



City and County Clerk & Recorder: Index in Grantee Indexes under Legacy Townhomes at Centrepoint and Legacy Townhomes at Centrepoint Owners Association, Inc., and also under Grantor Index as Brittany Homes, Inc., a Colorado Corporation.

Return to:

Fairfield and Woods, P.C.
1801 California Street, #2600
Denver, CO 80202

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
LEGACY TOWNHOMES AT CENTREPOINTE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF LEGACY TOWNHOMES AT CENTREPOINTE, is made and entered into by BRITTANY HOMES INC., a Colorado corporation ("**Declarant**," as hereinafter more fully defined).

WITNESSETH:

WHEREAS, Declarant is the owner of the real property situated in the City of Fort Morgan, County of Morgan, State of Colorado, which is described on **Exhibit A**, attached hereto and incorporated herein by this reference ("**Community**," as hereinafter more fully defined); and

WHEREAS, Declarant desires to subject and place upon the real property described on the attached **Exhibit A** certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein for the purpose of protecting the value and desirability of said real property and for the purpose of furthering a plan for the improvement, sale and ownership of said real property, to the end that a harmonious and attractive development of said real property may be accomplished and the health, comfort, safety, convenience and general welfare of owners in said real property, or any portion thereof, may be promoted and safeguarded; and

WHEREAS, a common interest community may be created pursuant to CCIOA (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common

interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded; and

WHEREAS, this common interest community is a planned community to be known as Legacy Townhomes at Centrepointe. It is anticipated that the Community will consist of residential single-family townhome-style attached homes. The Association, as hereinafter defined, shall serve as a unit owners association for the planned community; and

NOW, THEREFORE, the Declarant hereby declares that one or more Plats includes the real property described on the attached **Exhibit A**, and that all of the property described on the attached **Exhibit A**, as supplemented and amended (including by all additions of real property to this Declaration), shall be held, sold, and conveyed subject to CCIOA, and subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth herein.

ARTICLE 1 DEFINITIONS

Section 1.1 Agencies. "**Agencies**" means the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development, including the Federal Housing Administration (HUD), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to any of those currently performed by any of such entities.

Section 1.2 Allocated Interests. "**Allocated Interests**" means a calculation that applies equally to all Lots that are within the Community and subject to this Declaration. That is, the "**Allocated Interest**" for each such Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots then within the Community. To the extent this Declaration identifies any Annexable Area, the Allocated Interest for each Lot changes with each annexation to this Declaration of one or more Lots. The Garage Units, if annexed in the future, will have a separate "**Allocated Interest**" established for the Garage Units at the time of the first annexation of any Garage Units into the Community.

Section 1.3 Annexable Area. "**Annexable Area**" means the property described on **Exhibit D** attached hereto and incorporated herein by this reference, plus such additional real estate from such locations as the Declarant may elect in an amount not to exceed the maximum permitted pursuant to CCIOA. Unless and until the Annexable Area or any portion thereof is added to the Community, such property shall not be subject to this Declaration or any provision hereof except the right of annexation by the Declarant that is provided in Section 12.4 of this Declaration.

Section 1.4 Association. "**Association**" means the Legacy Townhomes at Centrepointe Owners Association, Inc., a Colorado nonprofit corporation, its successors and assigns, which is a

unit owners association as provided in CCIOA.

Section 1.5 Board of Directors or Board. "**Board of Directors**" or "**Board**" means the body, regardless of name, designated in this Declaration, the Articles of Incorporation and Bylaws of the Association, to act on behalf of the Association.

Section 1.6 CCIOA. "**CCIOA**" means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as amended.

Section 1.7 Common Area and Limited Common Area. "**Common Area**" means real property now or hereafter owned or leased by the Association, other than a "**Lot**" as defined in Section 1.15 of this Declaration. The Common Area at the time of recordation of this Declaration, or which must become Common Area, is described and identified as Common Area on **Exhibit B** attached hereto and incorporated herein by this reference.

"**Limited Common Area**" means those parts of the Common Area which are either limited to and reserved for the exclusive use of the Owner(s) of a particular Lot or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Lots. Limited Common Areas, if any, that have been included into and made subject to this Declaration at the time of recordation of this Declaration is described and identified as Limited Common Area on **Exhibit B**. Limited Common Area may be allocated to Lots in accordance with this Declaration and may be reallocated between or among Lots in accordance with CCIOA.

Section 1.8 Common Expenses. "**Common Expenses**" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

Section 1.9 Community. "**Community**" means real estate and Improvements described on the attached **Exhibit A** and any portion of the Annexable Area or other property that is added to the Community as provided in Section 12.4 of this Declaration. The Community is a planned community under CCIOA. The project is owned in fee simple. The name of the Community is Legacy Townhomes at Centrepointe

Section 1.10 Declarant. "**Declarant**" means Brittany Homes Inc., a Colorado corporation, and any other Person(s) acting in concert, to whom the Declarant, by Recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds).

Section 1.11 Declaration. "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions of Legacy Townhomes at Centrepointe, and any other Recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments, and also including maps and plats.

Section 1.12 Development Rights. "**Development Rights**" means the following rights or combination of rights hereby reserved by the Declarant, as such Development Rights may be

further described in this Declaration, to:

- (a) add real property to this Community, including the Annexable Area, and create Lots, Garage Units or Common Areas within this Community;
- (b) subdivide or replat Lots and Garage Units; and
- (c) withdraw real estate from this Community.

The Declarant may exercise its Development Rights in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any Development Rights. The Declarant's rights to exercise Development Rights shall terminate automatically as provided in Section 1.28 of this Declaration (Special Declarant Rights).

Section 1.13 Eligible Mortgagee. **"Eligible Mortgagee"** means a First Mortgagee (as hereinafter defined) who (i) is also a bank, savings and loan association, insurance company, real estate mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMN") or any other lender generally recognized as an institutional lender, and (ii) has notified the Association, in writing, of its name and address, and that it holds the First Mortgage on one or more Lots. The notice must include the Lot number and street address of the Lot on which it has such security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the information and afforded the rights described in Articles V, VIII and IX herein.

Section 1.14 First Mortgage. **"First Mortgage"** means a Mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and Special Assessments). **"First Mortgagee"** means a mortgagee whose encumbrance is a First Mortgage. Nothing contained in this Declaration shall prohibit a mortgagee under a single mortgage from being a "First Mortgagee" upon more than one (1) Lot and from maintaining and exercising all First Mortgagee voting rights, approvals and/or consents with respect to each applicable Lot for which it is First Mortgagee.

Section 1.15 Garage Units. **"Garage Units"** means a detached garage structure in the Community restricted to use for parking of motor vehicles and storage as depicted on the Plat.

Section 1.16 Governing Documents. **"Governing Documents"** means this Declaration, the Association Articles of Incorporation, the Association Bylaws, and any and all rules and regulations, policies and procedures, and similar documents, of the Association and/or the Board of Directors, as well as all supplements, amendments and clarifications.

Section 1.17 Improvements. **"Improvements"** means all structures and any appurtenances thereto now or hereafter located in the Community of every type and kind, including but not limited to landscaping and related features such as irrigation systems, plantings, trees,

shrubs, flowers, sod, turf and groundcover.

Section 1.18 Lot. "**Lot**" means each platted lot that is depicted on a Plat that may be sold or conveyed without violation of the provisions of law pertaining to the subdivision of land and which is intended for the construction of one single family Townhome thereon, including each such Townhome and all exterior improvements and landscaping now or hereafter located thereon. Each Lot shall constitute a "**unit**" under CCIOA, and it shall not be necessary to use the term "**unit**" as part of a legally sufficient description of a Lot. The term Lot does not include Common Areas and any publicly dedicated or publicly owned real property.

Section 1.19 Lots that May Be Included. "**Lots that May Be Included**" means one hundred sixteen (116) Lots and Fifty Eight (58) Garage Units which is the maximum number of Lots and Garage Units that may be subject to this Declaration. However, the aforesaid number of Lots that May Be Included is not a representation or a guarantee as to the actual number of Lots and Garage Units that will ultimately be included in, or constructed, as part of the Community.

Section 1.20 Maintenance Area. "**Maintenance Area**" means and refers to that portion of each Lot, which although not part of the Common Area, is designated by this Declaration or by the Board to be repaired, improved, maintained, insured and regulated by the Association. The Maintenance Area shall specifically include the roofs, gutters, downspouts, chimneys, chimney caps, flashing, front yard landscaping, front yard irrigation systems, windows, doors and the exterior finished surfaces and exterior structural components of the Townhomes (including all paint, stain, exterior wall surfaces, trim and soffits) but shall specifically exclude all windows and doors (except for paint or stained finishes), private driveways, sidewalks located on a Lot, front porches, exterior lightbulbs, rear yard landscaping, and rear yard decks, patios or other rear yard Improvements and any fences, which shall be the responsibility of the Owners. The Maintenance Area shall also include any utility lines located outside of the exterior of the Townhome building but within the physical boundaries of the Lots, if any.

Section 1.21 Member. "**Member**" means all Owners of a Lot collectively or, following termination of the Community, all former Owners entitled to distributions of proceeds under CCIOA, their heirs, personal representatives, successors or assigns. The Association shall have one (1) class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot shall have one (1) membership and there is only one (1) Member per Lot, even if multiple Owners own the Lot.

Section 1.22 Owner. "**Owner**" means each fee simple title holder of a Lot, including the Declarant or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. There may be more than one (1) Owner of a Lot.

Section 1.23 Period of Declarant Control. "**Period of Declarant Control**" means a length of time that terminates no later than the earlier of: sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant; two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business;

or two (2) years after the right to add new Lots to the Declaration was last exercised.

Section 1.24 Permittees. "**Permittees**" means and refers to any family members, tenants, subtenants, licensees, occupants, invitees, guests or visitors of an Owner.

Section 1.25 Person. "**Person**" means a natural person, a corporation, a limited liability company, a partnership, an association, a trust, a joint venture, or any other entity recognized under the laws of the State of Colorado, or any combination thereof.

Section 1.26 Plat. "**Plat**" means those land survey plats, improvement survey plats or subdivision plats recorded in the Records, as amended and supplemented, which land survey plat, improvement survey plat or subdivision plats includes and depicts the Lots described on Exhibit A, and any other land survey plats, improvement survey plats or subdivision plats which creates Lots for any portion of the Community which plats are or may be Recorded, as the same may be amended or supplemented from time to time. Each Plat constitutes a "plat" pursuant to the Act.

Section 1.27 Records. "**Records**" means the official real property records of the County of Morgan, Colorado; "**to Record**" or "**to be Recorded**," means to file for recording in the Records; and "**of Record**" and "**Recorded**," means having been recorded in the Records.

Section 1.28 Special Declarant Rights. "**Special Declarant Rights**" means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this Declaration: to build and complete Improvements; to exercise any Development Right; to maintain sales offices, construction offices, management offices, model homes and signs advertising the Community and/or Lots; to use easements for the purpose of making Improvements within the Community; to make the Community subject to a master association; to merge or consolidate with a common interest community of the same form of ownership; to appoint or remove any officer of the Association or any Board of Directors member during any Period of Declarant Control; to allocate any of the Common Area or portions thereof as Limited Common Area and to allocate such Limited Common Area among particular Lots. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any times. Such rights shall terminate automatically twenty-five (25) years after the date this Declaration was Recorded.

Section 1.29 Sub-Association. "**Sub-Association**" shall mean any association of Owners created pursuant to a Supplemental Declaration which encumbers a portion of the Community and whose members are comprised of less than all of the members of the Association.

Section 1.30 Supplemental Declaration. "**Supplemental Declaration**" shall mean a declaration executed by Declarant, which establishes additional provisions encumbering a portion of the Community.

Section 1.31 Townhome. "**Townhome**" means the individual residential dwelling unit

constructed on a Lot.

Section 1.32 Unbuilt Lots. "Unbuilt Lots" means those Lots that do not contain a Townhome on which a Certificate of Occupancy, or its equivalent, has been issued by the applicable governmental authority. "Unbuilt Lots" includes those Lots on which the Townhome on such Lot has been destroyed (for example, by fire or other casualty). However, the "Unbuilt Lots" that are referenced in the preceding sentence shall each cease to be an "Unbuilt Lot" when such Lot contains a Townhome on which a Certificate of Occupancy, or its equivalent, has been issued by the applicable governmental authority.

ARTICLE 2 MEMBERSHIP AND VOTING RIGHTS

Section 2.1 Association. The Association has been formed as a Colorado non-profit corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration and in its Articles of Incorporation and Bylaws.

Section 2.2 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Bylaws. Subject to Sections 3.2 and 3.3 hereof, the Board of Directors shall be elected by the Members. The Board of Directors may, by resolution, delegate portions of its authority to one or more committees, to officers of the Association or to agents or employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

Section 2.3 Voting Rights. Each Member shall be entitled to one (1) vote for each Lot owned, except that no votes allocated to a Lot owned by the Association may be cast. The maximum number of votes that may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association.

ARTICLE 3 ASSOCIATION

Section 3.1 Authority of the Board of Directors. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized committee, officer, agent or employee without a vote of the Members, except as otherwise specifically provided in this Declaration, the Articles of Incorporation or Bylaws of the Association, or law.

Section 3.2 Election of Part of the Board of Directors During the Period of Declarant Control. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May Be Included to Owners other than a Declarant, at least one (1) director and not less than twenty-five percent (25%) of the directors must be elected by Members other than a Declarant, provided that the Declarant reserves the right to appoint a majority of the Board. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that May Be Included to Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the directors must be elected by Members other than a Declarant, provided that the Declarant reserves the right

to appoint a majority of the Board.

Section 3.3 Authority of Declarant During Period of Declarant Control. Except as otherwise provided in this Article, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and directors of the Board of Directors and may remove all or any of the officers and directors of the Board of Directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and directors of the Board of Directors before termination of the Period of Declarant Control; but, in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 3.4 Termination of Period of Declarant Control. After termination of the Period of Declarant Control, the Members shall elect a Board of Directors, at least a majority of whom must be Owners other than a Declarant or designated representatives of Owners other than a Declarant. The Board of Directors shall, then, elect the officers. Such directors and officers shall take office upon election.

Section 3.5 Budget and Review or Audit. Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board of Directors shall give notice to the Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Board of Directors does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by sixty-seven percent (67%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board of Directors, and not vetoed by the Owners, must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

Section 3.6 Association Books and Records.

3.6.1 The Association's books and records shall be subject to an audit or a review as further provided in this Declaration. Except as otherwise provided in subsections 3.6.2 and 3.6.3 below, the Association shall make reasonably available for inspection and copying by Owners, First Mortgagees, and insurers or guarantors of any such First Mortgage, current copies of all of the Community's governing documents and financial documents as required by CCIOA and any other applicable law. The Person(s) accessing and/or copying such documents shall pay all costs associated therewith. **"Reasonably available"** shall mean available during normal business hours, upon prior notice of at least five (5) business days, or at the next regularly scheduled meeting if such meeting occurs within thirty (30) days after the request.

3.6.2 Notwithstanding subsection 3.6.1 above, a membership list or any

part thereof may not be obtained or used by any Person for any purpose unrelated to an Owner's interest as an Owner without the consent of the Board of Directors. Without limiting the generality of the foregoing, without the consent of the Board of Directors, a membership list or any part thereof may not be:

3.6.2.1 Used to solicit money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association;

3.6.2.2 Used for any commercial purpose; or

3.6.2.3 Sold to, or purchased by, any Person.

3.6.3. Notwithstanding subsection 3.6.1 above, the Board of Directors may, prior or subsequent to a request for inspection and/or copying, determine that items are confidential and should not be made available.

3.6.4 In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under Section 3.6 of this Declaration, Section 3.6 shall be deemed amended to require that which is required by CCIOA.

Section 3.7 Information Regarding First Mortgages on Lots. Each Member shall, within twenty (20) days of encumbering such Member's Lot with a First Mortgage, and at other times upon request of the Association, provide the Association with the name and address of such First Mortgagees and the loan number(s) (or other identifying number) of such First Mortgage(s). Within twenty (20) days after any change in the name or address of the First Mortgagees on a Member's Lot, and at other times upon request of the Association, such Member shall provide the aforesaid information to the Association with respect to each First Mortgage held by such First Mortgagees.

Section 3.8 Rules and Regulations and Policies and Procedures. Rules and regulations, and policies and procedures, concerning and governing the Lots, Common Area and/or this Community and the installation, maintenance, repair and replacement of Improvements on the Common Area may be adopted, amended and/or repealed by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction of any adopted rules and regulations, and policies and procedures thereof, including the levying and collecting of fines for the violation of any of such rules and regulations or policies and procedures; provided that, subsequent to termination of the Period of Declarant Control until automatic termination of the Special Declarant Rights as provided in Section 1.28 hereof (Special Declarant Rights), each adoption, amendment and repeal of the rules and regulations or policies and procedures requires the prior, written approval of the Declarant. Such rules and regulations and policies and procedures include all documents of the Association, regardless of the names (or lack thereof). The rules and regulations, and policies and procedures, may also state procedural requirements, interpretations and applications of this Declaration and law, including blanket requirements, blanket interpretations, and blanket applications. Any rules and regulations, or policies and procedures,

that are adopted shall be in accordance with, and shall not be in conflict with this Declaration.

Section 3.9 Management Agreements and Other Contracts. Any agreement for professional management of the Association's business, or other contracts providing for the services of the Declarant, shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereof, with or without cause and without payment of a termination fee, upon not more than sixty (60) days' prior written notice.

Section 3.10 Notice of Meetings and Other Matters of the Association. Notices of any meetings, newsletters and other correspondence or documents concerning the Association shall be sent to the Declarant at the same time that such notices, newsletters, and other correspondence or documents are sent to the Members. However, the foregoing shall expire ten (10) years after the date this Declaration was Recorded.

Section 3.11 Authenticated Electronic Representation. Notwithstanding anything to the contrary contained in any of the Governing Documents, to the extent not prohibited by applicable law, the Association may use technology or electronic representation in completing its duties and responsibilities. In this regard, any reference in any of such documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent not prohibited by applicable law, the provisions of all of such documents shall be deemed to include provisions which permit such authenticated electronic activity. To the extent not prohibited by applicable law, the Association may conduct Member and Board meeting by video conference or otherwise through the use of, any means of communication by which all Members and Directors participating may hear each other during the meeting. A Member or Director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 3.12 Continuing Notice. Until the termination of the Special Declarant Rights or until ten (10) years from the date of recordation of this Declaration, whichever last occurs ("Continuing Notice Period"), the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties or any portion(s) thereof. The Board shall also, until the expiration of the Continuing Notice Period, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondences to Owners, all inspection reports, any reserve studies prepared, maintenance reports prepared pursuant to the Association's governing documents, and audited or reviewed annual reports. Such notices and information shall be delivered to Declarant at its most recently designated address.

ARTICLE 4 ASSESSMENTS

Section 4.1 Personal Obligation. Each Owner of a Lot that has been included in the Community, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees, and shall be personally obligated, to pay to the Association any and all assessments, as provided in this Declaration; with such assessments to be established and collected

as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due and payable in full when due, without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments attributable to their Lot. Each assessment shall be the personal obligation of the Person(s) who was the Owner of such Lot at the time when the amount became due. The personal obligation for delinquent amounts shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 4.2 Purpose of Assessments. The annual assessments levied by the Association may be used to pay the Common Expenses, and for operation, maintenance, repair and replacement of the Common Areas and any other improvements, property, facility or building that is operated or maintained by the Association, to pay any costs or tariffs relating to street lighting in the Community (if applicable), to promote the aesthetics and livability of the Community and to promote the general health, safety and welfare of the residents of the Community, and for all of those purposes and activities which may be required of the Association, or the Board of Directors, or which the Association, or the Board of Directors, may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association; provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital Improvements.

Section 4.3 Rate of Assessments.

4.3.1 Except as otherwise set forth herein, annual and special assessments shall be fixed at a uniform rate for all Lots and assessed against all the Lots, other than Unbuilt Lots, in accordance with the Allocated Interests set forth in this Declaration. Annual and special assessments shall be sufficient to meet the expected needs of the Association to maintain the Common Areas, Maintenance Areas and to fulfill other maintenance responsibilities of the Association (as detailed in Section 8.1.1), to administer and operate the Association, and to perform all other activities and functions which may be required of the Association and to fulfill its purpose. Annual and special assessments shall be levied against each Lot upon which the initial construction of a Townhome has been completed and such Home has been issued a first certificate of occupancy, or its equivalent, by the applicable governmental authority or such Townhome is first occupied for residential purposes. The annual Association assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those Common Areas, Improvements and other items that must be maintained, repaired or replaced by the Association on a periodic basis and for the payment of insurance deductibles.

4.3.2 If any Common Expense or portion thereof benefits fewer than all of the Lots, or if any Common Expense disproportionately benefits any Owner or group of Owners, then the Board may, by approval of a majority of the voting Directors, assess the Common Expense or portion thereof exclusively against the Lots benefited or adjust the assessment for such Common Expense in such proportion and may be equitable and appropriate. Annual and special association assessments shall not be levied against Unbuilt Lots.

4.3.3 The Common Expenses for the operation, maintenance, repair and replacement of Limited Common Area shall be allocated in equal shares exclusively against the Lot or Lots that have exclusive use of such Limited Common Area. Such Common Expenses allocated to Limited Common Area shall not include the cost of insurance obtained by the Association pursuant to Article 6 of this Declaration.

4.3.4 At the election of the Board of Directors, the cost of utility services for the Common Areas and/or for commonly metered or bulk utility services provided to Lots which constitute Common Expenses (such as water, sewer, gas and electric services) and which are billed to the Association by any utility service provider, may, in turn, be allocated and billed each month (or other periodic basis) by the Association as a separately billed utility assessment against those Lots receiving the benefit of such utility services. Each Lot's allocated share of any such utility assessment shall be equal to the Allocated Interest of the Lot. Each Lot Owner covenants and agrees and shall be obligated to pay to the Association the utility assessment billed to the Owner's Lot.

4.3.5 At the election of the Board of Directors, the Association may contract for common trash and/or recycling collection services, which services shall constitute Common Expenses of the Association.

Section 4.4 Date of Commencement of Annual Assessments. No Lot which is an Unbuilt Lot shall be obligated to pay annual assessments. The annual assessments shall apply to all Lots (other than Unbuilt Lots) which are within the Community and subject to the Declaration and shall commence at such time as the Board of Directors may determine. After commencement of annual assessments as provided in the first sentence of this Section, annual assessments shall be based on an annual budget proposed by the Board of Directors and not vetoed by the Owners, as provided in this Declaration. The annual assessments shall be due and payable in monthly installments, in advance, on the first day of each month, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines, provided that the first annual assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

Section 4.5 Special Assessments. In addition to the annual assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, maintenance, repair or replacement of Common Areas, Maintenance Areas and Improvements for which the Association has construction, maintenance, repair or replacement obligations, including fixtures and personal property related thereto, or for repair or replacement of any damaged or destroyed Common Areas, Maintenance Areas and Improvements, or for the funding of any expense or deficit of the Association. Any such special assessment shall be set against each Lot, other than Unbuilt Lots, in accordance with their Allocated Interest. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with Section

4.6 hereof.

Section 4.6 Notice and Quorum for Any Special Assessments. Within thirty (30) days after adoption of any proposed special assessment for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the special assessment to all the Owners and shall set a date for a meeting of the Owners to consider the special assessment not less than ten (10) days nor more than fifty (50) days after mailing or other delivery of the summary. The special assessment proposed by the Board does not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at the noticed meeting by owners of Lots voting in person or by proxy to which at least sixty-seven (67%) of the votes in the Association are allocated, whether or not a quorum is present.

Section 4.7 Assessments/Charges for Services to Less Than All Lots. The Association may provide services to less than all of the Lots. If such services are not funded by the Association's annual or special assessments, then the Owner(s) of the applicable Lot(s) shall promptly, after demand, pay to the Association the anticipated costs, fees and expenses for such services and/or reimburse the Association for the incurred costs, fees and expenses. However, all Assessments for the regular planned maintenance, repair and replacement of the Common Areas and the Maintenance Areas, if any, shall be a general assessment against all Lots even though such maintenance, repair and replacement work may be accomplished in phases benefiting fewer than all of the Owners at any given time.

Section 4.8 Association Lien.

4.8.1 The Association has a statutory lien on a Lot for any amount levied against that Lot or the Owner(s) thereof, including for fines imposed against the Lot's Owner(s). Fees, charges, late charges, attorney fees, fines and interest and other amounts charged pursuant to this Declaration are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

4.8.2 Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Board of Directors, any officer of the Association or any managing agent of the Association, may prepare and record in the county in which the applicable Lot is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the assessments for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate in accordance with applicable law.

Section 4.9 Priority of Association Lien. A lien under this Article shall have a priority with respect to all other liens and encumbrances as established in accordance with the applicable

provisions of CCIOA.

Section 4.10 Certificate of Status of Assessments. The Association shall furnish to an Owner, or such Owner's designee, or to a First Mortgagee or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments, if any, currently levied against such Owner's Lot. The statement shall be furnished within a reasonable time after receipt of the request and is binding on the Association, the Board of Directors and every Owner. The Association or its agents shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 4.11 Application of Payments; Effect of Non-Payment; Remedies of the Association.

4.11.1 If an Owner who has both unpaid assessments and unpaid fines, fees, or other charges makes a payment to the Association, the Association shall apply the payment first to the assessments owed and any remaining amount of the payment to the fines, fees, or other charges owed.

4.11.2 Any assessment or other amounts not paid within ten (10) days after the due date thereof may bear interest from the due date at such lawful rate as may be set from time to time by the Board of Directors, and to the extent not prohibited by law the Board of Directors may charge a periodic late charge in such amount(s) and for such period(s) as may be set by the Board of Directors. The Association may bring an action at law against the Owner(s) personally obligated to pay the same, or foreclose the lien against such Owner's Lot in accordance with applicable law. If a judgment or decree is obtained, including in a foreclosure action, such judgment or decree shall include reasonable attorney's fees, together with the costs of the action, and may include interest and late charges, as above provided. No Owner shall be exempt from liability for payment of assessments by waiver of the use or enjoyment of any of the Common Area or by abandonment of the Lot against which the assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

Section 4.12 Surplus Funds. Any surplus funds of the Association remaining after payment of, or provision for, Association expenses, and any prepayment of or provision for reserves, shall be retained by the Association, and need not be paid to the Owners, or credited to them.

Section 4.13 Working Capital Fund and Transfer Fee.

4.13.1 At the closing of the first sale of a Lot to an Owner, other than a Declarant, who purchases the Lot from Declarant, a non-refundable contribution shall be made by such Owner to the working capital fund of the Association in an amount equal to two (2) months' of assessments then in effect against the Lot, regardless of whether or not annual assessments have

commenced as provided in Section 4.4 hereof. Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Lot and shall be for the use and benefit of the Association, including to meet expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the later sale or transfer of a Lot, an Owner shall not be entitled to a credit from the Association for the aforesaid working capital fund contribution. Upon each later sale or transfer of a Lot, the Association shall collect a New Member Fee upon each transfer of title to a Lot. The New Member Fee shall be charged to, and payable by, the grantee of the property, to the Association at the closing of the transfer, and shall be secured by the Association's lien for Assessments. The New Member Fee to the Association is initially established to be an amount equal to two (2) months' of assessments then in effect and shall be due upon the closing of the sale of the Lot. By duly adopted resolution, the Board of Directors may change the amount of the New Member Fee from time to time. Notwithstanding the above, neither the New Member Fee nor the administrative or transfer fee set forth in Subsection 4.13.2 below shall be levied upon transfer of title to property: (i) to a Declarant; (ii) to the Association; (iii) by a co-Owner to any Person who was a co-Owner immediately prior to such transfer; (iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner; (v) to an entity wholly owned by the grantor, to a spouse, or to a family trust created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the transfer fee shall become due; or (vi) to an institutional lender as security for the performance of an obligation pursuant to a mortgage or deed of trust encumbering the Lot.

4.13.2 The Association is authorized to impose and collect from a transferee of a Lot an administrative or transfer fee to cover administrative costs related to membership transfer, other than exempt transfers as set forth herein. The transfer fee shall be charged to, and payable by, the grantee of the property, to the Association at the closing of the transfer, and shall be secured by the Association's lien for assessments. The transfer fee to the Association is initially established to be the amount of Two Hundred Dollars (\$200.00), and shall be due upon the closing of the sale of the Lot. By duly adopted resolution, the Board of Directors may change the fee from time to time.

Section 4.14 Other Amounts and Charges. The Association may levy and assess amounts, charges, costs and fees, for matters such as, but not limited to, the following, in such amounts(s) as the Board of Directors may determine, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; returned checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; notices and demand letters; fines; and other amounts and charges incurred by the Association. All such amounts, charges, costs and fees, shall be in addition to the assessments levied by the Association, but shall be subject to all of the Association's rights and lien with respect to the collection and enforcement of assessments.

Section 4.15 Charges for Misconduct. If any Association expense is caused by the misconduct of any Owner or any of the Owner's Permittees, the Association may assess that

Association expense exclusively against such Owner and his Lot.

In addition, the Association may suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any other infraction of any of the Governing Documents.

ARTICLE 5 DESIGN REVIEW

Section 5.1 Required Reviews and Approvals; Declarant Exemption.

5.1.1 Alterations/Improvements. Except for those Improvements erected, constructed or installed by Declarant in its completion of the Community, no additions to, alterations or decoration of any Lot, including, but not limited to any structural alterations to any Townhome or Common Area, nor any changes to storm, screen or security doors and/or windows, or fences, walls, balconies or other structures, nor installation of window mounted air conditioning units or awnings, or any Improvement of any type shall be commenced, erected, placed or maintained, without the prior written approval of the Board, and subject to all laws, ordinances, regulations or other restrictions limiting or precluding alteration of the Townhomes. Without limiting the foregoing, after the purchase of a Lot from the Declarant, no Improvements shall be constructed or maintained upon the Property; no alterations or re-staining or repainting of the exterior of a Townhome shall be made by any Owner; no landscaping performed by any Owner; and no Owner shall enclose, by means of screens or otherwise any balcony, porch or patio, without the prior written approval of the Board. The provisions of Section shall not apply in any way or manner whatsoever to the Declarant or any Lot owned by Declarant and shall not in any way limit the exercise of Declarant's Development Rights or Special Declarant Rights.

ARTICLE 6 INSURANCE

Section 6.1 Insurance. The Association shall maintain insurance as required by CCIOA and other applicable law, including the following types of insurance to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as Common Expenses. In addition, the Association may maintain such insurance on such other property as the Board of Directors may determine in its discretion from time to time, or as may be hereinafter required. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any of the Agencies with respect to their insurance, guaranty, or purchase of First Mortgages.

6.1.1 Casualty. A master property insurance policy for broad form covered causes of loss over the following: all insurable Improvements located on the Lots, including the exterior structural components and exterior finished surfaces of the Townhomes (including the wall studs, rafters and subfloors of the Townhomes, but specifically excluding the exterior doors, windows, wall board, drywall, finished flooring, interior finished surfaces of the walls, floors and ceilings of the Townhomes and all fixtures, furnishings, equipment,

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

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

6.1.2 Public Liability. Comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area and in connection with the Association's maintenance responsibilities for the Townhomes, as provided in Section 5.1, in such limits as the Board of Directors of the Association may, from time to time, determine, but not in an amount less than \$1,000,000 per occurrence, insuring the Board of Directors, the Association, any managing agent, and their respective employees, agents and all persons acting as agents. The Declarant shall be included as an additional insured in the Declarant's capacity as a Lot Owner and Board member. The Lot Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area and in connection with the Association's maintenance responsibilities for the Townhomes.

6.1.3 A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Community and/or any Owner who disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate assessments on the Lots, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Community to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subsection (c).

6.1.4 If any Common Areas are located within an area identified by the

Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on such parcels in an amount at least equal to the lesser of: (i) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or (ii) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

6.1.5 In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

Section 6.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. Additionally, each Owner and each Eligible Mortgagee shall be beneficiaries of the policy in a percentage equal to the Owner's Allocated Interest. The policy or policies shall contain a standard non-contributors' clause in favor of each Eligible Mortgagee and a provision, if available, that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days prior written notice thereof is given to the insured and each Eligible Mortgagee. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any Owner or member of such Owner's household. Further, all policies of insurance carried by the Association shall also no act or omission by any unit owner, unless acting within the scope of such unit owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

Section 6.3 Deductibles. The Association may adopt and establish written non-discriminatory rules and regulations, or policies and procedures, relating to the responsibility for deductibles. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association, may be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, may be apportioned among the Persons sharing in a joint duty of repair and maintenance, and/or may be partly or wholly borne by the Association, and/or may be shared by any such Person(s) and the Association, all at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss, or any portion thereof, may be assessed to the Owner(s) in question and the Association may collect such amount(s) from said Owner(s) in

the same manner as any assessment.

Section 6.4 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Section 6.1 hereof, must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any First Mortgagees. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and First Mortgagee as their interests may appear. Subject to the provisions of Section 7.1 of this Declaration (Damage or Destruction), the proceeds must be disbursed first for the repair, restoration or replacement of the damaged property; and the Association, Owners and First Mortgagee are not entitled to receive payment of any portion of the proceeds, unless there is a surplus of proceeds after the property has been completely repaired, restored or replaced and any budget or reserve deficit funded, or unless the Community is terminated.

Section 6.5 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be the primary insurance not contributing with any of such other Owner's insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

Section 6.6 Acceptable Insurance Companies. Each insurance policy purchased by the Association must be written by an insurance carrier that is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 6.7 Insurance to be Maintained by Owners.

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

same property or loss, or any portion thereof, which is covered by such Association policy such Association policy shall be primary insurance not contributing with any of such other insurance.

6.7.2 Hazard Insurance for Unit Interior Improvements. To the extent not covered under the Association policies (but such Association policies shall only cover the condition of any Townhome as of the day of the initial closing on the Townhome), the Owner of each Townhome will procure and maintain, or cause to be procured and maintained, at its expense an HO-6 (condominium/townhome owner's) policy or any then current comparable form of owner's insurance policy generally available for all risks of physical damage including but not limited to damage by fire, water damage, vandalism, malicious mischief, sprinkler leakage, in amounts not less than one hundred percent (100%) of the full replacement cost of all "Interior Improvements" of the Townhome, and shall also include Loss Assessments coverage in the minimum amount of \$50,000 (or in such higher amount recommended by the Board of Directors of the Association from time to time). For purposes of this Section 6.7.2, the term "Interior Improvements" means everything within the interior of the Townhome from the "walls-in" (meaning inside the wall studs, rafters and subfloors of the Townhomes), specifically including the exterior doors, windows, wall board, drywall, finished flooring, interior finished surfaces of the walls, floors and ceilings of the Townhomes and all fixtures, furnishings, equipment, improvements and personal property of any kind located within the Townhomes. The insurable replacement cost of the Interior Improvements of each Unit will be based on the most recent appraisal provided by a qualified appraiser, as updated from time to time in accordance with policy requirements. Notwithstanding the foregoing insurance requirements and guidelines or any recommendations from the Board of Directors, each Owner is responsible for ensuring that the level of insurance coverage on his or her Townhome is sufficient.

6.7.3 Liability Insurance. Each Owner of a Lot shall obtain and maintain general liability insurance coverage for a minimum limit of \$500,000 for bodily injury, including death and property damage arising out of a single occurrence or in the aggregate; provided that the Association, in its reasonable discretion, shall have the right to require greater coverage, from time to time, upon 90 days' written notice to all Owners. Such liability policies shall insure such Owner, its guests, tenants, invitees and their respective agents and employees from liability in connection with the operation, maintenance and use of the Lot and must include a "severability of interest" clause or specific endorsement. The Association and other Owners shall not be responsible for any claims, losses, injuries, or damages that result from the acts or omissions of the other Owners, their agents, tenants, invitees, or guests that occur at or in the Lot. In addition, any liability policy obtained by an Owner shall name the Association and the property manager (if any) as additional insureds. Liability coverage within each Lot shall be the sole and direct responsibility of the Owner thereof; and the Association, its Board of Directors and/or the property manager shall have no responsibility therefor. Owners may carry other insurance for their benefit and at their expense, including but not limited to loss of use, loss of rents and special assessment coverage, provided that all such policies shall contain waivers of subrogation for the benefit of the Association, and provided further that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished due to additional insurance carried by any Owner.

6.7.4 Failure to Obtain Insurance. In the event an Owner fails to procure and maintain any insurance required to be procured and maintained by the Owner under this Article 6, and an uninsured loss occurs that would have otherwise been covered under the insurance required to be procured and maintained by the Owner, such Owner shall be liable to the Association for the loss suffered, and the Association shall be entitled to recover such amounts from the Owner in the same manner as any other debts owed to the Association. In addition, in the event an Owner fails within 30 days after notice from the Association to procure and maintain any insurance required to be procured and maintained by the Owner under this Article 6, the Association may (but shall have no obligation to) procure and pay for such insurance and charge such Owner responsible as a default Assessment.

Section 6.8 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Board of Directors or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance. Any First Mortgagees shall be furnished with a copy of such appraisal upon request.

ARTICLE 7 DAMAGE OR DESTRUCTION

Section 7.1 Damage or Destruction of Improvements.

7.1.1 Any portion of the Community which is covered by a policy of insurance which is required to be carried by the Association under this Declaration and which is damaged or destroyed must be repaired or replaced promptly by the Association unless: (i) the Community is terminated; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; (iii) sixty-seven percent (67%) of the Owners, including every Owner of a Lot that will not be rebuilt, vote not to rebuild; or (iv) prior to the conveyance of any Lot to a Person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

7.1.2 The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is a Common Expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the liability for Common Expenses of all the Lots.

Section 7.2 Use or Distribution of Insurance Proceeds. In the event of damage or destruction to all or a portion of the Common Areas due to fire or other casualty, the cost of repair or replacement of which is covered by insurance carried by the Association, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to

such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed area, the Association shall levy a special assessment in the aggregate amount of such insufficiency pursuant to Section 4.5 hereof, but without approval of the Owners, and shall proceed to make such repairs or reconstruction. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and any First Mortgagee of their respective Lots. The assessment provided for herein shall be a debt of each Owner and a lien on the Owner's Lot and the Improvements thereon, and may be enforced and collected in the same manner as any assessment provided for in this Declaration.

Section 7.3 Attorney-in-Fact. All of the Owners and First Mortgagees irrevocably constitute and appoint the Association as insurance trustee under C.R.S. § 38-33.3-313(5) and (9) and under this Declaration and as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Community in the event of their destruction, damage, condemnation, or liquidation of all or a part of the Community or from the termination of the Project, including without limitation the repair, replacement and improvement of any buildings, fixtures, improvements and service equipment located on the Community (but excluding any furniture, furnishings or other personal property installed by the Owners). Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. As attorney-in-fact, the Association, by its President or Secretary or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the power herein granted and to represent the Owners in any proceedings, negotiations, settlements or agreements. The proceeds of any insurance collected shall be payable to the Association, for the benefit of the Association, the Owners and their First Mortgagees as their interests appear, for the purpose of repair, restoration, reconstruction or replacement as provided in this Declaration. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact to deal with the Project upon its destruction, damage, or condemnation shall be appointed. Said appointment must be approved by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, and at least sixty-seven percent (67%) of the First Mortgagee. Notwithstanding any contrary provision of this Declaration, the Association's Articles of Incorporation and Bylaws, no Owner or any other party shall have priority over any rights of the First Mortgagees of the Lot pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of any Project common property.

Section 7.4 Party Walls.

7.4.1 The common walls adjacent to the common boundaries separating the Townhomes, as well as the footings underlying such walls, and any shared driveways and

fences are collectively referred to in this Agreement as the "Party Wall".

7.4.2 To the extent not inconsistent with this Declaration, the general rules of law regarding party walls and liability for damage due to negligence, willful acts or omissions shall apply to the Party Wall.

7.4.3 The Owners of each Townhome shall have a perpetual easement in and to that part of the other Townhome on which a Party Wall is located, for party wall purposes, including mutual support, maintenance, repair and inspection. In the event of damage to or the destruction of any Party Wall from any cause, then at joint expense of the Owners, a Party Wall shall be repaired or rebuilt, and each Owner, shall have the right to the full use of said Party Wall so repaired or rebuilt. Notwithstanding anything contained above to the contrary, if the negligence, willful act or omission of any Owner, his family, agent or invitee, shall cause damage to or destruction of, a Party Wall, such Owner shall bear the entire cost of repair or reconstruction, and an Owner who by his negligent or willful act causes the Party Wall to be exposed to the elements shall bear the full cost of furnishing the necessary protection against such elements.

7.4.4 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the Party Wall in proportion to such use. The Owners of each Lot shall have a perpetual easement in and to that part of the other Lot on which a Party Wall is located, for party wall purposes, including mutual support, maintenance, repair and inspection.

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

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

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

7.4.8 Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Section 5.5, each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by an Owner, the Executive Board of the Association shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall

pay its own attorney's fees.

ARTICLE 8 EXTERIOR MAINTENANCE

Section 8.1 Association Maintenance.

8.1.1 The Association shall maintain, repair and replace the following in first class condition as follows:

(a) All repair, replacement, improvement and maintenance of the Common Area and Limited Common Area and all Improvements located thereon, the Maintenance Area as provided in Section 1.20 herein or as provided in writing by the Board, and any property owned by the Association. The Association's maintenance obligation shall specifically include all private roadways, utility lines (including any common utilities within a Lot or Townhome which also serve another Townhome, and also any lines located outside of the exterior walls of a Townhome but not including any maintenance which is the responsibility of any public or private utility company or entity), any drainage structures or facilities of public improvements to the extent applicable and set forth in C.R.S. § 38-33.3-307(1.5), all water lines located within the private streets within the Planned Community and other portions of the Common Area, any light fixtures, sidewalks, pathways, or other Improvements located on the Common Area.

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

(c) The Association may also undertake, but shall have absolutely no obligation to undertake, such emergency repairs to any portion of the Community, including a Lot or Townhome, that the Executive Board believes necessary to prevent imminent danger to life or property.

8.1.2 The costs, expenses, fees and other amounts to be expended for the maintenance and repair provided for in this subsection shall, subject to Section 8.3 of this Article, be collected by the Association as assessments to Article 4 hereof. The Association shall have the sole right to determine the times, frequency and extent of performing its maintenance, repair and/or replacement work, including without limitation painting, snow plowing and shoveling, watering

and mowing. Notwithstanding any limitation in this Declaration, the Association may, in its sole discretion, elect not to replace certain landscape materials or elect to replace certain building or landscape materials with different types or kinds of materials if the Board determines that the appearance of the Community will not be adversely and materially affected. The Association and each Owner, and their agents and contractors, are hereby granted an easement as necessarily required for the purpose of maintenance and repair of the Owner's Lot on, over, across, under and through the Lots upon reasonable notice to the Owner thereof. Any damage occurring to such adjacent Lot or the Improvements thereon in performing such repairs or maintenance shall be the responsibility of the party performing or authorizing such repairs or maintenance. Except as specifically provided herein, the Association's maintenance obligation does not include Improvements or landscape on the rear yard of a Lot or snow removal or shoveling of sidewalks or driveways on the Lots, or located within an adjacent public right-of-way to a Lot. In no event shall the Association, Declarant or the Board, be responsible for removal of ice, or repair of damage caused by snow and ice to property not owned or maintained by the Association, or injuries, caused by snow and ice or slippery conditions.

8.1.3 Access at Reasonable Hours. For the purpose of performing the maintenance referred to in Section 8.1 of this Article and inspections related thereto, the Board of the Association, through its duly authorized agents, contractors or employees shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Lot and Improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Board or its agents, contractors or employees may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its action, except of its gross negligence or willful misconduct.

Section 8.2 Owner Maintenance. Except with respect to maintenance and services performed by the Association under Section 8.1 of this Declaration, each Owner shall be solely responsible for the proper and timely maintenance and repair of the interior and exterior of the Townhome upon his or her Lot including fixtures and improvements and all utility lines and equipment located therein and serving such Lot only, including without limitation all appurtenances which are used solely in connection with the Owner's Lot such as the garage, porch, patio, private walkway, fireplace or flue, if any, which is accessible from such Owner's Lot, and any portion of sidewalk serving the Community located upon such Owner's Lot, all of which shall all be kept in good, clean, and attractive condition, and in good order and repair. All exterior windows (including window seals) and doors shall be properly maintained in good, clean, attractive condition on all portions of the Townhomes, and promptly repaired or replaced in the event of the breakage of glass or the failure of window seals. All gutters and downspouts shall be properly maintained in good, clean, attractive condition on all portions of the Townhomes; with gutters and downspouts kept cleared of leaves and debris to ensure proper operation above. Owners shall be responsible for removing snow, leaves, and debris from all driveways, sidewalks, patios and balconies, located upon the Owner's Lot. Each Owner shall not disturb or alter the established grading on his Lot (including grading around the foundation of the Townhome

constructed thereon).

Section 8.3 Acts or Omissions. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement of or within any property or Improvement, is caused by the act or omission of any Owner, or by the act or omission of such Owner's pets or Permittees, the cost of such repair, maintenance, replacement or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or replacement shall be added to the assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Article 4 of this Declaration. A determination of the act or omission of any Owner, or such Owner's Permittees, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner.

ARTICLE 9 RESERVED

ARTICLE 10 RESTRICTIONS

Section 10.1 General Plan; Restrictions Imposed. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Community. This Community is subject to the Recorded easements, licenses, and other matters listed on **Exhibit C** attached hereto and incorporated herein by this reference, as well as all provisions of any plat and/or final development plan applicable to the Community or any portion thereof. In addition, the Declarant declares that the Community (including all of the Lots therein) shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the provisions, conditions, limitations, restrictions, agreements and covenants contained elsewhere in this Declaration. All Owners and occupants of any Lot shall comply with the provisions, conditions, limitations, restrictions, agreements and covenants contained in this Declaration.

Section 10.2 Use Restrictions on Timeshares. Timeshare estates may not be created and are not permitted within the Community.

Section 10.3 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it is permissible and proper for Declarant, and their employees, agents and contractors, to perform such reasonable activities, and to maintain upon portions of the Lots and Common Area such facilities as they deem reasonably necessary or incidental to the development, construction and sale of Lots, and development and construction of Improvements, specifically including, without limiting the generality of the foregoing, maintaining management offices, signs, model units, construction offices, trailers and sales offices, in such numbers, of such sizes, and at such locations (including but not limited to Lots owned by Declarant, any passive or active recreational amenity constructed by Declarant as Common Area and other locations) as they determine in their reasonable discretion from time to time. Nothing in this Declaration limits the rights of the Declarant to conduct all construction, sales and marketing activities as the Declarant deems necessary or desirable in its sole discretion and to use the easements provided in this

Declaration or otherwise of record for those and other purposes. Further, nothing in this Declaration limits the right of the Declarant or requires the Declarant to obtain approvals: (a) to excavate, cut, fill or grade any property owned by the Declarant or to construct, alter, demolish or replace any Improvements; (b) to use any structure on the Common Area or on any property owned by Declarant as a construction, management, model home or sales or leasing office in connection with the development, construction or sale of any property; and/or (c) to require Declarant to seek or obtain the approval of any Design Review Committee or of the Association for any activity or Improvement. Notwithstanding the foregoing, the Declarant shall not perform any activity or maintain any facility on any portion of the Lots in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with the use, enjoyment or access of such Owner, his family members, guests or invitees, of and to the Owner's Lot and to a public right-of-way.

Section 10.4 Vehicular Parking. No Owner and no Permittee of an Owner shall park or permit to be parked any vehicle upon an alley, sidewalk, roadway or any driveway (i) in such a manner as to block, impair or impede access to any other Owner's garage, (ii) in violation of any posted parking signs, or (iii) in violation of the Association's rules and regulations. No parking is permitted on a fire access lane and fire access lanes must be kept clear and passable by passenger and emergency service vehicles at all times. The Association may post and maintain no parking signs on fire access lanes and any motor vehicle that is parked in violation of this provision or in violation of posted parking signage will be subject to immediate tow. The Board may adopt rules and regulations further restricting parking within the Community and is authorized to further provide for the enforcement of this Section through the adoption of enforcement policies contained in the rules and regulations of the Association. To the extent not prohibited by law, the Association shall have the authority and power in accordance with applicable law to remove or cause to be towed any vehicle which is parked in violation of this this Section 10.4 at the sole expense of the owner thereof and to immediately tow vehicles parked in violation of posted parking restrictions. No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked outdoors in the Community. The Board is authorized to adopt rules and regulations defining an "abandoned or inoperable vehicle" and setting forth additional regulations and restrictions applicable to abandoned or inoperable vehicles.

Section 10.5 Use of Common Areas. There shall be no obstruction of the Common Areas, nor shall anything be kept or stored on any part of the Common Areas without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Areas without the prior written approval of the Association.

Section 10.6 Right of Board Regarding Rules and Regulations. In furtherance of the purposes of this Declaration, and subject to the Board's duty to exercise judgment and reasonableness on behalf of the Association, the Board may adopt, amend or repeal Rules and Regulations concerning and governing the Community or any portion thereof ("Rules and Regulations"). The Board may establish and enforce penalties for any infraction thereof.

Section 10.7 Satellite Dishes. In order to preserve the aesthetic character of the Community and all Lots, any type of satellite dish or receiver or antenna of any kind shall, if in

compliance with any other requirement of this Declaration, be installed on the roof of the respective, and otherwise in a manner best able to minimize any obstruction of any other Lot's light or living space and to minimize any change in the aesthetic character of the Property. No satellite dish or antenna may exceed one (1) meter in diameter. In the event any of these provisions are in violation of any federal, state or municipal law or code which would deem such a restriction to be invalid by its terms, this section shall be deemed to be only as restrictive as allowed by such laws or ordinances determined by court or other controlling opinions or if no such restrictions would be allowed, this subsection shall be deemed void and shall not affect any other section or clause in this Declaration.

Section 10.8 Noxious or Offensive Activities. No noxious or offensive activity shall be carried on upon any part of the Community nor shall anything be done or placed on it or in any part of the Community which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others. No activity shall be conducted on any part of the Community and no improvements shall be made or constructed on any part of the Community which are or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Community which is unreasonably loud or annoying. No odor shall be emitted on any part of the Community which is noxious or offensive to others.

Section 10.9 Pets. No animals, livestock, insects or poultry or other animals of any description shall be kept or maintained on any Lot, except that any Owner or a tenant may keep a reasonable number of domesticated birds or fish or small domestic animals permanently confined indoors. No other animals, except for an aggregate of not more than two domesticated animals per Lot will be permitted in the Community, so long as such pets comply with the Board's Rules and Regulations, are not kept for commercial purposes, do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent property, and are kept in compliance with all existing applicable local ordinances and any Rules and Regulations of the Association. The Board shall have the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this paragraph. Such action may include, after providing notice to the Owner and the opportunity to be heard, an order directing the permanent removal of the pet or pets from the Community. Owners shall hold the Association and the Board harmless from any claim resulting from any action concerning a pet. An Owner is responsible for any damage caused to the Property by his or his tenant's pet and shall be obligated to clean up after any pet while it is on the Property. All dogs shall be kept on leash and attended by their owners when present in the Common Areas. The Board may institute such Rules and Regulations as it deems advisable for the control of pets, including without limitation, prohibitions and restrictions (including the right to establish limits on the number, weight and size of the pets that may be kept, and the right to prohibit particular breeds of dogs in order to comply with the Association's liability insurance requirements), and may impose such fines as are necessary in its sole discretion to enforce such rules and this Declaration.

Section 10.10 Unsightliness. No unsightliness or waste shall be permitted on or in any

exterior part of the Community. No person or Owner shall keep or store anything in open view or in any part of the Community, nor shall any person or Owner bring, erect, affix or place anything in open view upon any part of the Community and nothing shall be placed on or in any part of the Community except inside an Owner's garage.

Section 10.11 Boats and Recreational Vehicles and Other Items. Except as provided for by applicable land use laws or ordinances, no boats, recreational vehicles and similar crafts, vehicles, trucks, commercial vehicles, trailers, mobile homes or detached camper units or any other items shall be kept, stored, parked or maintained in open view on or in any part of the Community except inside an Owner's garage.

Section 10.12 Use and Occupancy Restrictions. Each Lot shall be restricted to residential use. No Lot shall be occupied for living or sleeping purposes by more persons than the Lot was designed to safely accommodate. Lots shall be used and occupied primarily for a residence and secondarily for a home office if the home office complies with the following criteria: (i) no goods or merchandise may be produced, stored, displayed or sold as a part of the business conducted at the home office; (ii) only one other person not a resident in the Lot may be employed or associated with the business conducted at the home office; (iii) no separate entrance to the home office shall be permitted; (iv) no signs identifying the home office shall be permitted and (v) such use complies with the land use regulations of the City of Fort Morgan, State of Colorado and the County of Morgan, State of Colorado.

Section 10.13 Signs and Advertising. Except as provided for by applicable regulations or the Act (specifically C.R.S. § 38-33.3-106.5), no sign or advertising device of any nature shall be erected or maintained on any exterior part of the Community without the prior written consent of all of the Board; provided, however, one "for sale" or "for rent" sign of reasonable size and content may be displayed without Board approval.

Section 10.14 Trash and Recycling Receptacles. Trash and recycling receptacles owned and maintained by each Owner shall remain inside their own garage and taken to any common dumpster or other trash receptacle on the appropriate trash or recycling day. Owners shall have the duty to promptly return any trash receptacle to their garage or otherwise to the interior of their Townhomes. Common trash and recycling services (if reasonably available) may be provided by the Association as a Common Expense at the Board's discretion.

Section 10.15 Rentals. All leases and rental agreements shall be in writing. The minimum lease term is six (6) months. Short term rentals (less than 30 days), Airbnb or similar uses are not permitted in the Community. No more than twenty-five percent (25%) of Lots may be leased or rented at any given time. The Association shall keep a list of existing leases, with availability for new leases on a first come, first served basis. The Board may create additional Rules and Regulations governing the lease or rental of Lots at its discretion.

Section 10.16 Open Burning. The open burning of wood (or any products other than propane, natural gas or charcoal briquettes) is prohibited anywhere upon the Community. No Owner shall permit any condition upon a Lot which creates a fire hazard or is in violation of

applicable fire prevention regulations.

ARTICLE 11 PROPERTY RIGHTS IN THE COMMON AREA

Section 11.1 Owners' Easements of Enjoyment. Subject to this Article, every Owner shall have a non-exclusive right and easement for the purpose of access to such Owner's Lot and for use for all other purposes, in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 11.2 Extent of Owners' Easements. The Common Area, if any, may not be used in any manner which violates the statutes, rules, or regulations of any governmental authority with jurisdiction over the Common Area; and no Owner may place any structure on the Common Area. In addition, such rights and easements are subject to the following rights of the Association which may be exercised by the Board of Directors: (a) To borrow money for the purpose of improving the Common Area and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Area to a First Mortgage except in accordance with CCIOA; and (b) to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and (c) to promulgate and publish rules and regulations, standards, guidelines, and policies and procedures, with which each Member and each Permittee shall strictly comply, including the right to regulate and/or restrict vehicular parking and Improvements; and (d) to suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Governing Documents; and (e) to dedicate or transfer fee title to all or any part of the Common Area owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless the same is done in accordance with CCIOA; provided, however, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed a transfer within the meaning of this subsection; and (f) to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, Permittees, or other Persons for any purpose(s) the Board of Directors may determine; (g) the right of Declarant (until termination of the Special Declarant Rights) or the Association's Board (after termination of the Special Declarant Rights) to assign or allocate any part of the Common Area to be a Limited Common Area, for the exclusive use of a particular Owner and (h) to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area. Any Common Area owned by the Association is not dedicated for use by the general public.

Section 11.3 Limited Common Area. Subject to the terms and provisions of this Declaration, every Owner or group of Owners shall have the right to use and enjoy any Limited Common Area appurtenant to such Owner's Lot, and such right shall be exclusive except as to those other Owners with a right to use such Limited Common Area; and Declarant hereby reserves to itself the right to assign or convey as Limited Common Area appurtenant to a particular Lot, with or without consideration, the exclusive right to use any area of the Common Area. Upon such

disposition, the area shall be appurtenant to the Lot and shall pass with title thereto, regardless of whether or not specifically referenced in the deed or other instrument of conveyance of a Lot.

Section 11.4 Use of Common Area by Declarant. An easement is hereby reserved by the Declarant on, over, across and through the Common Area, and each portion thereof, as may be desirable for the purpose of exercising or discharging any of Declarant's rights or obligations, or exercising any Special Declarant Rights, and no Owner shall engage in any activity which will temporarily or permanently interfere with the Declarant's easements on, over, across and through the Common Area.

Section 11.5 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

Section 11.6 Payment of Taxes or Insurance by First Mortgagee. First Mortgagee shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may be or have become a lien against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and any First Mortgagee making any such payments shall be owed immediate reimbursement therefor from the Association.

Section 11.7 Designation of Common Area. Declarant, in Recording this Declaration, has designated and/or may hereafter designate certain areas of land as Common Area and as Limited Common Area intended for the common use and enjoyment of Owners for recreation and other related activities, as provided in this Declaration and other applicable documents. The Common Area owned by the Association is not dedicated hereby for use by the general public.

Section 11.8 Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept ownership and/or title to any property, including Common Area and Improvements thereon, as well as personal property, equipment, and easements, transferred to the Association by the Declarant, together with responsibility to perform all duties and functions incidental to ownership or beneficial use of such property, Improvements, personal property, equipment and easements, including the obligation to perform and pay for all necessary and proper operation, maintenance and repair duties and functions related to such property, Improvements, personal property, equipment and easements. The Association shall accept such transfer upon the tender of transfer of ownership or title by the Declarant to the Association. At any time thereafter that the Declarant makes written request, the Association shall promptly furnish to Declarant a written confirmation of transfer that includes the Association's acknowledgement that the Association has accepted the transferred property for all ownership, operation, maintenance and repair purposes. As of the date this Declaration is Recorded, interests which are planned to be transferred by the Declarant to the Association consist only of Common Area as identified as Common Area on the attached **Exhibit B**.

Section 11.9 Title to the Common Area. Subject to the limitations and restrictions of this Declaration, title to the Common Area shall be conveyed in fee simple, free and clear of all

encumbrances, by the Declarant to the Association, prior to the conveyance of the first Lot in any phase.

Section 11.10 Owners' Common Area Easement of Enjoyment. Subject to the limitations and restrictions of this Declaration, every Owner shall have an equal, nonexclusive right and easement of enjoyment in and to the Common Area, including without limitation the right of ingress and egress to and from the Owner's Lot, his parking area, any private street, any access easement, or any recreational facilities completed upon the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot without the necessity of additional reference.

Section 11.11 Other Easements. In addition to the Owners' Common Area Easement, the Community shall be subject to the following:

(a) Utility Easements. Notwithstanding any provision of this Declaration to the contrary, Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through and upon the Property for the purpose of installing, maintaining, repairing and placing any utilities or related services, including but not limited to any gas, electric, water or sewer line, mains or laterals, any telephone and cable television lines, any heating or cooling installations, any master television antenna system, or for other public purposes consistent with the intended use of the Property under this Declaration. The foregoing easements shall include, without limitation, the right of ingress and egress, the right to erect and maintain the necessary pipes, poles and other equipment, subject to the restrictions of Section 7.18, and the right to enter into agreements relating to such utility services and easements; all of which shall be binding upon the Association and the Owners. Should any person or party furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the Property without conflicting with the terms hereof. The foregoing easement shall be in addition to any other recorded easements on the Property, including, but not limited to, any easements granted in the recorded subdivision map. Notwithstanding any other provision contained in this Section 2.4(a), no easements shall be granted pursuant to this Section 2.4(a) which shall unreasonably interfere with an Owner's use of his or her lot. The rights reserved herein for Declarant shall pass to the Association upon the termination of the Development Period, and any and all of the covenants, terms, provisions, rights and duties arising from such easements granted by the Declarant and any related agreements shall thereupon pass to the Association and be assumed by it in place of the Declarant. Any consideration for any such easement shall be delivered to and become the property of the Association, whether the grant of easement was made by the Declarant or by the Association.

(b) Maintenance Easement. A non-exclusive easement is hereby granted to the Association, their respective officers, agents, employees and assigns upon, across, over, in and under the Common Area and any Lot as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration or otherwise, including without limitation any maintenance required or permitted hereunder, any of Declarant's rights, inspection, maintenance, repair, replacement, construction or reconstruction

of any facilities or utilities on or within the Common Areas and Maintenance Areas; provided, however, that entry into any Townhome in non-emergency situations shall only be made after service of reasonable written notice and during regular business hours, and, under emergency circumstances, shall only be made after such notice, if any, as is reasonable under the circumstances.

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

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

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

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

on the plat.

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

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

(i) Easement for Unannexed Property. The Declarant hereby reserves, for the use and benefit of the Annexable Area, a non-exclusive, perpetual easement for pedestrian and vehicular access, ingress and egress, on, over and across the roads, driveways, streets, sidewalks, access ways and similar Common Area, now or hereafter constructed, erected, installed or located in or on the Community, and on, over, across and under the Common Area for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement and use of any utilities Improvements that may now or hereafter serve the Annexable Area or any portion thereof (herein collectively the "Annexable Area Easement"). By virtue of this Annexable Area Easement, the Declarant generally intends to provide for pedestrian and vehicular access, and for utilities services, to those portion(s) of the Annexable Area which have not been included in the Community. Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as the following have occurred with respect to such portion of the Annexable Area: the addition of such portion of the Annexable Area to this Declaration; Declarant's failure to withdraw such portion of the Annexable Area, or any portion thereof, from this Declaration; and expiration of the Declarant's right to withdraw such portion of the Annexable Area from this Declaration.

Section 11.12 Delegation of Use. Subject to the provisions of this Declaration and any Rules or Regulations which may be established from time to time by the Association concerning the Common Area, any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests, or contract purchasers who reside on his Lot. Each Owner shall, to the extent permitted by law, be liable for any damage done to the Common Area by his family, tenants, guests, or contract

purchasers and for any breach of the Association's rules and regulations by such persons.

ARTICLE 12 GENERAL PROVISIONS

Section 12.1 Enforcement.

12.1.1 Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in any of the Governing Documents, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Remedies shall be cumulative and no remedy shall be exclusive of other remedies that may be available. Failure by the Association or any Owner to enforce any covenant, restriction or other provision contained in any of the Governing Documents, shall in no event be deemed a waiver of the right to do so thereafter.

12.1.2 The Association shall have the right to levy and collect fines for the violation of any provision of any of the Governing Documents in accordance with applicable provisions of CCIOA and the responsible governance policies of the Association.

Section 12.2 Severability.

All provisions of each of the Governing Documents are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 12.3 Conflicts. In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 12.4 Annexation; Withdrawal.

12.4.1 Until automatic termination of the Special Declarant Rights as provided in Section 1.28 of this Declaration, the Declarant may add to this Declaration and the Community the Annexable Area or any portion(s) thereof without the consent of any other Owners, First Mortgagee, or any other Person; however, such annexation is subject to a determination by HUD or VA (if the Declarant desires to attempt to obtain HUD or VA approval of the property being annexed, and if HUD or VA require such approval) that the annexation is in accord with the general plan approved by them and that the structures to be located thereon will be of comparable style, quality, size and cost, to the existing Improvements. Each annexation for the addition of any portion of the Annexable Area shall be effected, if at all, by Recording an Annexation of Additional Land substantially in the form attached hereto as **Exhibit E** attached hereto, which document:

12.4.1.1 shall provide for addition to the Community of the property described in such Annexation of Additional Land;

12.4.1.2 shall identify the owner(s) of the Lots or Garage Units thereby created;

12.4.1.3 shall assign an identifying number or designation to each new Lot or Garage Unit;

12.4.1.4 shall describe any Common Area within the property being added to the Community;

12.4.1.5 shall reallocate the Allocated Interests; and

12.4.1.6 may include such other provisions as the Declarant deems appropriate. Other provisions that may be included in an Annexation of Additional Land include covenants, conditions, restrictions, requirements and/or other provisions that, in addition to or different from those contained elsewhere in this Declaration, apply or will apply to some or all of the additional property that is thereby being added to this Declaration. The Allocated Interests for the Garage Units shall be included in the first Annexation of any Garage Units into the Community. Any of such other provisions referenced in this subsection may be amended with the consent of the Owners of sixty-seven percent (67%) of the Lots to which such other provisions apply.

12.4.2 The Declarant hereby reserves the right to Record one or more documents in order to clarify the effect of any exercise of the Development Right to add additional real property to the Community, including any matters contained in Sections 12.4.1. Each such document(s), if any such document(s) are Recorded by the Declarant, may state the legal description(s) of any property which has been added, and may include such other provisions as the Declarant may determine.

12.4.3 Except as otherwise specifically stated in the document pursuant to which property is added to the Community, all provisions of this Declaration, including (as to Lots) those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members, shall apply to the added property immediately upon the effective date of the Annexation of Additional Land (which shall constitute the date that such document is Recorded, unless otherwise stated therein). Each recorded Annexation of Additional Land to this Declaration, if any, constitutes an amendment to this Declaration.

12.4.4 Each Lot, and each parcel or tract of Common Area, constitutes a separate portion of the Community and is subject to a right of withdrawal by the Declarant. However, the Declarant's right to withdraw each Lot, and each parcel or tract of Common Area, shall expire and terminate, as to each Lot, and as to each parcel or tract of Common Area, upon initial conveyance of such Lot, and upon initial conveyance of such parcel or tract of Common Area, by the Declarant to any Person other than the Declarant but, in any event, no later than the automatic termination of the Special Declarant Rights as provided in Section 1.26 of this Declaration.

Section 12.5 Declarant's Use. Notwithstanding anything to the contrary contained in this

Declaration, it shall be expressly permissible and proper for the Declarant, its employees, agents, and contractors, to perform such activities, and to maintain upon portions of the Lots, and the Common Area, such facilities as the Declarant desires, specifically including maintaining signs, sales offices, sales trailers, model units, construction offices, and construction trailers, in such numbers, of such sizes, and at such locations as the Declarant determines, and the Declarant reserves easements for the same (including access easements). Any real estate used as a sales office, management office, model unit, or for the location of a trailer used as a construction or sales office, shall be a Lot or Common Area, as such property is designated in Recorded document(s). Nothing contained in any of the Governing Documents shall limit the rights of the Declarant to conduct all construction, sales, and marketing activities as the Declarant deems necessary or desirable, and to use any easements for those and other purposes. The rights provided for in this Section shall terminate automatically upon termination of the Special Declarant Rights, as provided in Section 1.28 hereof.

Section 12.6 Duration, Revocation, and Amendment.

12.6.1 Each and every provision of this Declaration shall run with and bind the land perpetually from the date this Declaration is Recorded. Except as otherwise provided in this Declaration, this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests; provided, however, prior to the termination of the Special Declarant Rights, including the right to exercise any Development Rights, no amendment of this Declaration shall be effective without the prior written approval of the Declarant.

12.6.2 Notwithstanding anything to the contrary contained in this Declaration, the Declaration may be amended, in whole or in part, by the Declarant without the consent or approval of any other Owner, any Eligible Mortgagees, or any other Person, in order to comply with the requirements, standards, or guidelines of any of the Agencies or of recognized secondary mortgage markets. Such right of amendment shall terminate automatically as provided in Section 1.28 of this Declaration.

12.6.3 Notwithstanding anything to the contrary contained in this Declaration, this Declaration, or any map or plat, may be amended in whole or in part, by the Declarant, without the consent or approval of any other Owner, any First Mortgagees, or any other Person, in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate automatically as provided in Section 1.28 of this Declaration.

12.6.4 Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, Recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant to this Declaration or as permitted by CCIOA, may be signed by the Declarant and shall require no other signatory.

12.6.5 No amendment shall operate or be effective to remove, revoke, limit, condition, or modify any right or privilege of the Declarant under this Declaration, including without limitation this Section 12.6.5 and Article 13, without the written consent of the Declarant or the assignee of such right or privilege. Each Amendment to this Declaration enacted by the a vote or agreement of Owners of Lots shall be applicable only to disputes, issues, controversies, circumstances, events, claims or causes of action that arose out of acts, omissions, events or other circumstances that occurred after the date of Recording of such amendment in Morgan County, and no such amendment shall be applied retroactively (i) to any disputes, issues, controversies, circumstances, events, claims or causes of action that arose out of acts, omissions, events or other circumstances that occurred before the date of Recording of such amendment in the County, or (ii) to impair the rights or obligations of any Person, including Declarant, as originally set forth in this Declaration. Notwithstanding anything to the contrary herein, nothing in this Section or Article 13 may not be amended, nullified or modified without the written consent of the Declarant.

12.6.6 Any indemnification or right of indemnification of directors and officers of the Association as provided by any of the Governing Documents shall continue as to a person who has ceased to be a director or officer of the Association and shall inure to the benefit of the director's or officer's estate, heirs, personal representatives, executors and administrators.

12.6.7 Any repeal or modification of any provision of the Association Documents permitting or requiring indemnification of director's and officer's shall be prospective only, and shall not adversely affect any limitation on the personal liability of a current or former director or officer of the Association for acts or omissions prior to such repeal or modification; any such repeal or modification shall not be effective as against a current or former director or officer of the Association for acts or omissions prior to such repeal or modification without such director's or officer's written consent.

Section 12.7 Registration of Mailing Address. Each Owner shall register its mailing address with the Association and the mailing address of each First Mortgagee with respect to the Owner's Lot, if any, and all statements, demands and other notices intended to be served upon an Owner, or upon a First Mortgagee shall, subject to Section 3.13 of this Declaration (Authenticated Electronic Representation), be sent by U.S. mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any statement, demand or other notice may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All statements, demands, or other notices intended to be served upon the Board of Directors or the Association during the Period of Declarant Control shall be sent by U.S. mail, postage prepaid, c/o Brittany Homes Inc., P.O. Box 3290, Parker, CO 80134, unless such address is changed by the Association during the Period of Declarant Control; subsequent to expiration of the Period of Declarant Control, the Association shall notify the Owners of a different address for notices.

Section 12.8 Limitation on Liability. The Association, the Board of Directors, the Declarant, and the officers, directors, members, partners, agents and employees of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act

was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 12.12 (Waiver) shall apply to this Section.

Section 12.9 No Representations, Guaranties or Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing or otherwise required by law. The release and waiver set forth in Section 12.12 (Waiver) shall apply to this Section.

Section 12.10 Disclaimer Regarding Safety. DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS OR POLICIES AND PROCEDURES OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 12.12 (WAIVER) SHALL APPLY TO THIS SECTION.

Section 12.11 Development Within and Surrounding the Community. Each Owner acknowledges that development within and surrounding the Community may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses, may change over time. Such development may entail changes to or alterations in the access to the Community, views of or from the Community or the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot subject to the foregoing, and waives and releases any claim against the Declarant, the Association, the Board of Directors, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 12.12 (Waiver) shall apply to this Section.

Section 12.12 Waiver. By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant, the Association, the Board of Directors, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives,

successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, including those contained in Sections 12.9, 12.10 and 12.11.

Section 12.13 Headings. The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

Section 12.14 Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

Section 12.15 Use of "Include," "Includes" and "Including". All uses in the Governing Documents of the words "**include**," "**includes**" and "**including**" shall be deemed to include the words "**without limitation**" immediately thereafter.

Section 12.16 Action. Any action that has been or may be taken by the Declarant, the Association, the Board, any Member, any director, any committee, or any other Person, may be taken "**at any time, from time to time**". Each provision that authorizes, directs or permits action shall be deemed to include such language.

Section 12.17 Sole Discretion. All actions which are taken by the Declarant, the Association, the Board, any Member, any director, any committee, or any other Person, shall be deemed to be taken "**in the sole discretion**" of each of such parties.

Section 12.18 Run with Land; Binding Upon Successors. The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon the Community and all real property and Improvements which are now or hereafter become a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Association and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

ARTICLE 13 DISPUTE RESOLUTION

Section 13.1 Arbitration.

Each Owner, and the Association, by taking title to a Lot and/or any portion of the Common Areas, acknowledges and agrees as follows:

13.1.1 Any claim, controversy or dispute over or related to the design, construction or construction defect of a Townhome, any Common Area or any improvements thereon or therein, or any other off-Lot subdivision improvements or facilities serving all or any portion of the Lots made against the Declarant or the Association, each of which shall be deemed a "Construction Dispute", shall be resolved by binding arbitration. Any such proceeding must be

commenced before the date when commencement of legal proceedings based on such claim or dispute would be barred by the applicable statute of limitations and no such proceeding shall be commenced after the date when such proceedings would be barred by the applicable statute of limitations. The foregoing shall not be construed as prohibiting the parties to a Construction Dispute that has arisen from thereafter agreeing in writing to resolve a Construction Dispute through litigation before a court of law. In the absence of an agreement otherwise between the parties, all Construction Disputes subject to arbitration shall be conducted in accordance with the Colorado Uniform Arbitration Act, C.R.S. (1973) Section 13-22-20, et seq., as amended ("CUAA"), and be decided by a single private party arbitrator who is a retired Colorado state court or Federal judge or attorney licensed to practice law in Colorado. If the parties are unable to agree upon an arbitrator within thirty (30) days from the date of the demand for arbitration, then the arbitrator shall be chosen in accordance with the rules governing the selection of an arbitrator under the CUAA, which selection shall be binding upon the parties. Subject to the provisions of these procedures, the arbitration shall be conducted in accordance with rules and procedures determined by the arbitrator. Each party to a Construction Dispute shall bear its own costs (including expert costs), expenses and attorneys' fees incurred in the arbitration. If any Owner, the Association, or the Declarant (except as provided in Section 13.1.6 below) files a proceeding in any court to resolve any Construction Dispute, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration of that or any other Construction Dispute, and the Court shall, upon motion of any party to the proceeding, direct that such Construction Dispute be arbitrated in accordance therewith and all costs incurred by the moving party in removing the Construction Dispute to arbitration, including without limitation, attorney's fees and costs, shall be awarded to the moving party. If a Construction Dispute is resolved through negotiation or mediation, and any party thereafter fails to abide by the terms of such agreement, or if any party thereto fails to comply with an arbitration award, then any other party may file suit or initiate administrative proceedings to enforce such agreement or arbitration 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 non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement or award, including without limitation, attorney's fees and costs.

13.1.2 JURY WAIVER. IN THE EVENT THAT ANY JUDICIAL PROCEEDING IS HAD HEREIN, IN ORDER TO EXPEDITE FINAL RESOLUTION OF THE CONSTRUCTION DISPUTE, EACH PARTY TO THE CONSTRUCTION DISPUTE WAIVES ANY RIGHT TO A JURY TRIAL FOR CLAIMS AND COUNTERCLAIMS RELATING TO THE CONSTRUCTION DISPUTE. THE OWNERS, ASSOCIATION AND DECLARANT WAIVE ANY RIGHTS TO JURY TRIAL FOR SUCH DISPUTES. SUCH PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE HAD THE OPPORTUNITY TO BE ADVISED BY INDEPENDENT LEGAL COUNSEL IN CONNECTION WITH THIS DECLARATION AND IN MAKING THIS WAIVER. EACH OWNER, ASSOCIATION AND THE DECLARANT ACKNOWLEDGE HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THIS JURY WAIVER AND INTEND THIS JURY WAIVER BE READ AS BROADLY AS POSSIBLE AND EXTEND TO CONSTRUCTION DISPUTES.

13.1.3 The Association shall comply with Section 38-33.3-303.5 of the Act, as may be amended, before instituting any "construction defect action" (as defined in said Section 38-33.3-303.5). Any Construction Dispute that constitutes an "action" as defined by Section 13-20-802.5 of the Colorado Construction Defect Action Reform Act shall be subject to the provisions of the Colorado Construction Defect Action Reform Act, C.R.S. 13-20-801 et seq.

13.1.4 In any judicial proceeding, arbitration or other proceeding regarding construction defects, there shall be no presumption that an alleged construction defect is prevalent or consistently present in other buildings, Lots or Common Area or any other property or improvements where such alleged construction defect has not been observed.

13.1.5 The Association may not sue anyone or arbitrate claims on behalf of two or more Owners, or take an assignment of claims from one or more Owners, with respect to any claims or issues on individual Townhomes, including without limitation, any Construction Dispute or other claim or dispute over or related to the design, construction or physical condition of the Lot or the Townhomes or other improvements thereon.

13.1.6 Notwithstanding any of the terms or provision of this Article 13 to the contrary, the Declarant may, in its sole discretion, elect to resolve any Construction Dispute involving Declarant as a plaintiff or defendant by court proceeding instead of through arbitration. If the Declarant elects to resolve any such Construction Dispute by court proceeding, Declarant may file and commence a proceeding in a court, or upon initiation of arbitration by another party and motion of the Declarant, the arbitrator shall direct that such Construction Dispute be litigated in a court of law, in which event the Court shall not grant any motion requesting that the Construction Dispute be arbitrated over the objection of Declarant.

13.1.7 Notwithstanding anything to the contrary set forth in this Declaration, this Article 13 may not be terminated, amended, nullified or modified without the prior written consent and approval of the Declarant.

ARTICLE 14 SUPPLEMENTAL DECLARATIONS AND SUB-ASSOCIATIONS

Section 14.1 Recordation of Supplemental Declarations. Declarant, may execute and record a Supplemental Declaration which encumbers a portion of the Community. Such Supplemental Declaration shall refer to this Declaration and may create a Sub-Association and may impose additional requirements on the Sites and Common Areas which are subject to such Supplemental Declaration (but shall have no effect on other property which is subject to this Master but not such Supplemental Declaration), provided that no such additional requirements may amend or be in conflict with the provisions of this Declaration, unless approved as an amendment to this Declaration pursuant to the amendment provisions of this Declaration. Any Supplemental Declaration may provide its own procedure for amendment of any provisions thereof. All Lots and/or Garage Units that are subjected to the provisions of any such Supplemental Declaration shall automatically be subject to the provisions of this Declaration and the Supplemental Declaration without the necessity of a specific reference to this Declaration in any deed, notice, Supplemental Declaration or other instrument. In the event of any conflict

between the provisions of this Declaration and the provisions of any Supplemental Declaration, the provisions of this Declaration shall control. Lots and/or Garage Units may be annexed to this Declaration through a Supplemental Declaration, as well as pursuant to the other provisions of this Declaration governing annexation of additional property. The Association may, but shall not be required to, delegate certain functions and authority of the Association to a Sub-Association created under a Supplemental Declaration provided that any such delegated authority may be exercised by such Sub-Association only with respect to the property made subject to the Supplemental Declaration. Any such delegation of authority shall be in a written instrument executed by the Presidents of both the Association and Sub-Association, after approval of their respective Boards of Directors, which is duly Recorded. Such delegation of authority may be modified or revoked at any time by the Association pursuant to a duly Recorded written instrument executed solely by the President of the Association after approval of the Board of the Association.

Section 14.2 Sub-Association. Any Supplemental Declaration may create a Sub-Association, the members of which are the Owners of Lots and/or Garage Units that are subject to such Supplemental Declaration. Any Sub-Association shall be organized as a non-profit corporation in accordance with the provisions of the Colorado Revised Non-Profit Corporation Act. Any Sub-Association may be granted all of the powers granted to the Association herein, including the power to impose and collect assessments from its Members solely with respect to common areas to be owned solely by such Sub-Association and used by and benefitting any of the members of such Sub-Association, provided that such powers shall be subordinate to the powers of the Association. The lien for assessments imposed by any Sub-Association shall be subordinate to the lien created under this Declaration, but, otherwise, such assessment lien shall have the priority set forth under this Declaration.

Section 14.3 Declarant's Approval Required. Until such time as Declarant no longer owns any Lots and/or Garage Units that are or may be included within the Community, any Supplemental Declaration and/or Sub-Association created pursuant to the provisions of the Declaration or otherwise with respect to Lots and/or Garage Units that also are subject to this Declaration shall be approved and executed by the Declarant prior to Recording or, with respect to a Sub-Association, prior to filing the Articles of Organization with the Colorado Secretary of State. Any Supplemental Declaration and/or Sub-Association which has not been so approved by the Declarant shall be null and void and of no effect on any part of the Community or on any Owners.

Section 14.4 Compliance with Common Interest Ownership Act. Nothing contained in this Article 14 shall be construed as limiting the rights of Owners to create a new Supplemental Declaration or Sub-Association under CCIOA or which is exempt from CCIOA. Any Supplemental Declaration and any delegation of authority to a Sub-Association shall not be deemed to be an amendment to this Declaration, as such authority has been granted herein.

[signature pages follow]

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 27 day of February, 2024

DECLARANT:

BRITTANY HOMES INC.,

a Colorado corporation

By:

David Stockman

Name:

DAVID P STOCKMAN

Title:

PRESIDENT

STATE OF COLORADO

)

)

ss.

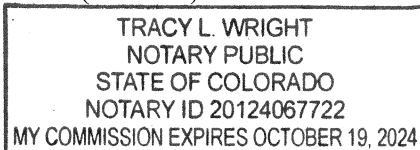
COUNTY OF Arapahoe

)

The foregoing instrument was acknowledged before me this 27 day of February, 2024 by David Stockman President of Brittany Homes Inc., a Colorado corporation.

Witness my hand and official seal.

(S E A L)



Notary Public

[Signature]

My Commission Expires:

10-19-2024

CONSENT OF THE LIENHOLDER

INBANK, as a Security Interest Holder in the Property, agrees that its interest in the Property pursuant to the Security Interests, shall be, subject to the covenants, terms, provisions, easements, liens and encumbrances of this Declaration, as the same may be amended from time to time.

INBANK

By: _____

Its: _____

STATE OF COLORADO)

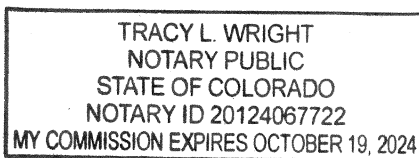
) ss.

COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 27 day of February, 2024, by Robert Moreses as Vice President of INBANK, on its behalf.

Witness my hand and official seal.

My commission expires: 10.19.2024



Notary Public

EXHIBIT A
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF LEGACY TOWNHOMES AT CENTREPOINTE
PHASE 1

(Real Property included in the Community)

Lots 1-12, inclusive, Block 1;

Lots 1-12, inclusive, Block 2;

Tracts A, B, G, H, M, N, R, and S;

Legacy Townhomes at Centerpointe, Filing No. 1,

being a replat of Lot 1, Block 5, Centerpointe Plaza Subdivision, Filing No. 1;

County of Morgan,

State of Colorado,

according to the corrected subdivision plat thereof recorded on December 13, 2023 at Reception No. 1500624 ("Plat");

together with that certain Private Drive identified as "Molly Lane" on the Plat,

as legal described and depicted on Exhibit A-1 attached hereto.

EXHIBIT A-1

PARCEL DESCRIPTION

A parcel of land, being part of Corrected Legacy Townhomes at CentrepoinTE Filing No. 1 (subdivision), as recorded December 13, 2023 as Reception No. 1500624 of the Records of the Morgan County Clerk and Recorder, situate in the Southwest Quarter (SW1/4) of Section Five (5), Township Three North (T. 3N.), Range Fifty-seven West (R. 57 W.) of the Sixth Principal Meridian (6th P.M.), City of Fort Morgan, County of Morgan, State of Colorado and being more particularly described as follows:

COMMENCING at the Southwest corner of said subdivision and assuming the South line of said subdivision as bearing North 88°49'07" East, as platted, a distance of 1109.37 feet and with all other bearings contained herein relative thereto;

THENCE North 88°49'07" East, along said South line, a distance of 79.19 feet to the Southeast corner Outlot R and to the POINT OF BEGINNING;

THENCE North 01°10'24" West, along the West line of said Outlot R, a distance of 43.69 feet to the South line of Block 1;

Thence along the South and East lines of said Block 1 the following two courses:

THENCE North 88°49'36" East a distance of 22.00 feet;

THENCE North 01°10'24" West a distance of 361.00 feet to the North line of said subdivision;

THENCE North 88°49'36" East, along said North line, a distance of 25.00 feet to the West line of Block 2;

Thence along the West and South lines of said Block 2 the following two courses:

THENCE South 01°10'24" East a distance of 361.00 feet;

THENCE North 88°49'36" East a distance of 22.00 feet to the Northwest corner of Outlot S;

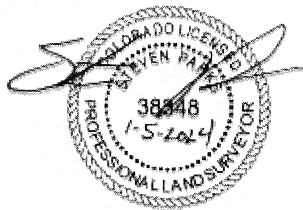
THENCE South 01°10'24" East, along the West line of Outlot S, a distance of 43.68 feet to the South line of said subdivision;

THENCE South 88°49'07" West, along said South line, a distance of 69.00 feet to the POINT OF BEGINNING.

Said described parcel of land contains 12,039 Square Feet or 0.276 Acres, more or less (±).

SURVEYORS STATEMENT

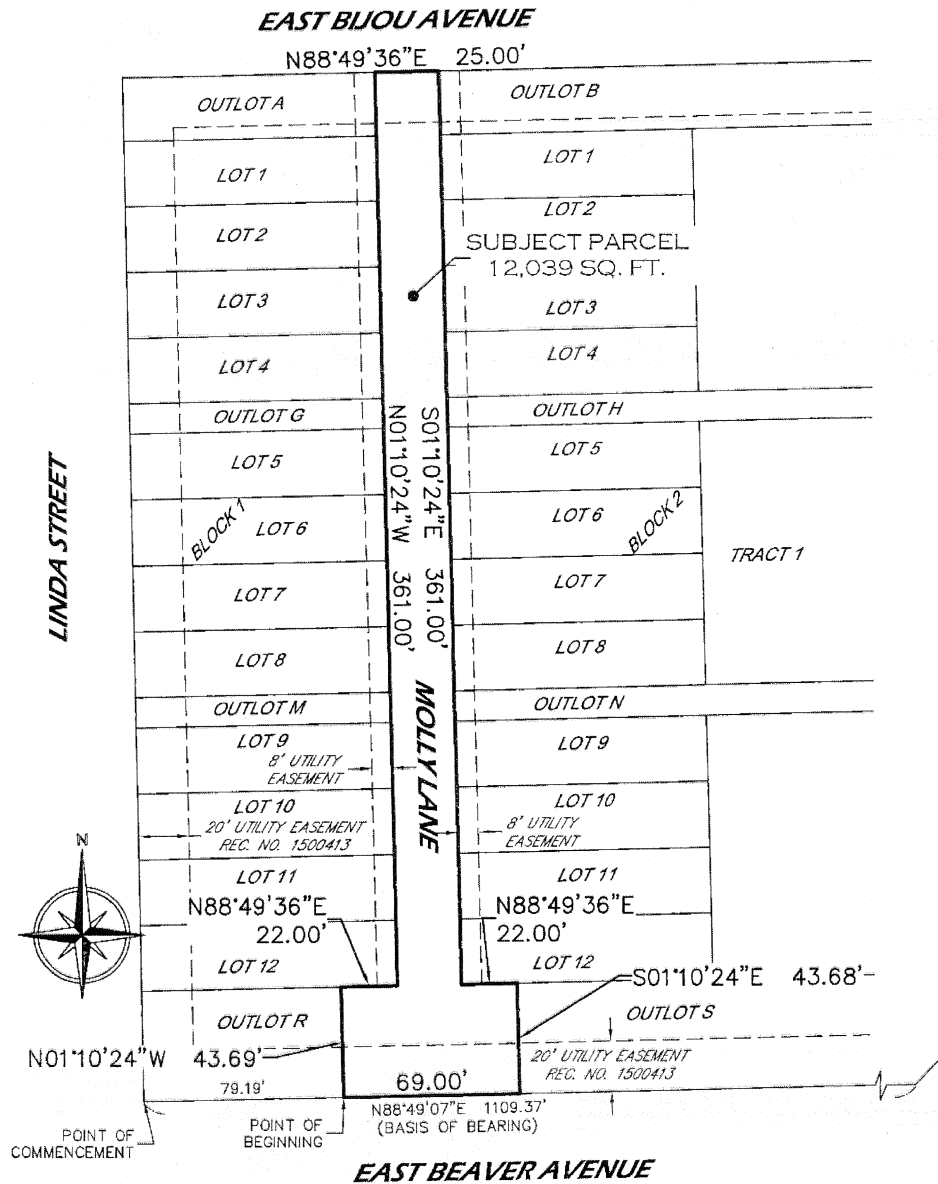
I, Steven Parks, a Colorado Licensed Professional Land Surveyor do hereby state that this Parcel Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.



Steven Parks - on behalf of Majestic Surveying, LLC
Colorado Licensed Professional Land Surveyor #38348

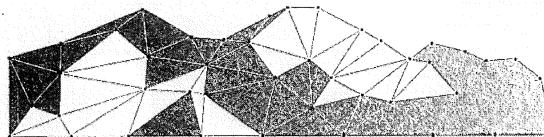
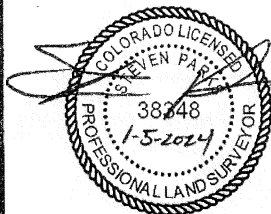


EXHIBIT A



Note: This drawing does not represent a monumented land survey. Its sole purpose is a graphic representation of the accompanying written description.

Notice: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon. (CRS 13-80-105)



MAJESTIC SURVEYING

Steven Parks, PLS 38348
On behalf of Majestic Surveying, LLC

PROJECT NO: 2021388
DATE: 1-5-2024

CLIENT: BRITTANY
SCALE: 1"=50'

EXHIBIT B
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF LEGACY TOWNHOMES AT CENTREPOINTE

Common Area:

Tracts A, B, G, H, M, N, R, and S, and the Private Drive identified as “Molly Lane.”

EXHIBIT C
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF LEGACY TOWNHOMES AT CENTREPOINTE

(Certain Title Exceptions)

The Declarant relied on Title Commitment No. 122-F16796-22-TBD Fidelity National Title in preparing this exhibit. This Declaration is subject to the following items, which if recorded, are recorded in the office of the Clerk and Recorder of Morgan County, Colorado:

1. Water rights, claims or title to water, whether or not disclosed by the Public Records.
2. All taxes and assessments for the year 2023, a lien not yet due or payable.
3. Right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises and right of way for ditches or canals constructed under the authority of the United States as reserved in U.S. Patent recorded June 4, 1892 in Book 12 at Page 269.
4. Right of the proprietor of a vein or lodge to extract and remove his ore should the same be found to penetrate or intersect the premises as reserved in U.S. Patent recorded February 4, 1887 in Book 12 at Page 163.
5. Right of the proprietor of a vein or lode to extract his ore therefrom should the same be found to intersect or penetrate the premises and right of way for ditches and canals constructed under the authority of the United States as reserved in U.S. Patent recorded June 4, 1892 in Book 12 at Page 269.
6. Right of way for road purposes as contained in Road Petition recorded July 7, 1883 in Book 15 at Page 1 and recorded May 6, 1886 in Book 15 at Page 7.
7. Right of way for road purposes as contained in Road Viewers Report recorded April 16, 1894 in Book 15 at Page 132.
8. Right of way for road purposes as shown on the Fort Morgan Master Street Plan recorded September 1, 1981 in Plat Book 5 at Page 93 and as shown on Comprehensive Plan Update recorded April 21, 2004 in Plat Book 10 at Page 128.

Note: The following Notices concerning underground facilities have been filed with the Clerk and Recorder. These statements are general and do not necessarily give notice of underground

facilities within the Land:

Mountain Bell Telephone Company, recorded October 2, 1981 in Book 821 at Page 502.

Public Service Company of Colorado, recorded October 2, 1981 in Book 821 at Page 514.

Morgan County Rural Electric Association recorded January 22, 1982 in Book 825 at Page 656.

City of Fort Morgan, Colorado recorded November 22, 1989 in Book 917 at Page 513.

9. Terms, conditions, restrictions, provisions, notes and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on the Plat(s) of said subdivision set forth below:

Recording Date: March 15, 2018

Recording No: Plat Book 1500413

10. Terms, conditions, restrictions, provisions, notes and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on the Plat(s) of said subdivision set forth below:

Recording Date: August 3, 2023

Recording No: 1500610

As Corrected by:

Recording Date: December 13, 2023

Recording No. 1500624

1

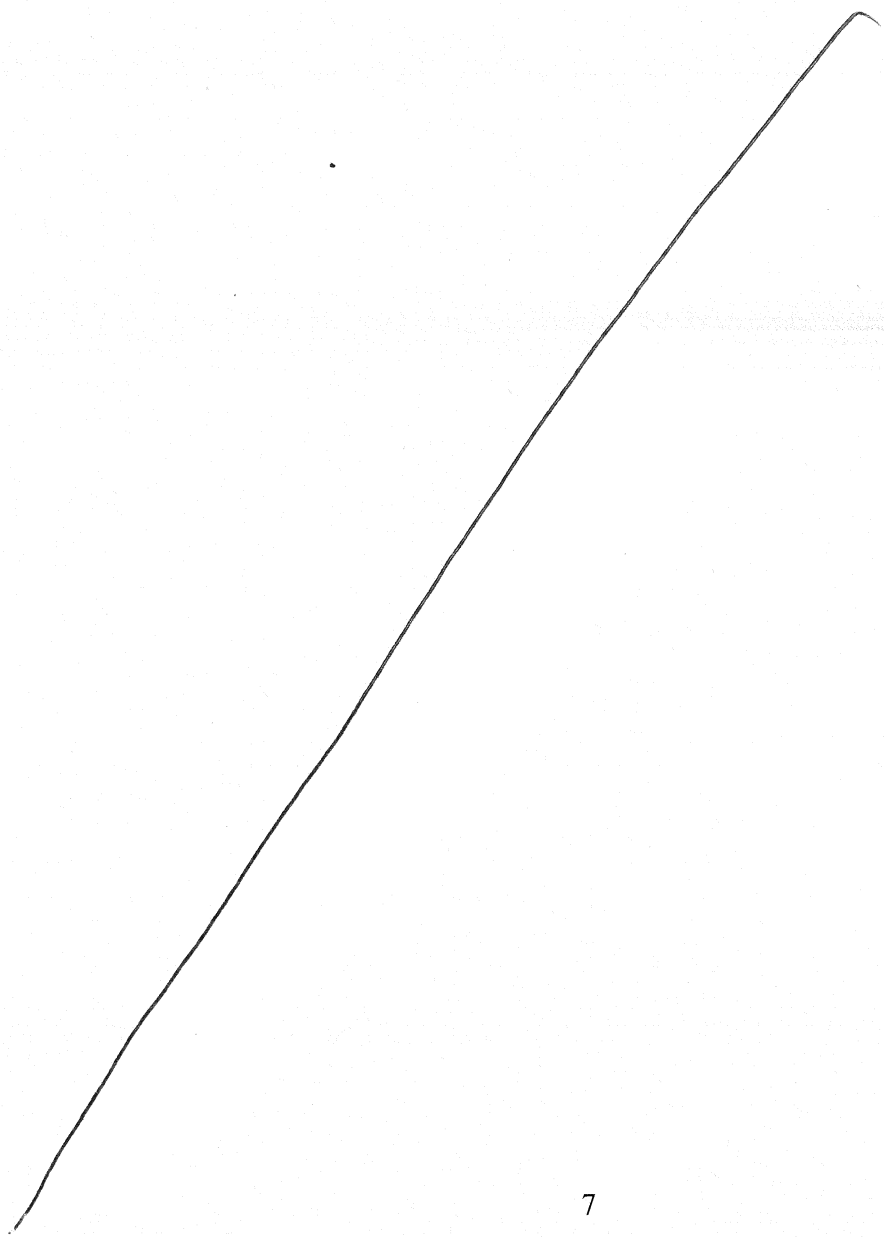


EXHIBIT D
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF LEGACY TOWNHOMES AT CENTREPOINTE

(Annexable Area)

All or any portion of future phases of Legacy Townhomes at Centerpointe,
being a replat of Lot 1, Block 5, Centerpointe Plaza Subdivision, Filing No. 1;
County of Morgan,
State of Colorado,
excepting any real property described on Exhibit A of this Declaration as Phase 1.

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF**

LEGACY TOWNHOMES AT CENTREPOINTE

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