIDENTAL PURPOSES GRANTED TO MOUNTAIN VIEW ELECTRIC ASSOCIATION, INCORPORATED BY THE INSTRUMENT RECORDED JANUARY 4, 1973 IN BOOK 2551 AT PAGE 293.
11. TERMS, AGREEMENTS, PROVISIONS, CONDITIONS, OBLIGATIONS AND EASEMENTS, AS CONTAINED IN AGREEMENT BY AND BETWEEN WOODMEN WATER AND SANITATION DISTRICT AND CIMARRON

CORPORATION RECORDED APRIL 8, 1976 IN BOOK 2821 AT PAGE 285. QUITCLAIM DEED IN CONNECTION THEREWITH RECORDED SEPTEMBER 17, 1980 IN BOOK 3352 AT PAGE 806.

12. TERMS, AGREEMENTS, PROVISIONS, CONDITIONS AND OBLIGATIONS AS CONTAINED IN SEWAGE LINE AGREEMENT BY AND BETWEEN THE CHAPEL, HILLS WATER AND SANITATION DISTRICT, A COLORADO SPECIAL DISTRICT; LEW CHRISTENSEN AND ASSOCIATES, INC., A COLORADO CORPORATION EMPIRE HOLDINGS, INC., A COLORADO CORPORATION; DOVENMUEHLE, INC., AN ILLINOIS CORPORATION, CIMARRON CORPORATION OF AMERICA, A DELAWARE CORPORATION; JOHN VENEZIA, INDIVIDUALLY, JOHN VENEZIA REALTY CONSULTANT, INC., A COLORADO CORPORATION RECORDED JULY 25, 1979 IN BOOK 3206 AT PAGE 118.

13. AN EASEMENT FOR A GAS PIPELINE AND INCIDENTAL PURPOSES GRANTED TO THE CITY OF COLORADO SPRINGS BY THE INSTRUMENT NOVEMBER 27, 1984 IN HOOK 39'12 AT PAGE 1413.

NOTE: GAS LINE EASEMENT RECORDED IN BOOK 3492 AT PAGE 1413 CONTAINS AN ILLEGIBLE EXHIBIT AND IS NOT LOCATABLE FROM THE DOCUMENT. THE PERMANENT EASEMENT LIES TEN (10) FEET ON EITHER SIDE OF THE GAS LINE AS CONSTRUCTED.

14. AN EASEMENT FOR A WATER WELL AND INCIDENTAL PURPOSES GRANTED TO WOODMEN WATER AND SANITATION DISTRICT BY INSTRUMENT RECORDED NOVEMBER 28, 1984 IN HOOK 3943 A'1' PAGES 1062 AND 1063, AND AGREEMENT FOR EASEMENTS BY AND BETWEEN WOODMEN WATER AND SANITATION DISTRICT AND HEWLVIT-PACKARD COMPANY RECORDED DECEMBER 17, 1984 IN HOOK 3950 A'1' PAGE 187.

SAID EASEMENTS AND AGREEMENTS CONVEYED TO THE CITY OF COLORADO SPRINGS IN WARRANTY DEED RECORDED JANUARY 10, 1995 IN BOOK 6602 AT PAGE 951.

15. WATER RIGHTS OR CLAIMS OR TITLE TO WATER IN, ON OR UNDER THE LAND. QUITCLAIM DEEDS (CONVEYING GROUNDWATER RIGHTS) IN CONNECTION THEREWITH RECORDED JANUARY 25, 1989 IN BOOK 5598 AT PAGES 1320 AND 1322.

16. AN EASEMENT FOR DRAINAGE FACILITIES AND INCIDENTAL PURPOSES GRANTED TO THE CITY OF COLORADO SPRINGS BY THE INSTRUMENT RECORDED APRIL 9, 1992 IN BOOK 5960 AT PAGE 56.

17. AN EASEMENT FOR PIPELINES AND INCIDENTAL PURPOSES GRANTED TO THE CITY OF COLORADO SPRINGS BY THE INSTRUMENT RECORDED OCTOBER 12, 1994 IN BOOK 6543 AT PAGE 470 AND RERECORDED OCTOBER 26, 1994 IN BOOK 6550 AT PAGE 678.

18. TEN FOOT ELECTRIC EASEMENT AND RIGHT OF WAY GRANTED TO MOUNTAIN VIEW ELECTRIC RECORDED JANUARY 4, 1973 IN BOOK 2551 AT PAGE 292 AND AS SHOWN ON THE RECORDED PLAT.

19. TERMS, CONDITIONS AND PROVISIONS OF RIGHT OF WAY AGREEMENT BETWEEN ELITE PROPERTIES OF AMERICA, INC., A COLORADO CORPORATION AND THE CITY OF COLORADO SPRINGS ON BEHALF OF ITS UTILITIES RECORDED MARCH 12, 1997 UNDER RECEPTION NO. 97012037.

20. TERMS, CONDITIONS AND PROVISIONS OF RIGHT OF WAY AGREEMENT BETWEEN ELITE PROPERTIES OF AMERICA, INC., A COLORADO CORPORATION AND THE CITY OF COLORADO

SPRINGS ON BEHALF OF ITS UTILITIES RECORDED MARCH 12, 1997 UNDER RECEPTION NO. 97027743.

21. NOTES, NOTICES, EASEMENTS AND RESTRICTIONS AS SHOWN AND AS SET FORTH ON THE RECORDED PLAT OF HEWLET PACKARD SUBDIVISION NO. 2.
22. EMERGENCY ACCESS EASEMENT AS GRANTED TO THE CITY OF COLORADO SPRINGS IN INSTRUMENT RECORDED APRIL 22, 1997 UNDER RECEPTION NO. 97045331.