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555 Zang St., Suite 100
Lakewood, CO 80228

**DECLARATION
OF THE
BERGEN PLACE AT HIWAN CONDOMINIUMS**

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**DECLARATION
OF THE
BERGEN PLACE AT HIWAN CONDOMINIUMS**

THIS DECLARATION is made on the date hereinafter set forth by Colorado Infill Projects, LLC, a Colorado limited liability company, whose address is 541 Pinnacle Ct., Grand Junction, CO 81507 ("**Declarant**").

R E C I T A L S

A. Declarant is the owner of certain real estate in Jefferson County, State of Colorado, which is more particularly described as set forth in *Exhibit C* attached hereto and by reference made a part hereof.

B. Declarant desires to create a Condominium Community on the real estate described in *Exhibit C* under the name of "Bergen Place at Hiwan Condominiums," in which portions of the real estate described in *Exhibit C* will be designated for separate ownership and uses of a residential nature, and in which portions of the real estate described in *Exhibit C* are to become co-owned by the Unit Owners.

C. Declarant has caused the "Bergen Place at Hiwan Homeowners Association, Inc.," a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado, as an owners' association, for the purpose of exercising the functions as herein set forth.

ARTICLE 1 SUBMISSION/NAMES/DEFINED TERMS

Section 1.1 Submission of Property.

The Declarant hereby submits the real estate described in *Exhibit A*, and such additional real property as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with and subject to all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the "Property"), to the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as it may be amended from time to time (the "Act") and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Declarant hereby declares that all of the Property described in *Exhibit A*, and as added by expansion, shall be held or sold, and conveyed subject to the following easements, restrictions, covenants, and conditions. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Property, that

this Declaration shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Unit Owner thereof.

Section 1.2 Name and Type.

The type of Common Interest Community is a Condominium Community. The name of the Condominium Community is "Bergen Place at Hiwan Condominiums." The name of the Association is the "Bergen Place at Hiwan Homeowners Association, Inc."

Section 1.3 Property.

The Community is located in Jefferson County, State of Colorado. The initial Property of the Community is described in *Exhibit A*. All easements and licenses to which the Community is presently subject are recited in *Exhibit C*. Additional easements are established in the Act. The Community may be subject to other easements or licenses granted pursuant to this Declaration, or granted by authority reserved in any recorded document or established in the Act.

Section 1.4 Defined Terms.

Each capitalized term in this Declaration or in the Map shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

(a) "**Act**" shall mean the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as it may be amended from time to time.

(b) "**Agency**" shall mean and collectively refer to the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development ("HUD"), the Department of Veterans Affairs (formerly the Veterans Administration) ("VA"), and the Colorado Housing and Finance Authority (CHFA).

(c) "**Allocated Interests**" shall mean the undivided interest in the Common Elements, the Common Expense liability and the votes in the Association.

(d) "**Assessment**" shall include all Common Expense Assessments, insurance Assessments, utility Assessments, and any other expense levied to a Unit pursuant to this Declaration or the Act.

(e) "**Association**" shall mean Bergen Place at Hiwan Homeowners Association, Inc., a Colorado nonprofit corporation, and its successors.

(f) **“Common Elements”** shall mean the Property within this Community other than the Units, which portion of the Property shall be co-owned by the Owners and shall be as designated in a recorded Map and in this Declaration.

(g) **“Common Expenses”** shall mean any expenditure made a liability received by or on behalf of the Association, together with any allocations to reserves.

(h) **“Community”** shall mean and refer to the Community of Bergen Place at Hiwan, which Community is a Condominium Community as defined in the Act and which Community is also a Common Interest Community as defined in the Act.

(i) **“Declarant”** shall mean the Declarant named in this Declaration, and any successor and/or assignee designated by written notice or assignment executed by the Declarant designated in this Declaration and executed by the transferee and recorded, to the extent any rights or powers reserved to Declarant are transferred or assigned to that party.

(j) **“Development Rights”** or **“Special Declarant Rights”** shall mean those rights set forth in this Declaration and those rights set forth in the Act.

(k) **“Eligible Holder”** shall mean a holder, insurer or guarantor of a first lien security interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a security interest.

(l) **“Executive Board,” “Board”** or **“Board of Directors”** shall mean the body, regardless of name, designated in this Declaration to act on behalf of the Association.

(m) **“Governing Documents”** shall mean this Declaration, the plat and Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.

(n) **“Improvement(s)”** shall mean structures installed within or upon a Unit.

(o) **“Limited Common Elements”** shall mean those portions of the Common Elements, if any, designated by Declarant or the Association for the exclusive use of one or more but fewer than all of the Units.

(p) **“Map”** shall mean the Condominium Map of Bergen Place at Hiwan Condominiums, which is an engineering survey (and any supplements and amendments thereto) of the Community depicting and locating thereon the location of the buildings, the Units, the Common Elements, the floors and elevations, and all of the land and improvements thereon, which Map is incorporated herein and made a part of this Declaration by reference. More than one plat, map or supplement thereto may be recorded, and, if so, then the term “Plat” or “Map”

shall collectively mean and refer to all of such plats, maps and supplements thereto.

(q) **“Member”** shall mean and refer to those persons entitled to membership as provided in the Bylaws and as set forth herein.

(r) **“Metro District”** shall mean and refer to the West Jefferson County Metropolitan District.

(s) **“Metro District Documents”** shall mean and refer to all documents relating to and regulating the Metro District, including but not limited to, that certain Easement Deed and Agreement recorded in Jefferson County on March 28, 2001 at Reception No. F1207570 and on June 26, 2001 at Reception No. F1262809, as such documents may be amended and supplemented from time to time.

(t) **“Owner”** or **“Unit Owner”** shall mean the Declarant, or any other person or entity that owns a Unit.

(u) **“Parking Easement”** shall mean that certain easement depicted on the Plat of The Ridge at Hiwan Twelfth Filing recorded in Jefferson County on January 30, 2003 at Reception No. F1663546, as amended by that certain Plat of The Ridge at Hiwan Twelfth Filing Adjustment 1 recorded March 14, 2018 at Reception No. 2018023342, and any other amendments and supplements to the same containing parking for the Community.

(v) **“Pet”** shall mean and include cats, dogs, birds, reptiles or other household animals, as may be defined in or supplemented by the Rules and Regulations.

(w) **“Property”** shall mean the property described in *Exhibit A*, and such additional property as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon. All easements and licenses which the Community is subject to as of the date of this Declaration are recited in *Exhibit A*.

(x) **“Rules and Regulations”** shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Community or for clarification of the Governing Documents, including any amendment to those instruments.

(y) **“Unit”** shall mean a physical portion of the Community, designated for separate ownership, shown as a Unit on the recorded Map for the Community, the boundaries of which are defined in the Map and in this Declaration.

ARTICLE 2 EASEMENTS

Section 2.1 Utility, Map and Plat Easements.

Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat and on the recorded Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by or under the authority reserved in any recorded document.

Section 2.2 Easements for the Association and Unit Owners.

Each Unit shall be subject to an easement in favor of the Association, acting through the Executive Board (including its agents, employees and contractors) and to each Unit Owner to allow for their performance of obligations in this Declaration. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages, and a lien therefore is authorized and established against that party's property, pursuant to this Declaration. The Association shall have an easement to enter a Unit to inspect for events which may be causing waste of water, heat or any other utility provided by the Association or paid as a part of the Common Expenses. If the inspection reveals that the Owner has failed to maintain the Unit so as to prevent waste of common utility services provided for as a Common Expense, the Board shall follow the procedures provided for in this Section.

Section 2.3 Utility Reservations.

Declarant hereby creates and reserves to itself, until Declarant has sold the last Unit that may be created to an Owner other than Declarant, and, thereafter, to the Association, a blanket easement upon, across, over and under the Property, the Community and the Units for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment, effluent irrigation systems, gas, telephone, electricity and master television antenna or cable systems or subsequent utility as may be desired or provided. By virtue of this blanket easement, it shall be expressly permissible for Declarant or the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Property and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, telephone and television wires, circuits, conduits and meters, and such other improvements or facilities. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Property is reserved, provided the easement granted does not conflict with the terms hereof. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property. Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the

entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

Section 2.4 Parking.

The Owners, their guests, and their invitees may use and occupy the Parking Easement as set forth in the Governing Documents and other recorded documents appurtenant to the Community.

Section 2.5 Unit Owners' Easements of Enjoyment.

Every Unit Owner shall have a right and easement access to their Unit and of enjoyment in and to any Common Elements and Limited Common Elements appurtenant to such Owner's Unit, and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) The right of the Association to promulgate and publish Rules and Regulations with which each Unit Owner and their tenants, invitees, licensees and guests shall strictly comply.

(b) The right of the Association, upon approval of at least 67% of the total Association vote, to mortgage the Common Elements as security for that purpose, provided, that the rights of such mortgage shall be subordinate to the rights of the homeowners;

(c) The right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Elements;

(d) the right of the Association to transfer or convey ownership of the Common Element, or any portion thereof, subject to the prior approval of 67% of the total Association vote; provided that all Owners of Units to which any Limited Common Element is allocated shall approve of any transfer or conveyance of that Limited Common Element.

(e) The right of the Association to suspend the voting rights and rights to use the Common Elements by a Unit Owner, after notice and the opportunity for a hearing, for a period not to exceed 60 days or during any period of violation of any other provision of the Governing Documents, whichever is greater.

(f) The right of the Association to close portions of the Common Elements for maintenance, repair, replacement, and improvement;

(g) The right of the Association to change use of, add or remove improvements to the Common Elements; and

(h) The Development and Special Declarant Rights of the Declarant reserved in this Declaration.

Section 2.6 Delegation of Use.

Any Unit Owner may delegate their right of enjoyment to the Common Elements and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Unit. If the Owner delegates rights to use the Common Elements to tenants or contract purchasers who reside on the Property, the Owner shall not be entitled to use the Common Elements.

Section 2.7 Disclaimer of Liability.

The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Elements or any of their improvements, fixtures, and facilities. It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Elements, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Elements and their improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership.

Every person who is a record Unit Owner of a fee interest in any Unit which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of such Unit shall be the sole qualification for such membership. Where more than one person holds an interest in any Unit, all such persons shall be Members.

Section 3.2 General Purposes and Powers of the Association.

The Association, through its Executive Board, shall perform functions and manage the Community as provided in this Declaration so as to: (a) protect the value and desirability of the Community and the Units; (b) to further the interests of the residents, occupants, tenants and

guests of the Community and members of the Association; (c) to foster a vibrant, responsive and competent Association; and (d) to promote a harmonious community and responsible leadership. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association.

The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Executive Board. All corporate powers of the Association, unless otherwise specified in the Governing Documents, shall be exercised by or under the authority of the Executive Board, and the business and affairs of the Association shall be managed under the direction of the Executive Board. The Executive Board may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Executive Board of final responsibility.

Section 3.4 Metro District/Metro District Documents.

The Community and the provisions of the Governing Documents of the Association are subject and subordinate to the Metro District Documents and are a part of the Metro District.

Section 3.5 Allocated Interests.

The ownership interest, Common Expense liability and votes in the Association allocated to Units are as follows:

- (a) The percentage of ownership interest of the Common Elements, on an equal basis between each Unit in the Community;
- (b) The percentage of liability for Common Expenses, on an equal basis between each Unit in the Community; and
- (c) Unit Owners shall be entitled to one vote for each Unit owned.

If any Unit is increased in size or reduced in size, the basis for allocating the above interests may be changed to the square footage of each Unit, at the discretion of the Declarant, within the time frame allowed in this Declaration for exercise of Reserved Development Rights.

If Units of the same size are added to or withdrawn from the Community, pursuant to the

provisions of this Declaration and the Act, the formulas set forth above, or then in use, shall be used to reallocate the Allocated Interests.

Section 3.6 Association Agreements.

Any agreement for professional management of the Community or any contract providing for services of the Declarant, may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon 30 days written notice. The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Declarant control period unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the turnover date upon not more than 30 days' notice to the other party thereto.

Section 3.7 Right to Notice.

Notice of matters affecting the Community shall be given by the Association or through access to Association records, as further provided in the Bylaws or as otherwise provided by the Executive Board.

Section 3.8 Declarant Control.

The Declarant shall have the reserved power, pursuant to Section 303(5) of the Act, to appoint and remove officers and members of the Executive Board.

Section 3.9 Security Disclaimer.

The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by other residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

Section 3.10 Education and Training.

As a Common Expense, the Association may provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting use of facilities for such purposes. The Association may provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community. The Association may also fund and support education and training for officers and directors.

Section 3.11 Optional Audited Financial Statements.

The Association may determine, or an Agency may request, that the Association prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding fiscal year.

ARTICLE 4 UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 4.1 Number of Units.

The number of Units initially included in the Community is 0. Declarant reserves the right to create and add additional Units up to 32 Units or to the maximum number of Units for the properties subject to this Declaration as allowed by any governmental entity having jurisdiction.

Section 4.2 Identification of Units/Unit Descriptions.

The identification of each Unit is shown on the Map. Every contract for sale, deed, lease, security interest, will or other legal instrument shall legally describe a Unit by its identifying Unit number, followed by the name of the Community, with reference to the Map and the Declaration. An illustrative description is as follows:

Condominium Unit ____, Bergen Place at Hiwan Condominiums,
according to the Declaration recorded _____, 20__, at
Reception No. _____ and the Condominium Map recorded in
Book ____, Page ____ of the records of the Clerk and Recorder,
Jefferson County State of Colorado.

Reference to the Declaration and Map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration and Map, without specific references thereto.

Section 4.3 Unit Boundaries.

(a) The following are designated as boundaries of each Unit, as defined below and as depicted on the Map:

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceilings, extended to an intersection with the vertical perimeter boundaries. Space above ceilings to which access is needed for repair and maintenance of the Unit and Common Elements above the Unit are Limited Common Elements to the Unit.

(ii) Lower Boundaries. The horizontal plane of the undecorated or unfinished upper surfaces of the floors, extended to an intersection with the vertical perimeter boundaries.

(iii) Vertical Perimeter Boundaries. The planes defined by the interior unfinished surface of all perimeter walls, the exterior unfinished surface of doors to the Common Elements, the exterior surface of closed exterior windows and doors, areas depicted on the Map as a deck or patio area of a Unit, and the vertical planes indicated by boundary lines as shown on the plat or Map.

(b) Inclusions. Each Unit includes the spaces and improvements lying within the boundaries described above, including garages, as depicted on the Map. Each Unit also includes the spaces and improvements containing utility meters, water heating facilities, all electrical switches, wiring, pipes, ducts, conduits, smoke detector or security systems and communications, television, telephone and electrical receptacles and boxes serving that Unit exclusively, the surface of these items being the boundaries of that Unit, whether or not the spaces are contiguous.

(c) Exclusions. Except when specifically included by other provisions of this Declaration or by the Map, the following are excluded from each Unit: the spaces and improvements lying outside the boundaries described above, support walls, the exterior finished surface of the building in which Units are located, exterior street or common lighting, and any chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and other service to other Units and the Common Elements.

(d) Noncontiguous Portions. Certain Units may include special portions or pieces of equipment, such as air conditioning compressors, utility meters, meter boxes, utility connection structures, air or gas pump and storage facilities and storage portions, which are situated in buildings or structures that are detached from the Unit. Such special

equipment or storage portions are a part of the Unit, notwithstanding their non-contiguity with the principal portions. Each Unit includes the spaces and improvements lying within the boundaries described above, and also includes the utilities and utility meters and communications, television, telephone and electrical receptacles and boxes serving that Unit exclusively, whether or not in the boundaries or contiguous to the Unit, unless the same are maintained by a governmental agency or entity. The Common Elements are excluded from each Unit and any utilities or other facilities running through or within any Unit for the purpose of furnishing utility and other service to other Units and/or the Common Elements are also excluded.

Section 4.4 Common Elements.

The real estate described in the initial Map are the initial Common Elements. Portions of any Common Elements may be designated as a part of a Unit or as a Limited Common Element to a Unit. Portions of Units may become Common Elements or Limited Common Elements, pursuant to rights reserved elsewhere in this Declaration.

Section 4.5 Limited Common Elements.

In the event a Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, those Common Expenses may be assessed equally against the Units to which the Limited Common Element is assigned.

(a) The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

(i) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit is a Limited Common Element to those Units and any portion serving only the Common Elements is a part of the Common Elements.

(ii) Any shutters, awnings, window boxes, doorsteps, stoops, porches, decks, balconies, patios, walkways, entry foyers and exterior doors and windows or other fixtures designed to serve less than all Units, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

(b) The Association may modify Limited Common Elements without a

membership vote, but only with consent of the Owner(s) to whose Unit(s) the Limited Common Element is appurtenant. The Association may also, without a membership vote, assign or reassign Limited Common Elements not previously assigned with the consent of the affected Owner(s) and the Association, provided that any such assignment or reassignment shall be made in accordance with the Act.

ARTICLE 5 MAINTENANCE AND SERVICE RESPONSIBILITIES

Section 5.1 Association Maintenance and Service Responsibilities.

(a) The Board of Directors of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance and service responsibilities. The Association shall maintain, repair, replace, and improve those items set forth in *Exhibit E* of this Declaration.

(b) Maintenance of Common Elements by Owner. Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements) shall be performed at the sole expense of such Owner or occupant, and the Owner or occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

(c) Association Discretion. The Association may, in its sole discretion, assume the obligation for maintenance or repair of additional property, either real or personal, that lies within or outside the Community. The Association shall have the right to assume such obligation even if the obligation currently lies with Owners or other entities, provided however, the Association shall provide Owners with 15 days prior written notice of any such change. The Association, in its sole discretion, shall determine the time and manner in which any maintenance, whether required or assumed, shall be performed as well as the color or type of materials used.

(d) Damage to Unit by Association. The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

(e) Liability of Association.

(i) The Association shall not be liable for injury or damage to person or property caused by or resulting from any water, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any device, pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except:

(1) for injuries or damages arising after the Owner of a Unit has put the Association on written notice of a specific leak or flow from any portion of the Common Elements or device, pipe, drain, conduit, appliance or equipment for which the Association has a maintenance responsibility; and

(2) only if the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter.

(ii) The Association shall not be liable to the Owner of any Unit or such Owner's occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements.

(iii) The Association shall not be liable to any Owner, or any Owner's occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is caused by an act of God, is not foreseeable or is not a natural result of the Association's failure to discharge its responsibilities.

(iv) No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 5.2 Owner's Maintenance Responsibility.

Except as otherwise provided in this Declaration, each Owner shall have the obligation to maintain, repair, replace, and improve all items set forth in *Exhibit E* of this Declaration.

Section 5.3 Owner Responsibilities.

Each Owner shall have the responsibility to:

- (a) perform his or her maintenance responsibility in such manner so as not to unreasonably disturb other persons in Units;
- (b) promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible;
- (c) pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants, guests, with the cost thereof to be added to and become part of the Owner's next chargeable Assessment;
- (d) An Owner shall be liable for all injuries or damages to person or property caused by or resulting from the Owner's maintenance or lack of maintenance of the Unit or any appurtenant Limited Common Element; and
- (e) Each Owner shall have the responsibility to perform his or her maintenance responsibility in such manner so as not to unreasonably disturb or put at risk other persons in Units, other Units or the Common Elements.

Section 5.4 Mold.

Each Owner shall be required to take necessary measures to retard and prevent mold from accumulating in the Unit, and the Common Elements, including but not limited to appropriate climate control, removal of visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces and cleaning of the same. No Owner shall block or cover any heating, ventilation or air conditioning ducts. Owners shall immediately notify the Board in writing of the following: (a) any evidence of water leaks, water infiltration or excessive moisture in a Unit; (b) any evidence of mold that cannot be removed by the Owner with a common household cleaner; (c) any failure or malfunction in heating, ventilation or air conditioning; (d) any inoperable doors, windows, heating, ventilation or air conditioning ducts. The receipt of notice by the Association shall not create any additional Association maintenance responsibility

other than those set forth in this Declaration. Owners shall be responsible for any damage to his or her Unit and personal property, to any other Unit or the Common Elements, as well as any injury to the Owner or occupants resulting from the Owner's failure to comply with this section. Owners shall be responsible for all costs and expenses incurred by the Board to remove mold and/or damage within his or her Unit, to any other Unit or to the Common Elements if the Owner fails to meet the requirements of this Section.

Section 5.5 Bedbug, Insect, and Vermin Infestations.

Each Owner shall be required to take necessary measures, as determined in the sole discretion of the Board of Directors, to retard and prevent bedbug, insect, and vermin infestations, including but not limited to, bedbugs, rodents, termites, lice, cockroaches, mice, and rats from accumulating in the Unit. Owners shall immediately notify the Board in writing of the following: (a) any evidence of a bedbug, insect, and/or vermin infestation in a Unit; and (b) all steps taken to remove bedbugs, insects, and vermin in a Unit. Owners shall be responsible for treatment and removal of bedbug, insect, and/or vermin infestations immediately upon the discovery of the same. The receipt of notice of a bedbug, insect, and/or vermin infestation in a Unit by the Association shall not create any additional Association maintenance responsibility other than those set forth in this Declaration. Owners must provide written confirmation to the Association that all bedbug, insect, and/or vermin infestations have been removed from the Unit upon completion of the remediation process and must provide evidence and documentation to the Association of such removal. Failure by any Owner to comply with this Section shall entitle the Association to perform all necessary remediation and collect any amounts expended for such remediation as an Assessment. Owners shall be responsible for any damages to their Units, personal property, to any other Units, or the Common Elements, as well as any injury to residents and guests resulting from the Owner's failure to comply with this Section. Any fees or costs incurred by the Association or other Owners as a result of violation of this Section shall be the obligation of the infested Unit's Owner to pay.

Section 5.6 Inspection, Repair and Replacement of Designated Owner Maintenance Components.

The Association shall have the right, but not the obligation, to conduct a periodic inspection, on a schedule to be determined by the Board of Directors, of designated Owner maintenance components as may be set forth in the Rules and Regulations. If, in the Board of Directors' sole discretion, the component needs to be maintained, repaired or replaced, the Association may provide such maintenance, repair or replacement (even though such component may be the Owner's responsibility) and the cost of such periodic inspection, maintenance, repair or replacement may be assessed against the Owner of the Unit served by such component pursuant to the following Section of this Declaration.

Section 5.7 Failure to Maintain.

If the Association determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, except in the case of an emergency, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Association.

Unless the Association determines that an emergency exists, the Owner shall have 10 days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within 10 days. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as provided in this Section; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the Assessment to which such Owner is subject, shall become and be a lien against the Unit, and shall be collected as provided in this Declaration for the collection of Assessments.

If the Board determines that the need for maintenance or repair is a Common Expense and is caused through the willful or negligent act of any Owner, or occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or occupant's Unit, shall become a lien against the Unit, and shall be collected as provided in this Declaration for the collection of Assessments.

ARTICLE 6 ASSESSMENTS

Section 6.1 Creation of Association Lien and Personal Obligation to Pay Assessments.

Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance Assessments (assessed in proportion to risk); utility Assessments (assessed in proportion to usage), and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late fees, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Unit Owner of such Unit at the time when the Assessment or other charges became or fell due. The Association annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the

Association, and additional fees charged by the managing agent, including but not limited to, administration and witness fees, and/or any other charges that may be assessed and/or levied or may be agreed to in the process of collecting past due Assessments, including but not limited to, credit card convenience fees from whatever source, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Unit Owner may become exempt from liability for payment of Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Units in accordance with formulas for liability for the Common Expenses as set forth in this Declaration.

Section 6.2 Basis of Assessments.

The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year

Section 6.3 Annual Assessment.

The budget for annual Assessments shall be submitted to the Unit Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by a majority of the total Association votes. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Executive Board. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 6.4 Special Assessments.

In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund.

The proposed Special Assessment shall be submitted to the Unit Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The proposed Special Assessment may be vetoed by votes of Owners representing a majority of the total Association votes. A proposed Special Assessment will be ratified unless Owners representing more than a majority of the votes allocated to the Units that will be subject to the special Assessment vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. During the Period of Declarant Control, any proposed Special Assessment shall also require Declarant's consent. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

Section 6.5 Supplemental Assessments.

The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

- (a) those amounts expended by the Association for the benefit of any individual Unit or any occupant thereof, including but not limited to: Unit insurance; improvement, repair, replacement and maintenance specific to a Unit; improvement, repair, replacement and maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;
- (b) any extraordinary maintenance, repair, improvement or replacement costs of any area which the Association maintains required on fewer than all the Units;
- (c) any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of an Owner (or his agents, guests, licensees, invitees or lessees);
- (d) All fines and costs assessed against an Owner pursuant to the Governing Documents; and
- (e) Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Unit and are reasonably determined to be allocable to a particular Unit.

Section 6.6 Application of Payments.

All sums collected on a delinquent account shall be remitted to the Association's attorney until the account is brought current. All payments received on an account of any Owner or the Owner's Unit shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner.

Section 6.7 Effect of Non-Payment of Assessments.

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 10 days after the due date thereof, as established by the Executive Board, shall bear interest at the rate established by the Executive Board, on a per annum basis to accrue monthly, from the due date, and the Association may assess a reasonable late fee thereon as determined by the Executive Board.

(b) Failure to make payment within 60 days of the due date thereof shall cause the total amount of such Unit Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. The Board may, in its discretion, decelerate a Member's annual Assessment.

(c) Further, the Association may foreclose its lien and/or bring an action at law or in equity, or all of the same, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving the Association's lien therefor. Likewise, the obtaining of a money judgment shall not preclude the foreclosure of the Association's lien so long as the judgment remains unsatisfied.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a

foreclosure action is filed to foreclose any Assessment lien, and a Unit Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Unit Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 6.8 Lien Priority.

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

Section 6.9 Working Fund.

The Association or Declarant may require the first Unit Owner of each Unit (other than Declarant) to make a non-refundable payment to the Association in an amount equal to one-fourth (1/4) of the annual Common Expense Assessment against that Unit in effect at the closing thereof, which sum shall be held, without interest, by the Association as a working fund. Said working fund shall be collected and transferred to the Association at the time of closing of the initial sale by Declarant of each Unit, as aforesaid, and shall be for the use and benefit of the Association. Such payment shall not relieve a Unit Owner from making regular payments of Assessments as the same become due.

Section 6.10 Borrowing.

The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Unit Owners present and voting, in person or by proxy, at a duly meeting called for that purpose.

ARTICLE 7 COVENANTS AND RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

All Property within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Executive Board or by an appropriate committee (subject to review by the Executive Board) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules. The following use restrictions are also subject to the Development Rights and Special Declarant Rights reserved by the Declarant.

Section 7.1 Use/Occupancy.

All Units within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation. Occupancies may also be subject to any Rules and Regulations adopted by the Declarant or the Association. Units shall not be used for any purpose other than a residential dwelling except as set forth in this Section. Home occupations shall be allowed so long as such use is incidental and secondary to the use of the Unit and does not change the residential character thereof and complies with local zoning ordinances and regulations. In no event shall external advertising, of any kind, be permitted. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment, including semi trailers; (e) the use or rental of any structure on a Unit for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes. In no instance shall a home occupation be visible externally, nor shall any home occupation employ any person other than the Owner. Garages, whether a part of Unit, a Common Element or a Limited Common Element, shall be used for the purpose of vehicle parking, as provided in this Declaration.

Section 7.2 Leasing and Occupancy.

Any Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Owner may deem advisable, subject to the restrictions of this Declaration, subject to restrictions of record and subject to the following:

- (a) "Leasing" or "Renting" for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person other than the Owner; provided, however, for the purposes of this Declaration, leasing shall not include the occupancy of the Unit by the child or parent of an Owner. For the purposes of this Declaration,

occupancy by a roommate of an Owner who occupies the Unit as such Owner's primary residence shall not constitute leasing under this Declaration.

(b) Short term occupancies and rentals (of less than six months) of Units shall be prohibited, including short term transient rentals such as Air BnB or Home Away, regardless of how described.

(c) All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents. Owners are required to provide tenants with copies of the current Declaration, Articles of Incorporation, Bylaws and any Rules and Regulations of the Association.

(d) Each Owner who leases his or her Unit shall provide the Association, upon execution of the lease, a copy of the current lease and tenant information, including the names of all occupants, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.

(e) All occupancies, leases and rental agreements of Units shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Governing Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

(f) All occupancies of Units shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Declaration, the Bylaws of the Association, the Articles of Incorporation or the Rules and Regulations of the Association. If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within 30 days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Unit.

(g) Leases shall be for or of the entire Unit.

(h) All Owners who reside at a place other than the Unit shall provide to the Association an address and phone number(s) where the Owner can be reached in the case

of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(i) The Association shall have the authority to adopt Rules and Regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

Section 7.3 Acquisition of Multiple Units.

No Owner (except for the Declarant prior to initial conveyance to another Owner) may own or control more than two total Units in the Community, directly or indirectly through an affiliate of the Owner, whether through purchase, trade, gift, inheritance, lease, merger, consolidation or other means of acquisition. Notwithstanding anything in this Declaration to the contrary, this restriction on acquisition of Units shall not apply to a mortgagee acquiring title to a Unit subject to a mortgage by foreclosure or deed in lieu of foreclosure. This restriction shall be enforceable by the Association or any Owner by means of an action for injunction to restrain any future acquisition or to require an Owner who has violated this restriction to divest any interest so acquired.

Section 7.4 Restrictions on Pets.

Up to two total Pets may be kept in a Unit, *if* the Pet is not a nuisance to other Owners or occupants. No dogs weighing more than 50 pounds shall be permitted in the Community. No Owner or resident shall maintain or keep any Pet which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or occupants in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations. If a Pet is deemed a nuisance by the Association, the Owner or person having control of the Pet shall be given a written notice to correct the problem and if not corrected, that Owner will be required to remove the Pet from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any. Pets may not be kept for any commercial purposes. When on Common Elements, Pets must be on a leash and under the control of the Owner of the Pet. Feces left by Pets upon the Common Elements or Limited Common Elements, must be removed promptly by the owner of the Pet or the person responsible for the Pet. Pets shall not be allowed to defecate or urinate on any patio or balcony in the Community. Owners shall hold the Association harmless from any claim resulting from any action of their Pets.

Section 7.5 Antennae.

“Permitted Antennas” are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on the Unit or Limited Common Elements which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Unit or Limited Common Elements.

Section 7.6 Nuisances.

No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Unit Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Unit or Common Element, or any portion of the Community by Unit Owners. Further, no immoral, improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed. As used herein, the term “nuisance” shall not include any activities of Declarant or its assignees which are reasonably necessary to the development and construction of Improvements within this Community; *provided, however*, that such activities shall not reasonably interfere with any Unit Owner's use and enjoyment of their Unit, or any Unit Owner's ingress and egress to or from their Unit or a public way.

Section 7.7 Vehicular Parking, Storage, and Repairs.

(a) Parking upon the Common Elements and Limited Common Elements shall be regulated by the Executive Board.

(b) Each parking area may be subject to designation of individual spaces as a Limited Common Element appurtenant to certain designated Units. All parking spaces shall be used by the Owners or occupants for self-service parking purposes on a "first come, first served" basis; *provided, however*, that no Owner or occupant shall park more than two vehicles (owned or leased by such Owner, a member of his or her family or occupant of his or her Unit) on the Common Element parking spaces without the prior written consent of the Executive Board. While any buildings under construction or completed are owned by Declarant, use of the parking spaces adjacent to that building may be restricted to Declarant's use for construction and sales purposes.

(c) The following may not be parked or stored within the Community, unless such parking or storage is within a garage, is authorized in writing by the Executive Board of the Association, or is otherwise exempted by Colorado law: oversized vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. Any of the foregoing may be parked as a temporary expedience for up to 4 consecutive hours for loading, delivery of goods or services, or emergency; *provided, however*, overnight parking of these vehicles is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of the Common Elements, Units, Limited Common Elements or any Improvement located thereon.

(d) No abandoned, unlicensed or inoperable automobiles or vehicles of any kind shall be stored or parked within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Executive Board of the Association.

(e) No motor vehicle may impede the safe and efficient use of streets within the Community by residents, obstruct emergency access to/from the Community, or interfere with the reasonable needs of other residents to use their driveway, streets, or guest parking within the Community.

(f) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of the garages.

(g) Garages, garage driveways, and designated parking spaces (designated as a part of a Unit, a Limited Common Element or as a part of Common Elements) are restricted to use for access or as a parking space for vehicles.

(h) The conversion or alteration of a garage into living areas, storage areas, workshop areas, or any other modification or alteration of the garages, which would hinder, preclude or prevent the parking of the number of vehicles for which the garage

was originally designed is prohibited.

(i) Each Owner or occupant shall keep any door of a garage closed as frequently as possible, such that the visual effect of open garage Unit doors are avoided and the contents therein are concealed from view from other Units and the streets, all for the purpose of preserving the value and appearance of the Community.

(j) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 72 hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If 72 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges.

(k) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Unit or dwelling, is obstructing the flow of traffic, is parked on any grassy area, is parked in a space which has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(l) If a vehicle is towed or booted in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 7.8 Use of Common Elements.

There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association.

Section 7.9 No Annoying Lights, Sounds or Odors.

No light shall be emitted from any portion of the Community which is unreasonably

bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Executive Board.

Section 7.10 No Hazardous Activities.

No activity shall be conducted on any portion of the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Community and no open fires shall be lighted or permitted on any portion of the Community.

Section 7.11 Compliance with Insurance Requirements.

Except as may be approved in writing by the Executive Board, nothing shall be done or kept on the Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 7.12 No Unsightliness.

All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure.

Section 7.13 Restriction on Signs and Advertising Devices.

(a) Except as provided in this Section, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere on a Unit except such sign or signs as may be approved in writing by the Association.

(b) Signs intended to impact the outcome of an election must be displayed in accordance with the Association's Rules and Regulations.

(c) One professionally lettered "For Sale" or "For Rent" sign not to exceed three feet by two feet and one professionally lettered security or alarm system sign not exceeding six inches by six inches may be displayed inside a window of a Unit.

Section 7.14 Use of Patios and Balconies.

Nothing shall be hung from or placed outside the Unit, including patios and balconies, unless allowed in the Rules and Regulations.

Section 7.15 Prohibition of Marijuana Distribution and Growing.

No Owner or occupant of a Unit may utilize such Unit for the purpose of growing or distributing marijuana or medical marijuana. This prohibition may further be clarified by the Board of Directors through Rules and Regulations. Owners will be responsible for any damage resulting from a violation of this restriction, including but not limited to increased water and utility charges.

Section 7.16 Smoking Prohibition.

(a) Definitions. For the purposes of this Section, the following terms shall be defined as follows:

(i) “Smoking” shall mean and include the inhaling, exhaling, burning or carrying of any lighted cigarette, cigar or other tobacco product, marijuana or any other legal or illegal substance.

(ii) “Business Invitee” shall mean and include, but not be limited to, any contractor, agent, household worker or other person hired by the Owner, tenant or resident to provide a service or product to the Owner, tenant or resident.

(b) Smoking Prohibition. No Owner, guest, family member, tenant, resident, business invitee or visitor shall smoke cigarettes, cigars, other tobacco products and/or any other legal or illegal substance within the Common Elements of the Community.

(c) Disclosure Requirement. Any Owner who rents his or her Unit or otherwise allows someone other than the Owner to reside within or occupy the Unit shall disclose to all persons residing within the Unit that smoking is prohibited within all Common Elements in the Community, prior to their residency or occupancy.

(d) Enforcement. Each Owner is responsible for the actions of all other persons residing within or visiting his or her Unit and shall be subject to disciplinary action or a court action for an injunction, or any remedies available under this Declaration or State law, for violation of this Section. This Section may be enforced in a court of law by any Owner, resident or the Association. Any and all fees and costs incurred by the Association as a result of enforcing this Section shall be recoverable by the Association and may be collected as an Assessment under the terms of this Declaration.

(e) Rules and Regulations. The Board of Directors shall have the authority and power to enact Rules and Regulations which it deems necessary to enforce this restriction, including a schedule of fines which may be imposed after notice and

opportunity for hearing.

Section 7.17 Prohibited Activities.

No Owner or occupant of a Unit may engage in any activity or practice which, in the sole discretion of the Board, is considered a threat to the health and/or safety of other Owners and residents within the Community, including but not limited to, hoarding, creating conditions conducive to indoor fires, allowing Units to fall into a state of disrepair to the point that rodents or other pests enter, or any other conditions which could cause damage or harm to other Units in the Community.

Section 7.18 No Restrictions on Sale of a Unit.

The right of a Unit Owner to sell, transfer or otherwise convey their Unit shall not be subject to any right of first refusal or similar restriction and such Unit may be sold free of any such restrictions.

Section 7.19 No Restrictions on Mortgaging of a Unit.

There are no restrictions on the right of the Unit Owners to mortgage or otherwise encumber their Unit. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 7.20 Restrictions on Structural Alterations and Exterior Improvements.

No structural alterations to any Unit or any Common or Limited Common Elements shall be done by any Owner, without the prior written approval of the Association. No Improvement to the exterior of a building which includes a Unit or to the Common Elements or to any landscaping shall be constructed, erected, placed or installed within the Community unless complete plans and specifications thereto shall have been first submitted to and approved in writing by the Executive Board.

Section 7.21 Restrictions on Outbuildings.

No shed, playhouse, trailer, mobile home, tent, shack, barn, detached garage, swing set, or other outbuilding shall be used or permitted to be kept or stored on any portion of the Community, either temporarily or permanently, unless approved by the Executive Board.

Section 7.22 Plat Restrictions.

The restrictions, if any, included on the plat for the Property are incorporated herein by this reference.

Section 7.23 Rules and Regulations.

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

Section 7.24 Declarant's Use.

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its assigns, employees and agents, to perform such reasonable activities, and to maintain upon portions of the Community such facilities as deemed reasonably necessary or incidental to the construction and sale of Units in the development of the Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities.

Section 7.25 Use of the Words Bergen Place at Hiwan Condominiums and Bergen Place at Hiwan Homeowners Association, Inc.

No resident shall use the words Bergen Place at Hiwan Condominiums or Bergen Place at Hiwan Homeowners Association, Inc. or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

ARTICLE 8 DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 8.1 Development Rights and Special Declarant Rights.

The Declarant reserves, through seven years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

- (a) the right to redesignate uses, to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements, subdivide Units or complete or make improvements, as the same may be indicated on Maps or plats filed of

record or filed with the Declaration;

(b) the right to create or construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements or to convert Common Elements into Units;

(c) the right to add Units and to subject all or any part of the property described in *Exhibit C* and *Exhibit D* attached hereto and hereby incorporated by reference and additional unspecified real estate to the provisions of this Declaration upon the substantial completion of improvements on any portion of that property;

(d) the right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions;

(e) the right to withdraw all or any part of the Property from the Community, provided portions of the Property included within a building cannot be withdrawn once a Unit in that building has been conveyed;

(f) the right to make amendments to the Declaration or other Governing Documents to meet or comply with any requirements of FHA or VA;

(g) the right to exercise any development rights reserved or allowed in the Act;

(h) the right to use, and to permit others to use, easements through the Common Elements, as may be reasonably necessary;

(i) the right to merge or consolidate the Community with another Community;

(j) the right to appoint or remove any officer of the Association or any director during the Declarant Control period;

(k) the right to exercise any additional reserve right created by any other provision of this Declaration;

(l) the right to amend the Declaration in connection with the exercise of any development right; and

(m) the right to amend the Maps or plat in connection with the exercise of any development right.

As to the properties described in *Exhibit C* and *Exhibit D*, Declarant makes no assurances concerning the construction, building types, architectural style and/or size of Units as may be created; *provided, however*, that the quality of construction will be consistent with the improvements constructed on the property described in *Exhibit A*.

Subsequent to the initial Property and Improvements made subject to this Declaration,

any additional buildings, structures and types of Improvements to be placed on the Property or any part thereof may be of such quality and type as the persons developing the same may determine, and those Improvements need not be of the same quality or type as the Improvements previously constructed on the Property, nor of the same size, style or configuration. The Improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Property as may be added or as shown on the Map.

Section 8.2 Additional Reserved Rights.

In addition to the rights set forth above, Declarant also reserves the following additional rights:

(a) *Sales.* The right to maintain mobile and other sales offices, parking lots, management offices and models in Units or on the Common Elements.

(b) *Signs.* The right to maintain signs and advertising on the Community, to advertise the Community or other communities developed or managed by or affiliated with the Declarant.

(c) *Dedications.* The right to establish, from time-to-time, by dedication or otherwise, public streets, utility and other easements for purposes including, but not limited to, public access, access paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions.

(d) *Use Agreements.* The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of parking and/or recreational facilities and/or Common Elements, which may or may not be a part of the Community.

(e) *Construction Easement.* Declarant and its assignees expressly reserve the right to perform warranty work, and repairs and construction work, and to store materials in secure areas, in Units and in Common Elements, and the future right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Unit Owner or holder of a security interest. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property.

(f) *Access Easement.* Declarant and its successors and assigns shall have an access easement to and from and real property accessible through the Community.

(g) *Other Rights.* The right to exercise any additional reserved right created by any other provision of this Declaration.

Section 8.3 Rights Transferrable/Rights Transferred.

Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of Jefferson County. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Unit Owners or any holders of a security interest in a Unit. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of Jefferson County. Such instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) with the consent of the appropriate Unit Owner(s) or any holders of a security interests on the Unit(s).

Section 8.4 No Further Authorizations Needed.

The consent of Unit Owners or holders of security interests shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted.

Section 8.5 Amendment of the Declaration or Map.

If Declarant or its assignees elect to exercise any reserved rights, that party shall comply with the Act.

Section 8.6 Interpretation.

Recording of amendments to the Declaration and the Map or plat pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically (a) vest in each existing Unit Owner the reallocated Allocated Interests appurtenant to their Unit, and (b) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as

expanded and to any Additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration Map. Reference to the Declaration and Map in any instrument shall be deemed to include all Amendments to the Declaration, and the Map without specific reference thereto.

Section 8.7 Construction.

Subsequent to the initial Property and improvements made subject to this Declaration, any additional buildings, structures and types of improvements to be placed on the Property or any part thereof may be of such quality and type as the persons developing the same may determine, and those improvements need not be of the same quality or type as the Improvements previously constructed on the Property, nor of the same size, style or configuration. The improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Property as may be added or as shown on the Map.

Section 8.8 Termination of Reserved Rights.

The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law or, (iii) terminated by written instrument executed by the Declarant, recorded in the records of the Clerk and Recorder of Jefferson County, State of Colorado.

Section 8.9 Additions by Others.

Additions of Units to the Community may be made by others than the Declarant, upon approval of the Association pursuant to a vote of a majority of a quorum of its members and upon approval of 2/3 of the Eligible Holders of first lien security interests. Such approval by the members and Eligible Holders of first lien security interests shall be evidenced by a certified copy of such resolution of approval and a supplement or amendment to this Declaration, both recorded in records of the Clerk and Recorder of Jefferson County, State of Colorado.

ARTICLE 9 INSURANCE/CONDEMNATION

Section 9.1 Insurance to be Carried by the Association.

The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as set forth in the Act,

which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, or the first occupancy of a Unit.

Section 9.2 Association Hazard Insurance on the Units and Common Elements.

(a) The Association shall obtain and maintain hazard insurance covering full replacement cost, loss, damage or destruction by fire or other casualty to the Units and the Common Elements and the other property of the Association as set forth in *Exhibit E* of this Declaration.

(b) If obtainable, the Association shall also obtain the following and any additional endorsements deemed advisable by the Executive Board: (a) an Inflation guard endorsement, (b) a Construction Code endorsement, (c) a demolition cost endorsement, (d) a contingent liability from operation of building laws endorsement, (e) an increased cost of construction endorsement.

(c) All blanket hazard insurance policies shall contain a standard non-contributory mortgage clause in favor of each holder of first lien security interests, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such holders of first lien security interests, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of the County of Jefferson County, State of Colorado.

(d) All insurance purchased by the Association pursuant to this Section shall run to the benefit of the Association, the Board of Directors, officers, all agents and employees of the Association, the Owners, and their respective mortgagees, and all other persons entitled to occupy any Unit, as their interests may appear.

(e) The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

(f) The Board of Directors shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs. Each Owner shall have the right to obtain additional coverage at his or her own expense.

Section 9.3 Owner Insurance Responsibilities.

Unit Owners are specifically responsible for maintaining insurance which covers his or her Unit to the extent not covered by policies maintained by the Association, as set forth in *Exhibit E* of this Declaration. Owners are also responsible for general liability insurance within a Unit. The liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any insurance carried by Unit Owners. The policies of insurance carried by the Association shall be primary, even if a Unit Owner has other insurance that covers the same loss or losses as covered by policies of the Association. The Association's insurance coverage, as specified in this Declaration, and under the Act, does not obviate the need for Unit Owners to obtain insurance for their own benefit.

Section 9.4 Liability Insurance.

The Association shall obtain a policy of public liability and property damage liability insurance covering the Common Elements, in such limits as the Board may determine from time to time, but not in any amount less than a combined single limit of \$1,000,000.00. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. All liability insurance shall name the Association as the insured. If there are steam boilers in operation on the Community, or if the Community has central heating or cooling, there must be in force boiler explosion and machinery coverage insurance providing for not less than \$1,000,000 per accident, per location. Additionally, for such times, if any, as the Declarant has the reserved development right to expand the Community by adding additional Units, the Declarant shall purchase, at Declarant's expense, an additional general liability insurance policy for the benefit of the Association, existing Unit Owners and existing holders of first lien security interests.

Section 9.5 Fidelity Insurance.

The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees, as required by law.

Section 9.6 Worker's Compensation and Employer's Liability Insurance.

The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or

hereafter be required by law.

Section 9.7 Directors' and Officers' Personal Liability Insurance.

The Association shall obtain directors' and officers' personal liability insurance to protect the directors and officers from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 9.8 Other Insurance.

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

Section 9.9 Miscellaneous Terms Governing Insurance Carried by the Association.

The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

(a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Unit Owner and shall provide that such policies may not be canceled or modified without at least 30 days prior written notice to all of the Unit Owners, holders of first lien security interests and the Association.

(b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien security interests at least 10 days prior to the expiration of the then-current policies.

(c) All liability insurance shall be carried in blanket form, naming the Association, the Board, the manager or managing agent, if any, the officers of the Association, the Declarant, holders of first lien security interests, their successors and assigns and Unit Owners as insureds.

(d) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Units and the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than 100% of the full insurable replacement cost.

(e) Unit Owners shall obtain and carry a “walls-in” insurance policy (i.e. HO-6 policy) in an amount that is no less than 20% of the Unit’s appraised value, on the Improvements and personal property in their Unit for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such insurance carried by Unit Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if a Unit Owner has other insurance that covers the same loss or losses as covered by policies of the Association. In this regard, Declarant discloses that the Association's insurance coverage, as specified hereunder and under the Act, does not obviate the need for Unit Owners to obtain insurance for their own benefit.

(f) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Unit Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Unit Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Unit Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 9.10 Insurance Premium.

Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 9.11 Managing Agent Insurance.

The manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association. The Association may indemnify its managing agent, except for that agent's intentional acts or omissions or negligence outside the scope of their duties and obligations to the Association, or outside of direction from or of the Association.

Section 9.12 Waiver of Claims Against Association.

As to all policies of insurance maintained by or for the benefit of the Association and Unit Owners, the Association and the Unit Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or

not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 9.13 Annual Insurance Review.

The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 9.14 Adjustments by the Association.

Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Unit Owners and holders of first lien security interest are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 9.15 Responsibility for Payment of Deductible Amount.

Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Elements unless the damage is the liability of an Owner, his family, guests, or invitees, as set forth in this Declaration, in which case the Association shall seek reimbursement of the deductible amount as an Assessment in compliance with and under the terms of this Declaration.

(b) Any loss falling within the deductible portion of the Association policies to property for which Owners have repair and maintenance responsibility shall be paid or absorbed by the Owners of the Units involved in the same proportion as each Owner's claim bears to the total amount of insurance proceeds paid for the occurrence.

(c) The Owner shall pay or absorb the deductible for any loss to the Unit that would be the responsibility of the Owner in the absence of insurance unless: (1) the loss

is caused by the negligent or willful act or omission of the Association or another Owner, in which case the negligent party shall be responsible for the deductible, or (2) the loss is caused by the failure of another Owner to maintain any portion of the Unit, including any appliance, equipment, or fixture in a Unit, which that Owner is responsible to maintain in good working order and condition, in which case the Owner who has failed to maintain any such portion of the Unit resulting in damage to another's Unit will be responsible for the deductible. If a negligent Owner or Owner who fails to maintain their Unit as provided in this Declaration fails to pay the deductible for damage to a Unit, the Association may, but shall not be obligated to seek the deductible on behalf of the Owner suffering the loss as provided in this Declaration for the collection of Assessments.

Section 9.16 Duty to Repair.

Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Unit Owner, at the Unit Owner's option as to whether the repair is done by the Association or the Unit Owner, except as provided in the Act.

Section 9.17 Condemnation and Hazard Insurance Allocations and Distributions.

In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Unit Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 9.18 Insurance Assessments.

If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. Notwithstanding the Special Assessment procedure set forth in this Declaration, the insurance Assessment shall be ratified unless vetoed by 90% of the Members pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time.

Section 9.19 Payment of Claims to Delinquent Owners.

Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of Assessments owed to the Association under this Declaration, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

ARTICLE 10 SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS

Section 10.1 General Provisions.

The provisions of this Article are for the benefit of holders, insurers, or guarantors of holders of first lien security interests recorded within the Community. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Association. A holder, insurer or guarantor of a first lien security interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a security interest shall be considered an "Eligible Holder." Eligible insurers and guarantors of a first lien security interest shall have the same rights as Eligible Holder.

Section 10.2 Special Rights.

Eligible Holders shall be entitled to: (a) timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within 60 days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association, including any annual audited financial statement; (d) receive written notice of all meetings of the Executive Board or Members of the Association; (e) designate a representative to attend any such meetings; (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (g) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration; (h) 60 days written notice prior to the effective date of any proposed amendments of a material adverse nature to first mortgagees to this Declaration, the Articles of Incorporation, or the Bylaws; (i) 60 days written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Community or by an Eligible Holder; and (j) immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or to the Unit on which the Eligible Holder holds a security interest, if the cost of reconstruction

exceeds \$20,000 and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Units.

Section 10.3 Special Approvals.

Unless at least 67% of the Eligible Holders of first lien security interests (based on one (1) vote for each mortgage owned) of Units in the Association and requisite Unit Owners have given their written approval, neither the Association nor any Member shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such Property by the Association shall not be deemed within the meaning of this provision); (b) change the method of determining the obligations, Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Units, including the architectural design of the exterior appearance of Units, or the upkeep of the Common Elements; (d) fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration; (e) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed; (f) take action to terminate the legal status of the Community after substantial destruction or condemnation occurs; (g) adopt any amendments to this Declaration of a material adverse nature to first mortgagees; and (h) establish self-management by the Association when professional management has previously been required by the legal documents for the Community or by an Eligible Holder. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Holder of a first lien security interest receives written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within 60 days, it shall be deemed to have approved such request.

Section 10.4 Right to Pay Taxes and Insurance Premiums.

Any holder of a first lien security interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Units, and the holder of a first lien security interest making such payments shall be entitled to immediate reimbursement therefor from the Association.

ARTICLE 11 DISPUTE RESOLUTION PROCEDURES

Section 11.1 Alternate Dispute Resolution.

The (a) Declarant, (b) Association (including its officers, directors and committee members), (c) all Owners, and (d) any other person or entity not otherwise subject to this Declaration who agrees to submit to this Article (a "Bound Party") agree to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party hereby covenants and agrees to submit all claims, grievances, controversies or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Rules and Regulations of the Association, the design or construction of any improvements on the Property, or otherwise relating to the Community (the "Claims") to the dispute resolution procedures set forth in this Article.

Section 11.2 Claim Resolution Procedures.

Unless prohibited by Colorado law, all Claims shall be resolved using the following procedures in lieu of litigation:

(a) Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely (i) the nature of the Claim, including the date, time, location, persons involved, and Respondent's role in the Claim, (ii) the basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles, Rules or Regulations or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(c) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Community.

(d) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association or such other mediator upon which the Parties may agree.

(e) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons or entities not a Party to the foregoing proceedings.

(f) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(g) Each Party shall, within 10 days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(h) Subject to subsection (i) below, if the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 20 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the appropriate rules of the American Arbitration Association, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided nothing herein shall release or discharge Respondent from any liability to persons not a party to the foregoing proceedings.

(i) If a Claim alleges that any improvements located on the Properties suffer from construction or design defects, the following additional requirements must be

satisfied before such a Claim may be submitted to arbitration: (a) if the Claim relates to one or more Units, the written approval of the Owner of each such Unit and the First Mortgagee on each such residence shall be obtained; (b) if the Claim is to be pursued by the Association, the Association shall hold a meeting of the Members no sooner than ten (10) days following the Association providing a written statement to all Owners and First Mortgagees discussing the potential Claim. Such written statement must include at least the following information: (I) a statement of the Claim and the Declarant's response thereto, including any settlement offer; (II) an estimate of the time and costs of pursuing such Claim, (III) the potential impact of the Claim on the marketability of the Units; and (IV) a statement advising the Owners of their duty to disclose the Claim or alleged defect to prospective purchasers of their Units. Such written statement shall also be sent to the Declarant at least ten (10) days before such meeting and the Declarant shall have the right to attend and make a presentation at such meeting.

(j) This Article is an agreement of the Bound Parties to arbitrate all Claims and is specifically enforceable under the applicable arbitration law of the State of Colorado. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(k) Each Bound Party shall bear all of its own costs incurred in resolving the Claims, including its attorney fees and mediation and/or arbitration expenses, unless the Bound Parties otherwise agree, in writing, signed by each Bound Party.

(l) If the Parties agree to resolve any Claim through negotiation or mediation as set forth above, and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without need to comply with the provisions of this Article. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one noncomplying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including without limitation, attorney fees and costs.

(m) Notwithstanding any other provision contained herein, this Article 11 may not be amended without the express written consent of the Declarant.

ARTICLE 12 GENERAL PROVISIONS

Section 12.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association, acting through the Board, may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

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

(ii) suspending the right to vote;

(iii) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Unit and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass;

(v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Unit.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

Section 12.2 Attorney Fees.

If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any provision of the Governing Documents, the Association may require reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner or an Owner's family member, guest, tenant, invitee or licensee, shall be charged as an Assessment and shall constitute a lien against the Unit.

Section 12.3 Severability.

Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 12.4 Term of Declaration.

The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 12.5 Amendment of Declaration, Map or Plat by Declarant.

If Declarant shall determine that any amendments to this Declaration or the Map shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of seven years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Unit Owner and holder of a security interest. Each deed, security interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 12.6 Amendment of Declaration by Unit Owners.

Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Members holding at least 67% of the votes in the Association and with the written consent of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. Except to the extent expressly permitted in this Declaration or the Act, no amendment may create or increase any special Declarant's rights, increase the number of Units in the Community, or change the boundaries of any Unit or the Allocated Interests of a Unit, or the uses to which any Unit is restricted, without compliance with the Act. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Jefferson County, State of Colorado of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 12.7 Amendment Required by Mortgage Agencies.

Prior to seven years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which a holder of a first lien security interest, or FHA, HUD, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Jefferson County, State of Colorado of a certificate setting forth the amendment or repeal in full.

Section 12.8 Required Consent of Declarant to Amendment.

Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving development rights or for the benefit of the Declarant, or the assignees, shall not be effective unless Declarant, and its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate seven years after the recording of this Declaration, or upon conveyance of 100% of the Units to Unit Owners, whichever occurs first.

Section 12.9 Required Consent of VA/FHA to Certain Amendments.

While the Declarant is in control of the Association (i.e., Unit Owners other than Declarant have not yet elected a majority of the Executive Board), amendments to the Declaration, Articles of Incorporation or Bylaws of the Association must first be approved by the VA or FHA if either VA or FHA has approved the Community for VA guaranteed or FHA insured loans. Further, the Association may not be merged or consolidated with another association without the prior written consent of the VA or FHA if either VA or FHA has approved the Community for VA guaranteed or FHA insured loans.

Section 12.10 Captions.

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

Section 12.11 Interpretation.

The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Executive Board shall have the authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under

the laws of the State of Colorado.

Section 12.12 Singular Includes the Plural.

Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 12.13 Validity of Amendments.

Provided by the Act, any action to challenge the validity of an amendment of this Declaration must be brought within one year after the amendment is recorded in the real property records of Jefferson County, Colorado.

Section 12.14 Required VA Provisions.

At least 25 days advance notice to all members is required for any extraordinary action, as set forth in applicable VA guidelines. Such notice shall: (i) state the purpose of the meeting; (ii) contain a summary of any material amendments or extraordinary actions proposed; (iii) contain a copy of the proxy or consent form that can be cast in lieu of attendance at the meeting; and (iv) set forth a 25% Member quorum requirement. The Association shall have the authority to charge reasonable admission or other fees for special or extraordinary uses of the Common Elements.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of the Bergen Place at Hiwan Condominiums to be executed by its duly authorized agents this ____ day of __, 20____.

Colorado Infill Projects, LLC,
a Colorado limited liability company

By: _____
Manager and Authorized Agent

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Declaration was acknowledged before me on this ____ day of _____, 20____, by _____ as Manager and Authorized Agent of Colorado Infill Projects, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Notary Public

My Commission Expires: _____

EXHIBIT A.PROPERTY

There is no initial “Property” in the Community. Property may be added by exercise of reserved development rights, as set forth in this Declaration.

Property added to the Community may be subject to the easements and interests of record as set forth in *Exhibit C* of this Declaration.

EXHIBIT B. INITIAL UNITS

There are no initial Units in the Community. Units may be added or created by exercise of reserved development rights, which rights are set forth in this Declaration.

**EXHIBIT C. PROPERTIES OWNED BY DECLARANT WHICH MAY BE ADDED
TO THE DECLARATION**

PARCEL A:

LOTS 1A AND 1B, THE RIDGE AT HIWAN TWELFTH FILING ADJUSTMENT 1, ACCORDING TO THE RECORDED PLAT THEREOF RECORDED MARCH 14, 2018 UNDER RECEPTION NO. [2018023342](#), COUNTY OF JEFFERSON, STATE OF COLORADO.

PARCEL B:

EASEMENT FOR ACCESS OVER THOSE AREAS DESIGNATED AS "PRIVATE ACCESS DRIVE" ON THE PLAT OF THE LODGES IN THE RIDGE AT HIWAN, RECORDED NOVEMBER 5, 1999 UNDER RECEPTION NO. [F0973066](#), INCLUDING, WITHOUT LIMITATION, THOSE AREAS DESIGNATED AS "RED LODGE DRIVE", "TAHOE COURT", "BIG SKY COURT", "FAIRBANKS COURT" AND "BIG BEAR DRIVE", AND THOSE AREAS DESIGNATED AS "PRIVATE ACCESS DRIVE" ON THE PLAT OF THE RIDGE AT HIWAN ELEVENTH FILING, RECORDED DECEMBER 31, 1998 UNDER RECEPTION NO. [F0769646](#), AND LOCATED IN TRACTS A, D AND G THEREOF, AS GRANTED BY INSTRUMENT RECORDED JANUARY 27, 2000 UNDER RECEPTION NO. [F1009203](#), ALL IN THE RECORDS OF THE CLERK AND RECORDER OF THE COUNTY OF JEFFERSON, STATE OF COLORADO.

PARCEL C:

EASEMENT FOR INGRESS AND EGRESS OVER THOSE AREAS DESIGNATED AS "BLACK EAGLE DRIVE" AND "RED LODGE DRIVE" ON THE SECOND SUPPLEMENT TO CONDOMINIUM MAP OF ELK TRAIL AT THE RIDGE AT HIWAN CONDOMINIUMS RECORDED APRIL 13, 2010 UNDER RECEPTION NO. [2010031515](#) AND THIRD SUPPLEMENT TO CONDOMINIUM MAP OF ELK TRAIL AT THE RIDGE AT HIWAN CONDOMINIUMS RECORDED OCTOBER 25, 2011 UNDER RECEPTION NO. [2011096677](#) AS GRANTED IN THIRD AMENDMENT TO THE DECLARATION OF CONDOMINIUM FOR ELK TRAIL AT THE RIDGE AT HIWAN CONDOMINIUMS RECORDED APRIL 13, 2010 UNDER RECEPTION NO. [2010031514](#) AND FOURTH AMENDMENT TO THE DECLARATION OF CONDOMINIUM FOR ELK TRAIL AT THE RIDGE AT HIWAN CONDOMINIUMS RECORDED OCTOBER 25, 2011 UNDER RECEPTION NO. [2011096676](#) OF THE RECORDS OF THE CLERK AND RECORDER OF JEFFERSON COUNTY, STATE OF COLORADO, FIFTH AMENDMENT RECORDED DECEMBER 18, 2014 UNDER

RECEPTION NO. [2014108203](#), AND MEMORANDUM OF EASEMENTS
RECORDED JULY 29, 2015 UNDER RECEPTION NO. [2015008242](#).

Subject to the following easements of record:

- 1 Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
- 2 Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- 3 Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
- 4 Any lien, or right to a lien, for services, labor or material heretofore 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 of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
- 6 Any and all unpaid taxes, assessments and unredeemed tax sales.
- 7 (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
- 8 EXISTING LEASES AND TENANCIES, IF ANY.
- 9 RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED JANUARY 18, 1892, IN BOOK 32 AT PAGE [302](#).
- 10 ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE WEST COUNTY METROPOLITAN DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED APRIL 24, 1980, UNDER RECEPTION NO. [80031587](#).
- 11 THE EFFECT OF OFFICIAL DEVELOPMENT PLAN FOR THE RIDGE AT HIWAN, RECORDED MAY 03, 1984 UNDER RECEPTION NO. [84040561](#), AND ANY AND ALL AMENDMENTS THERETO.
- 12 TERMS, CONDITIONS AND PROVISIONS OF COST RECOVERY AGREEMENT RECORDED FEBRUARY 1, 1993 UNDER RECEPTION NO. [93013891](#).
- 13 UTILITY EASEMENT AS GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO IN INSTRUMENT RECORDED FEBRUARY 25, 1998, UNDER RECEPTION NO. [F0561554](#).
- 14 TERMS, CONDITIONS AND PROVISIONS OF SUBDIVISION IMPROVEMENTS AGREEMENT RECORDED DECEMBER 31, 1998 AT RECEPTION NO. [F0769645](#).
- 15 (ITEM INTENTIONALLY DELETED)

- 16 UTILITY EASEMENT AS GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO IN INSTRUMENT RECORDED APRIL 08, 1999, UNDER RECEPTION NO. [F0842872](#).
- 17 TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN EASEMENT AGREEMENT RECORDED JANUARY 27, 2000 UNDER RECEPTION NO. [F1009203](#).
- 18 TERMS, CONDITIONS AND PROVISIONS OF EASEMENT DEED AND AGREEMENT BY AND BETWEEN THE RIDGE AT HIWAN, W.J. GRAHAM CONSTRUCTION COMPANY, THE GENESEE COMPANY AND THE WEST JEFFERSON COUNTY METROPOLITAN DISTRICT RECORDED MARCH 28, 2001 AT RECEPTION NO. [F1207570](#) AND RECORDED JUNE 26, 2001 UNDER RECEPTION NO. [F1262809](#), QUITCLAIM DEED RECORDED MARCH 1, 2007 UNDER RECEPTION NO. [2007023599](#) AND VACATION OF EASEMENT RECORDED FEBRUARY 26, 2007 AT RECEPTION NO. [2007021436](#).
- 19 TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN SUBDIVISION IMPROVEMENTS AGREEMENT RECORDED JANUARY 30, 2003 UNDER RECEPTION NO. [F1663545](#); FIRST AMENDMENT RECORDED MAY 5, 2005 UNDER RECEPTION NO. [2005014748](#); SECOND AMENDMENT RECORDED APRIL 6, 2009 UNDER RECEPTION NO. [2009030133](#).
- 20 EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF THE RIDGE AT HIWAN TWELFTH FILING RANGE JANUARY 30, 2003 UNDER RECEPTION NO. [F1663546](#), COUNTY OF JEFFERSON, STATE OF COLORADO.
- AFFIDAVIT OF ROAD NAME CHANGE RECORDED JUNE 3, 2003 UNDER RECEPTION NO. [F1766994](#).
- CERTIFICATE OF COMPLIANCE RECORDED JANUARY 25, 2006 UNDER RECEPTION NO. [2006009832](#).
- 21 TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN EASEMENT DEED RECORDED JANUARY 30, 2003 UNDER RECEPTION NO. [F1663548](#).
- 22 EASEMENT GRANTED TO COMCAST OF COLORADO VII, LLV, FOR BROADBAND SERVICES, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED NOVEMBER 04, 2005, UNDER RECEPTION NO. [2005109540](#).
- 23 EASEMENT GRANTED TO COUNTY OF JEFFERSON, FOR DRAINAGE EASEMENT, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 19, 2006, UNDER RECEPTION NO. [2006007520](#).
- 24 EASEMENT GRANTED TO COUNTY OF JEFFERSON, FOR EMERGENCY ACCESS, UTILITY AND DRAINAGE EASEMENT, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED JANUARY 19, 2006, UNDER RECEPTION NO. [2006007521](#).
- 25 MINERAL RIGHTS AS CONVEYED IN MINERAL DEED RECORDED JULY 12, 2007 UNDER RECEPTION NO. [2007081036](#), AND ANY AND ALL ASSIGNMENTS THEREOF OR INTERESTS THEREIN.
- RELINQUISHMENT OF SURFACE RIGHTS IN CONNECTION THEREWITH RECORDED SEPTEMBER 17, 2008 UNDER RECEPTION NO. [2008087593](#).

- 26 TERMS, CONDITIONS AND RESTRICTIONS AS SET FORTH IN SPECIAL WARRANTY DEED RECORDED SEPTEMBER 17, 2008 UNDER RECEPTION NO. [2008087591](#).
- 27 RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN THE DECLARATION OF CONDOMINIUM FOR ELK TRAIL AT THE RIDGE AT HIWAN CONDOMINIUMS RECORDED SEPTEMBER 29, 2008, UNDER RECEPTION NO. [2008090968](#); FIRST AMENDMENT TO THE DECLARATION OF CONDOMINIUM FOR ELK TRAIL AT THE RIDGE AT HIWAN CONDOMINIUMS RECORDED OCTOBER 28, 2008 UNDER RECEPTION NO. [2008099363](#); SECOND AMENDMENT TO THE DECLARATION OF CONDOMINIUM FOR ELK TRAIL AT THE RIDGE AT HIWAN CONDOMINIUMS RECORDED DECEMBER 15, 2008 UNDER RECEPTION NO. [2008112461](#); THIRD AMENDMENT TO THE DECLARATION OF CONDOMINIUM FOR ELK TRAIL AT THE RIDGE AT HIWAN CONDOMINIUMS RECORDED APRIL 13, 2010 UNDER RECEPTION NO. [2010031514](#); FOURTH AMENDMENT TO THE DECLARATION OF CONDOMINIUM FOR ELK TRAIL AT THE RIDGE AT HIWAN CONDOMINIUMS RECORDED OCTOBER 25, 2011 UNDER RECEPTION NO. [2011096676](#); FIFTH AMENDMENT TO THE DECLARATION OF CONDOMINIUM FOR ELK TRAIL AT THE RIDGE AT HIWAN CONDOMINIUMS RECORDED DECEMBER 18, 2014 UNDER RECEPTION NO. [2014108203](#), AND SIXTH AMENDMENT TO THE DECLARATION OF CONDOMINIUM FOR ELK TRAIL AT THE RIDGE AT HIWAN CONDOMINIUMS RECORDED JANUARY 29, 2015 UNDER RECEPTION NO. [2015008240](#).

(AFFECTS PARCEL C)

- 28 TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN MEMORANDUM OF EASEMENTS RECORDED JANUARY 29, 2015 UNDER RECEPTION NO. [2015008242](#).
- 29 EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF THE RIDGE AT HIWAN TWELFTH FILING ADJUSTMENT 1 RECORDED MARCH 14, 2018 UNDER RECEPTION NO. [2018023342](#).
- 30 TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN NOTICE OF SITE DEVELOPMENT PLAN RECORDED MARCH 14, 2018 UNDER RECEPTION NO. [2018023343](#).
- 31 ANY FACTS, RIGHTS, INTERESTS OR CLAIMS WHICH MAY EXIST OR ARISE BY REASON OF THE FOLLOWING FACTS SHOWN ON IMPROVEMENT SURVEY PLAT CERTIFIED JUNE 12, 2018 PREPARED BY C.C.S. CONSULTANTS, INC., JOB #02GRA01B:
(SAID DOCUMENT STORED AS OUR ESI [35796378](#))

A. THE BRICK WALL AND SPLIT RAIL FENCE ALONG THE NORTH BOUNDARY DOES NOT COINCIDE WITH SAID BOUNDARY.

B. FIRE HYDRANTS, CURB AND GUTTER, AND ADA RAMP LOCATED UPON THE LAND, BUT NOT WITHIN A RECORDED EASEMENT FOR SUCH PURPOSES.

C. A CONCRETE PAN LYING PARTIALLY WITHIN THE LAND AND PARTIALLY OUTSIDE THE LAND.

D. A BRICK WALL LOCATED AT THE SOUTHEASTERLY BOUNDARY OF THE LAND LIES PARTIALLY INSIDE AND PARTIALLY OUTSIDE THE BOUNDARIES OF THE LAND.

32 Any other documents of record.

**EXHIBIT D. OTHER PROPERTIES WHICH MAY BE ADDED TO THE
DECLARATION**

All or part of any real estate located adjacent to the Community, or across a public street or alley from the Community, provided the owner of that real estate consent.

EXHIBIT E. MAINTENANCE AND INSURANCE OBLIGATIONS

“A” = Association obligation

“O” = Owner obligation

“NA” = not applicable

The term “maintenance” includes repair and replacement unless otherwise noted on the Chart.

	MAINTENANCE	INSURANCE
BUILDING EXTERIORS		
Residence-structure, including foundation, columns, girders, beams and supports	A	A
Siding, sheathing, wrap, brick, trim, molding, and other exterior facade surfaces	A	A
Exterior stoops, steps, and concrete surfaces	A	A
Gutters and downspouts	A	A
Porches, patios, and balconies	O	A
Roof shingles and roof underlay	A	A
Shutters and awnings	A	A
Chimneys and chimney caps	A	A
Window screens	A	A
Interior glass surfaces--cleaning	O	N/A
Glass--repair and replacement	O	A
Window panes and frames--painting and staining	A	A
Window panes and frames--maintenance, repair, and replacement	A	A
Window trim and caulking	A	A
Skylights	A	A
Exterior unit doors and garage doors--painting and staining	A	A
Garage doors-- maintenance and repair	A	A

	MAINTENANCE	INSURANCE
Garage door openers	O	O
Exterior unit doors including peep holes, doorknobs and lock mechanisms-- maintenance and repair	A	A
Storm doors	A	A
Balcony/patio sliding glass doors	O	A
Exterior light fixtures	A	A
UTILITIES		
Utilities <u>outside</u> Units and garages servicing more than one Unit: <ol style="list-style-type: none"> 1. Electrical and other wires 2. Water and sewer pipes 3. Cables 4. Circuit boxes 5. Water meters 6. Circuit breakers 	A	A
Utilities <u>outside</u> Units and garages servicing only one Unit: <ol style="list-style-type: none"> 1. Electrical and other wires 2. Water/sewer pipes 3. Cables 4. Circuit boxes 5. Water meters 6. Circuit breakers 	A	A
Utilities <u>inside</u> Units or garages and servicing only that Unit: <ol style="list-style-type: none"> 1. Furnaces 2. Heating equipment 3. Thermostats 4. Ducts 5. Conduits 6. Water pipes 	O	A

	MAINTENANCE	INSURANCE
7. Electrical wiring 8. Electrical outlets 9. Telephone wiring 10. Telephone outlets 11. Light switches 12. Hot water equipment 13. Cable wiring 14. Compressors 15. Sump pumps 16. Circuit breakers		
Utilities <u>inside</u> Unit but servicing more than one Unit: 1. Furnaces 2. Heating equipment 3. Thermostats 4. Ducts 5. Conduits 6. Water pipes 7. Electrical wiring 8. Electrical outlets 9. Telephone wiring 10. Telephone outlets 11. Light switches 12. Hot water equipment 13. Cable wiring 14. Compressors 15. Sump pumps 16. Circuit breakers 17. Boiler equipment (if any)	A	A
Air conditioners, including condensers and lines running from/to such equipment	O	O
RESIDENCE INTERIORS		
Furnishings, including all personal property such as furniture, electronics, jewelry, and clothing	O	O

	MAINTENANCE	INSURANCE
Window coverings	O	O
Permanent fixtures, as originally installed by developer, including but not limited to: <ul style="list-style-type: none"> 1. ceiling fans 2. hand rails 3. cabinets 4. countertops 5. bathtubs and showers 6. sinks 7. toilets 	O	A
Permanent fixtures, as upgraded by Owners	O	O
Appliances including: oven range refrigerator dishwasher washer/dryer countertop microwave	O	O
Fireplaces (including facade, screen, chimney back, flue, and damper)	O	A
Interior <u>non-perimeter</u> walls, floors, and ceilings—including finished and unfinished surfaces, doors, drywalls, studs, insulation, hardware, and other material lying within such walls, floors, and ceilings	O	A
Finished surfaces of <u>perimeter</u> walls and ceilings—including: <ul style="list-style-type: none"> · drywalls · paint · wallpaper · paneling 	O	O

	MAINTENANCE	INSURANCE
· texture		
Finished surfaces of <u>perimeter</u> floors-- including: 1. tile 2. vinyl 3. hardwood 4. carpeting	A	A
Any components lying <u>between the perimeter</u> <u>drywalls and residence exterior</u> , including but not limited to: 1. insulation 2. girders 3. beams 4. pipes 5. wiring 6. plumbing	A	A
Subflooring	A	A
Crawl spaces	A	A
Garage interiors, including any drywall or improvements therein	O	A
GROUND		
Retaining walls	A	A
Landscaping	A	A
Irrigation system and time clocks	A	A
Private roads, drives, and sidewalks	A	A
Driveways	A	A
Fences surrounding private patios	A	A
Private parking areas	A	A

	MAINTENANCE	INSURANCE
Monuments and signage	A	A
OTHER		
Snow removal from driveways and sidewalks	A	A
Garbage pick-up	A	A
Common Elements existing in Community and not otherwise listed	A	A
Any personal property of Owners not otherwise listed	O	O
Any Owner installed exterior/interior improvement not otherwise listed	O	O