

**FIRST AMENDMENT TO  
AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
DAVEN HAVEN CABINS**

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF DAVEN HAVEN CABINS (this "First Amendment") is made as of \_\_\_\_\_ 2023, by the DAVEN HAVEN CABINS OWNERS ASSOCIATION a Colorado Non-Profit Corporation (the "Association").

**RECITALS**

1. The Townhouse Declaration for Daven Haven Cottages was recorded July 16, 2002, at Reception No. 2002-007246 of the records of the Clerk and Recorder of Grand County, Colorado (the "Original Declaration").
2. On July 16, 2002, the Final Plat for Daven Haven Cottages was recorded at Reception No. 2002-007245 of the records of the Clerk and Recorder of Grand County, Colorado (the "Final Plat").
3. On May 13, 2005, an As-Built Plat for Daven Haven Cottages was recorded at Reception No. 2005-004886 of the records of the Clerk and Recorder of Grand County, Colorado (the "As-Built Plat").
4. On December 17, 2008, a Townhouse Declaration for Daven Haven Cottages was recorded at Reception No. 2008011706 of the records of the Clerk and Recorder of Grand County, Colorado (the "Second Declaration").
5. On December 17, 2008, the 1<sup>st</sup> Amendment to the Final Plat of Daven Haven Cottages was recorded at Reception No. 2008011705 of the records of the Clerk and Recorder of Grand County, Colorado (the "First Amended Final Plat").
6. On April 20, 2012, the Daven Haven Cabins Final Plat 2<sup>nd</sup> Amendment to the Development formerly known as Daven Haven Cottages was recorded at Reception No. 2012002995 (the "Second Amended Final Plat").
7. On April 20, 2012, the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Daven Haven Cabins was recorded at Reception No. 2012002996 (the "Restated Declaration").
8. On December 21, 2012, the Correction Plat to Daven Haven Cottages Final Plat was recorded at Reception No. 2012009954 (the "Correction Plat").

9. Article 8.00 of the Restated Declaration provides that the Restated Declaration may be amended by a written instrument signed by sixty percent (60%) of the Owners.

10. Section 38-33.3-312(1), C.R.S. provides that portions of the common elements may be conveyed by an association if persons entitled to cast at least sixty-seven percent (67%) of the votes in the association agree to that action.

11. The Association is the owner of Parcel 3, Daven Haven Cabins, except for the Units as defined in the Restated Declaration and the Correction Plat.

12. The Parties desire to amend the Restated Declaration in accordance with the terms and conditions of this First Amendment and the Third Amended Final Plat – Daven Haven Cabins, (the “Third Amended Final Plat”), recorded on \_\_\_\_\_, 2023, at Reception No. 2023 \_\_\_\_\_ of the records of the Clerk and Recorder of Grand County, Colorado.

13. At least sixty-seven percent (67%) of the Members of the Association have approved this First Amendment and the Third Amended Final Plat.

NOW, THEREFORE, in consideration of the premises set for above, the Association declares as follows:

1. The boundary line between Parcel 3 and Parcel 4 as shown on the Correction Plat shall be modified consistent with said boundary line as shown on the Third Amended Final Plat.

2. The second sentence in paragraph 2 of the Declaration shall be amended to read as follows:

The number of Units currently existing is twelve (12) and three (3) additional Units may be built.

3. The definition of “This Declaration” or “this Declaration” in Article 2.00 of the Restated Declaration shall be deleted in its entirety and the following inserted in lieu thereof:

**This Declaration (or this Declaration)** means the Amended and Restated Declaration of Covenants, Conditions, and Restrictions, recorded April 20, 2012, at Reception No. 2012002996 of the records of the Clerk and recorder of Grand County, Colorado, as amended from time to time.

4. The definition of “Property” in Article 2.00 of the Restated Declaration shall be deleted in its entirety and the following inserted in lieu thereof:

**Property** means the Units as shown on the Correction Plat to Daven Haven Cottages Final Plat recorded December 21, 2012, at Reception No. 2012009954 of the records of the Clerk and Recorder of Grand County, Colorado, and the Common Elements as shown on the Third Amended Final Plat recorded on \_\_\_\_\_, 2023, at Reception No. 2023 \_\_\_\_\_.

5. The following definitions are added to Article 2.00 of the Restated Declaration.

**Correction Plat** shall mean the Correction Plat to Daven Haven Cottages Final Plat recorded December 21, 2012, at Reception No. 2012009954 of the records of the Clerk and Recorder of Grand County, Colorado.

6. Except as amended by this First Amendment, the Restated Declaration shall remain unchanged and in full force and effect.

7. In the event of a conflict between the terms and conditions of this First Amendment and the Restated Declaration, the terms and conditions of this First Amendment shall govern.

IN WITNESS WHEREOF, the Association does adopt this First Amendment as of the date signed by the Association and recorded in the real estate records of the Clerk and Recorder of Grand County, Colorado.

DAVEN HAVEN CABINS OWNERS ASSOCIATION,  
a Colorado non-profit corporation,

By \_\_\_\_\_,  
\_\_\_\_\_, President

STATE OF COLORADO    )  
                                      ) ss  
COUNTY OF GRAND    )

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ as President of the Daven Haven Cabins Owners Association, a Colorado nonprofit corporation at \_\_\_\_\_ o'clock \_\_\_\_\_.m..

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

SECRETARIAL CERTIFICATE

THE UNDERSIGNED, \_\_\_\_\_, being the duly elected and acting Secretary of Daven Haven Cabins Owners Association, a Colorado nonprofit corporation (the Association), does hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, at a duly called meeting of the Members of the Association, the above and foregoing First Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Daven Haven Cabins subdivision was approved and adopted by at least sixty-seven percent (67%) of the owners of Units entitled to vote.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: Secretary

STATE OF COLORADO     )  
  ) ss  
COUNTY OF GRAND     )

Subscribed, sworn to, and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ as Secretary of the Daven Haven Cabins Owners Association, a Colorado nonprofit corporation at \_\_\_\_\_ o'clock \_\_\_\_\_.m.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
DAVEN HAVEN CABINS**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF DAVEN HAVEN CABINS (this "Declaration") is made as of April 20th, 2012, by Gregory A. Barnes and Carey A. Barnes (collectively "Declarant").

**RECITALS**

1. The Townhouse Declaration for Daven Haven Cottages was recorded July 16, 2002, at Reception No. 2002-007246 of the records of the Clerk and Recorder of Grand County, Colorado (the "Original Declaration").
2. On July 16, 2002, the Final Plat for Daven Haven Cottages was recorded at Reception No. 2002-007245 of the records of the Clerk and Recorder of Grand County, Colorado (the "Final Plat").
3. On May 13, 2005, an As-Built Plat for Daven Haven Cottages was recorded at Reception No. 2005-004886 of the records of the Clerk and Recorder of Grand County, Colorado (the "As-Built Plat").
4. On December 17, 2008, a Townhouse Declaration for Daven Haven Cottages was recorded at Reception No. 2008011706 of the records of the Clerk and Recorder of Grand County, Colorado (the "Second Declaration").
5. On December 17, 2008, the 1<sup>st</sup> Amendment to the Final Plat of Daven Haven Cottages was recorded at Reception No. 2008011705 of the records of the Clerk and Recorder of Grand County, Colorado (the "First Amended Final Plat").
6. The Parties desire to amend and restate in their entirety all of the previously recorded documents described in Paragraphs 1 through 5 above, for the purpose of correcting and clarifying the mistakes made and the ambiguities created in these prior documents.

NOW, THEREFORE, the Declarant hereby declares that DAVEN HAVEN CABINS, formerly known as Daven Haven Cottages, shall be a Townhome Community held, transferred, sold and conveyed subject to the terms of this Declaration.

1. The documents identified in paragraphs 1 through 5 above (collectively "the Amended Documents") are hereby amended and restated in their entirety by this Amended and Restated Declaration of Covenants, Conditions and Restrictions and by the Daven Haven Cabins Final Plat 2nd Amendment to the Development formerly known as Daven Haven Cottages as described in Grand County Reception No. 2002-007245, recorded April 20, 2012 at Reception No. 2012-002996 of the records of the Clerk and Recorder of Grand County, Colorado, (the "Second Amended Final Plat"). In the event of any conflict between the terms of this Declaration and the Second Amended Final Plat on one hand and the Amended Documents on

the other hand, the terms hereof and the Second Amended Final Plat shall govern unless otherwise specifically provided herein.

2. No property other than that defined as the "Property" in Article 2.00 below shall be deemed subject to this Declaration, except as otherwise provided for herein. The number of Units currently existing is twelve (12) and no additional Units will be built. The boundaries of each Unit, including the Unit's identifying number are set forth in the Daven Haven Cabins Final Plat 2nd Amendment to the Development formerly known as Daven Haven Cottages as described in Grand County Reception No. 2002-007245, recorded April 20, 2012 at Reception No. 2012-002996 of the records of the Clerk and Recorder of Grand County, Colorado.

3. All covenants, conditions, restrictions, reservations, easements, Assessments, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of the Association and all of the Owners, all other parties having any right, title or interest in the Units or the Common Elements (as that term is defined below) or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

#### **ARTICLE 1.00 GOALS, PURPOSES AND PHILOSOPHY**

1.01 It is the intent of the Parties to establish DAVEN HAVEN CABINS as a quality residential townhome community, which is controlled by this Declaration. This Declaration sets forth both general and specific requirements consistent with such intent. The Association is authorized to adopt additional rules, regulations and requirements which may be necessary or desirable regarding the Units as well as the Common Elements. Any reference herein to this Declaration shall include any and all rules, regulations and requirements so adopted.

1.02 It is the purpose of this Declaration that the harmony of design shall always be protected insofar as is practical in connection with the uses and structures permitted by this instrument.

1.03 The Property (as defined below) is subjected to this Declaration to insure reasonable and appropriate improvement; to protect the Owners against such improper use of the Property as may depreciate the value of their property; to preserve the aesthetic appearance and the physical condition of the Property and, thereby, the marketability and quality of the Units; to obtain harmonious color schemes; to prevent haphazard and inharmonious improvements; to preserve the financial health of the Association; and in general to provide adequately for quality improvements and thereby to enhance the value of the investment made by the Owners.

#### **ARTICLE 2.00 DEFINITION OF TERMS**

In addition to the definitions hereinabove contained, the following definitions shall apply to this Declaration.

**Act** means Sections 38-33.3-101, *et seq.*, C.R.S., the Colorado Common Interest Ownership Act, as amended. Undefined terms shall have the definitions set forth in the Act.

**Assessments** means assessments or charges to Unit(s) and/or Owners for Common Expenses, Special Expenses, Individual Expenses, and Working Capital Funds as specified in This Declaration.

**Association** means DAVEN HAVEN CABINS OWNERS ASSOCIATION a Colorado Non-Profit Corporation.

**Board** means the Board of Directors or executive board of the Association.

**Board Resolution** means a documented action, policy, decision, or procedure that is affirmed by a majority vote of the Board, and includes, without limitation, additions, deletions, modifications, clarifications, or amendments to the Bylaws, the Rules and Regulations, and prior resolutions of the Board. All Board Resolutions adopted by the Board prior to the effective date of This Declaration are hereby ratified.

**Bylaws** means the bylaws of the Association as amended from time to time.

**Common Element or Common Area** means any real estate, improvement or fixture within the Property owned, leased, licensed, or used by the Association, other than a Unit.

A. **General Common Element or General Common Area** means any real estate, improvement or fixture within the Property owned, leased, licensed, or used by the Association, other than a Unit and a Limited Common Element. Without limiting the generality of the preceding sentence, the General Common Elements include, without limitation:

1. any parcels of real property and improvements and fixtures located thereon (A) that are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to the Second Amended Final Plat, this Declaration or a lease, license, easement or other agreement, and (B) that are used or possessed by the Association for the benefit of all the Owners;

2. if any chute, flue, pipe, duct, vent, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the General Common Elements; and

3. any physical portion of the Property that is designated on the Second Amended Final Plat or Amended As-Built Plat as "General Common Element" or "G.C.E.".

**B. Limited Common Element** means a Common Element for the exclusive use of one or more, but fewer than all, of the Owners. Without limiting the generality of the foregoing, Limited Common Elements include, without limitation:

1. two assigned parking area(s) for each Unit as indicated on the Second Amended Final Plat;
2. walkways, steps, doorsteps, stoops, porches, decks, cantilevered decks, columns, piers, balconies and patios located outside the boundaries of a particular Unit;
3. if a chute, flue, pipe, duct, vent, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only one Unit is a Limited Common Element, allocated solely to the Unit it serves;
4. the areas directly adjacent to each Unit, below the porches, decks, cantilevered decks, balconies, patios, having the same dimensions as the perimeter of the porches, decks, cantilevered decks, balconies, patios above it; and
5. any physical portion of the Property that is designated on the Second Amended Final Plat as "Limited Common Element" or "L.C.E.".

**Common Expenses** means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocation to reserves, but specifically excluding those expenditures made or liabilities incurred that are Individual Expenses or Special Expenses.

**Common Interest Community or Townhome Community** means the Property described in this Declaration.

**Cost of Enforcement** means all fees, costs, expenses, bookkeeping, accounting fees, legal fees, receiver's fees, and interest incurred by the Association in connection with (i) the collection of Assessments, fines, interest, late charges, penalties or the Costs of Enforcement; (ii) enforcement of the terms and obligations of This Declaration, the Bylaws, any Board Resolution, the Rules and Regulations or any local, State or Federal law.

**C.R.S.** means the Colorado Revised Statutes, as amended.

**Declarant** means Gregory A. Barnes and Carey A. Barnes, or any person or entity to which the Declarant's rights have been transferred.

**Design Review Guidelines or Guidelines** means the design guidelines for the Property which may be adopted by the Board and which may be amended as set forth herein. These Guidelines shall be followed by all builders, developers, Owners and their Guests. The Board shall follow them in its review of plans submitted to it. Violation of the Design Review Guidelines shall constitute a violation of this Declaration.



**First Mortgagee** means the beneficiary of a first deed of trust or the holder of a first mortgage.

**Guest** means (i) an Owner's family members, cohabitants or guests; (ii) any renter, lessee, or occupant of a Unit, including without limitation, their family members, cohabitants or guests; (iii) any other person who occupies, either temporarily or permanently, the Unit; (iv) an employee, contractor, customer, client, agent, or representative of any of the above; or (v) any invitee of any one of the above.

**Individual Expenses** means expenses incurred by the Association that the Board determines should be charged to one or more, but not all, of the Units as well as individual fines or fees charged to specific Units and/or Owners, as permitted or required by This Declaration, the Bylaws, the Rules and Regulations, a Board Resolution, or law.

**Member** means a member of the Association, which consists of every Person who is an Owner of a Unit.

**Owner** means the owner of record of the fee simple title to any Unit, whether by one or more Persons. If two or more Persons own a Unit jointly, the Persons are jointly and severally liable for an Owner's obligations hereunder, and they are collectively referred to as the Owner of such Unit.

**Person** means a natural person, corporation, partnership, association, trustee, trust, limited liability company, joint venture, or any other entity recognized as being capable of owning real property under Colorado law.

**Property** means the Units and all of the Common Elements created in the re-subdivision of Parcel 3, Marina Drive Minor Subdivision, Town of Grand Lake, Grand County, State of Colorado, into Daven Haven Cabins.

**Rules and Regulations** means the various rules, regulations and requirements adopted by the Owners or the Board from time to time which govern or control various aspects of living in, construction on, and use of the Property. The Rules and Regulations shall include the construction Rules and Regulations referred to in Article 5 hereof as well as Rules and Regulations adopted by the Board which control other matters such as, but not limited to, animals on the Property and parking. A violation of the Rules and Regulations shall constitute a violation of this Declaration.

**Second (or 2<sup>nd</sup>) Amended Final Plat** means that certain Daven Haven Cabins Final Plat 2nd Amendment to the Development formerly known as Daven Haven Cottages as described in Grand County Reception No. 2002-007245, recorded April 20, 2012 at Reception No. 2012-007245 of the records of the Clerk and Recorder of Grand County, Colorado.

**Special Expenses** means expenses or liabilities incurred by the Association deemed by the Board to be properly funded by sources other than the Common Expense Assessment or Individual Expense Assessment to defray, in whole or in part, any unexpected or unbudgeted expense to

include, but not be limited to, the cost of any construction, reconstruction, improvement, repair or replacement of a capital improvement upon the Common Elements or for funding any operating deficit incurred or reasonably expected to be incurred by the Association.

**This Declaration (or this Declaration)** means this Amended and Restated Declaration of Covenants, Conditions and Restrictions.

**Unit** means a physical portion of the Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are in or determined from the Second Amended Final Plat. A Unit includes the real estate under the Cabin and, in some cases, some real estate within the Unit footprint as shown on the Second Amended Final Plat, and all interior and exterior portions of the improvement thereon, including decks. Upon the recording of this Declaration, to convey, encumber or otherwise affect legal title to a Unit an instrument must describe the Unit as follows:

Unit \_\_\_\_\_, (27 through 38, as the case may be),  
According to the Daven Haven Cabins Final Plat 2nd Amendment to the  
Development formerly known as Daven Haven Cottages as described in  
Grand County Reception No. 2002-007245, recorded April 20, 2012 at  
Reception No. 2012-002-996 of the records of the Clerk and Recorder  
of Grand County, Colorado,

Each such description shall be construed to include (i) a non-exclusive easement for appropriate ingress and egress throughout the General Common Elements and appropriate use of the Limited Common Elements appurtenant to such Unit; and (ii) all other easements, licenses, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created by This Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, and any Board Resolutions.

**Working Capital Fund** means a non-refundable contribution made by the Owner of each Unit to the Association at the time of the closing of the purchase of the Unit. Such contribution shall be added to the existing reserves of the Association, for (i) unforeseen expenditures; (ii) the purchase of capital equipment; or (iii) to repair, replace or improve the Common Elements or the exterior portions of the Units for which the Association is responsible.

## ARTICLE 3.00 GENERAL RESTRICTIONS ON ALL LANDS

### 3.01 Purposes

The Property shall be used for and only for residential use in accordance with the Zoning Regulations of the Town of Grand Lake, County of Grand, State of Colorado, as the same may be amended from time to time. Should such zoning regulations allow for home-based occupations, the Owner and his Guests shall not in the course of such occupation (i) post signs

on the Property; (ii) increase parking requirements on the Property; or (iii) create any disturbance or annoyance to any other Owners, Guests or occupants of adjacent properties.

### **3.02 Materials and Appearance**

No building or improvement shall be undertaken by anyone, including the Association, which is to be of a design or constructed of materials which are not harmonious with the existing buildings in quality, color and style, all in the discretion of the Board. All construction and improvements on any Unit must comply with all Design Review Guidelines and applicable Federal, State and local rules, regulations, laws, and ordinances.

### **3.03 Nuisances**

No obnoxious or offensive activities shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance or reasonably be expected to cause embarrassment, disturbance or annoyance to other Owners or Guests. No unreasonable noise, light, glare, or any other nuisance shall be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Property or to other Owners or Guests. The Board, after notice and hearing, shall determine, in its reasonable discretion, if such noise, light, glare or other nuisance is unreasonable.

### **3.04 Owners' Maintenance Responsibility**

Each Owner shall, in a timely manner and at its sole cost and expense, maintain, repair, reconstruct and replace as necessary his Unit and the following Limited Common Elements:

a. external light fixtures, bulbs, electrical outlets, telephone and cable boxes and the like that are for the sole benefit of a single Unit and that are not tied directly into an electrical meter or similar metering device that is controlled by and/or billed directly to the Association.

Each Owner shall be responsible for any damage or injury to any person or property directly resulting from his failure to perform or negligence in performing any maintenance. Notwithstanding anything herein contained to the contrary, each Owner shall be responsible for any damage caused by him or his Guests to any Unit or Common Elements.

Each Owner shall also assist in keeping the Common Elements neat, clean and free of litter and trash. Owners and their Guests shall store all rubbish and trash in covered receptacles inside the Units until either properly disposed of in an Association-provided trash receptacle or otherwise removed from the Property.

Any party who digs in or otherwise disrupts or damages any General Common Area shall be responsible for repairs necessary to return the General Common Area to its condition

immediately prior to such damage, including but not limited to 95% soil compaction and revegetating.

If an Owner does not comply with his responsibilities under this Section 3.04 in a manner satisfactory to the Board, the Board, after notice and hearing, shall have the right, but not the obligation, to perform such maintenance, repair, reconstruction, replacement, and/or rubbish/trash removal and charge the Owner the cost thereof, which charge shall be considered an Individual Expense Assessment and subject to a lien against the Unit.

### **3.05 Association's Maintenance Responsibility**

The Association shall, at its sole cost and expense, be responsible for the maintenance, repair, reconstruction and replacement of the Common Elements, including the unassigned parking spaces, and the assigned parking spaces and the driveway between Units 37 and 38 and Units 34 and 36 which is a Limited Common Element. The Association's responsibility to maintain, repair, and plow Daven Haven Lane (as shown on the Second Amended Final Plat) shall be shared with the owner of Tract 4, Daven Haven Cabins, pursuant to a Mutual Easement Agreement to be entered into.

All costs incurred by the Association to comply with its responsibilities under this Section 3.05 shall be allocated equally to all Units as part of a Common Expense or Special Expense Assessment.

In the event of any ambiguity or lack of certainty as to what is considered an Owner or Association responsibility, the Board, in its sole and good faith judgment, shall make the determination as to which party bears responsibility for the repair and/or maintenance item in question.

### **3.06 Animals**

No animals of any kind other than dogs, cats, or other common household pets, not exceeding two such animals at any one time, shall be raised, bred or kept on any part of the Property. No animals may be raised, bred or kept for any commercial purposes. The Association shall have the right to prohibit the maintenance of any animal which constitutes, in the reasonable opinion of the Board, a nuisance or danger to any person, wildlife or property, including barking dogs. Animals within the Property must be kept within the Owner's Unit, under the Owner's control, or on a leash being held by a person capable of controlling the animal. Each Owner shall have the duty and responsibility to clean up after an animal belonging to, or under the care of, the Owner or his Guest. Owners shall be responsible for any damage to or additional maintenance of the Common Elements or the exterior of any of the Units caused by an animal belonging to, or under the care of, an Owner or his Guest, and may be subject to a fine for violation of this provision.

### **3.07 Parking and Vehicles**

Each Unit has two assigned parking spaces which are Limited Common Elements as reflected on the Second Amended Final Plat. All other parking spaces are unassigned and are considered General Common Elements. No campers or motor homes of any style are allowed on the Property. Vehicles are to be parked only in the spaces assigned to each specific cabin and may not be occupied overnight. A maximum length of eighteen feet applies to snowmobile, ATV, and boat trailers. Such trailers are only allowed on the Property when an Owner or Guest owning such trailer is staying on the Property overnight and may only be parked in the designated parking space. No long-term storage (over seven days) of recreational water craft, ATVs, snowmobiles or any type of trailer is allowed. No motorized vehicle or trailer whatsoever, except operable, insured and currently licensed vehicles or trailers may be kept or placed upon any portion of the Property. Nothing herein shall be deemed to prohibit commercial or construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to the Property.

### **3.08 Lease or Rental of a Unit**

Notwithstanding anything to the contrary contained elsewhere in this Declaration, an Owner shall have the right to lease or rent his Unit upon such terms and conditions as he may deem appropriate, subject to the following:

- a. Any lease or rental agreement is subject to the terms of This Declaration, the Bylaws, Articles of Incorporation, the Rules and Regulations, and Board Resolutions as well as all Federal, State and local statute or ordinance; and
- b. The failure of the lessee or renter (including their family, guests, contractors, employees, agents, representatives or invitees) to comply with the terms of This Declaration, the Bylaws, the Articles of Incorporation, Board Resolutions, or the Rules and Regulations shall constitute a default by the Owner and such default shall be enforceable by the Board against the Owner, the lessee or renter, or both; jointly and severally.
- c. Until December 31, 2012, Daven Haven Rental Management Company shall be the Management Company responsible for leasing the Units out. Owners purchasing Units prior to December 31, 2012, shall be required to enter into a Property Management Agreement with Daven Haven Rental Management Company for the period of time to December 31, 2012. Thereafter, Owners shall be entitled to manage their Units themselves or enter into management contracts with other property management persons or companies.

## **ARTICLE 4.00 ASSOCIATION**

### **4.01 Organization and Powers**

The Association is organized as a non-profit Colorado corporation under the Colorado Revised Non-Profit Corporation Act. It is charged with the duties and vested with the powers provided by law and set forth in the Act, This Declaration, its Articles of Incorporation and its Bylaws. In particular, but without limitation, the Association shall be responsible for the enforcement of

This Declaration, the Articles of Incorporation, Bylaws, Board Regulations, and Rules and Regulations, and for maintenance and upkeep as herein provided for. The Association shall manage, operate, care for, and maintain all of the Common Elements and the assigned parking areas which are Limited Common Elements as herein provided for and keep them in a safe, clean and attractive condition for the use and enjoyment of the Owners. The Association shall have all power necessary or convenient to effectuate such purposes.

#### **4.02 Membership and Voting Rights**

Each Owner of a Unit shall be a Member of the Association and all memberships shall be appurtenant to Units. The right to vote may not be severed or separated from the ownership of a Unit. Memberships in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of title to a Unit, and then only to the purchaser or foreclosing lien holder of such Unit. Upon transfer of fee title to any Unit, the new Owner shall provide the Board with a copy of the deed or other document of conveyance and of any trust deed or mortgage and the Board shall then record the transfer in the books of the Association.

Each Owner who is in full compliance with this Declaration, Bylaws, Board Resolutions, and Rules and Regulations shall be entitled to one (1) vote for each Unit owned. For matters requiring Member vote, only one (1) vote may be cast for each Unit, for a maximum possible number of twelve (12) votes for the Townhome Community. If a Unit is owned by more than one Person, any one of the Persons who are collectively deemed the Owner of that Unit may exercise the vote on behalf of their Unit, unless an objection or protest by another Person who owns an interest in such Unit is made prior to the completion of the vote, in which case the vote for such Unit shall be exercised as the Persons owning such Unit shall determine, in a timely manner, amongst themselves. Should the Persons who collectively own a Unit be unable, within a reasonable time, to agree how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost.

#### **4.03 Board of Directors, Officers, and Indemnification**

The Board shall consist of three (3) Members, with no more than one Board Member from any one Unit. The number of Members on the Board may be changed by a majority vote at a meeting of the Members at which there is a quorum, from time to time. The Officers of the Association need not be Members of the Board of Directors.

Each Director, Officer, and committee member of the Association shall be indemnified by the Association against all expenses and liabilities including attorney's fees reasonably incurred by him in any proceeding to which he may be a party or in which he may become involved, by reason of him being or having been a Director, Officer or committee member, to the full extent of Colorado law. Such indemnification shall not apply to claims arising from illegal actions, gross negligence or willful and wanton acts of misconduct of such Director, Officer or committee member. The indemnified Director, Officer, or committee member shall have the duty to promptly notify the Board of a potential, threatened, or actual claim; shall cooperate in the

defense of the claim; shall take reasonable efforts to mitigate any damages; and shall take no action which would in any way jeopardize any insurance coverage for the claim.

#### **4.04 Meetings of Members of the Association**

Annual Meetings of Owners, as Members of the Association, shall be held once each calendar year. Special Meetings of the Owners may be called by the President of the Association, by a majority of the Board or by the Owners having 33 1/3%, or any lower percentage specified in the Bylaws, of the then eligible votes in the Association. Those Members eligible to vote and appearing in the records of the Association at 9:00 a.m. (MT) on the day preceding the date of any meeting of the Members required or permitted to be held shall be entitled to attend any such meeting, either in person or by proxy, and to vote.

#### **4.05 Declarant Control Period**

A. Declarant reserves for itself, its successors and assigns the right to appoint the Board. The period of time during which the Declarant has the right to appoint the Board is referred to as the "Declarant Control Period". This right shall terminate no later than either sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be transferred to Unit Owners other than a Declarant, two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business, or two (2) years after any right to add new Units by annexation was last exercised, whichever occurs first.

B. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Unit Owners other than a Declarant, at least one (1) Member and not less than twenty-five percent (25%) of the Members of the Board must be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the Members of the Board must be elected by Unit Owners other than the Declarant.

#### **4.06 Assessments and Lien Rights**

##### **A. Common Expense Assessment**

Until the Association makes a Common Expense Assessment, the Declarant shall pay all Common Expenses. No Common Expense Assessment shall be made by the Association until 75% of units have been sold. Once the Association makes a Common Expense Assessment, such assessment shall be paid by all those who own units at the time of such assessment. The Association has the authority and duty to assess and collect Assessments to pay all Common Expenses plus a reasonable reserve. "Common Expense Assessments" shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the Association. Unless otherwise specified by Board Resolution, Common Expense Assessments shall be due and payable in monthly installments due on the first day of each month. All Common Expense Assessments shall be assessed against all the Units equally.

**B. Special Expense Assessment**

The Association has the authority and duty to assess and collect "Special Expense Assessments" to pay all Special Expenses deemed reasonable or necessary by the Board. Special Expense Assessments in excess of \$1,000 per Unit in any calendar year must be approved by at least sixty percent (60%) of the Owners who are then eligible to vote. All Special Expense Assessments shall be assessed against the Units equally.

**C. Individual Expense Assessment**

"Individual Expense Assessments" shall be assessed against the Unit for which the expense was incurred or against the Unit of the Owner responsible for the Individual Expense. Individual Expenses include any (i) expense or liability caused by the intentional misconduct or negligence of any Owner or Owner's Guest; (ii) expenses incurred by the Association due to an Owner's failure to comply with their obligations hereunder (such as, but not limited to, maintenance expenses); and (iii) any fines, penalties, Costs of Enforcement, and interest pursuant to This Declaration, the Bylaws, Board Resolutions, Rules or Regulations or applicable laws.

**D. Working Capital Fund Assessment**

Each time a Unit is sold, a "Working Capital Fund Assessment" shall be collected from the purchaser and transferred to the Association at the time of closing of the purchase of the Unit. The amount of the Working Capital Fund Assessment shall be established by Board Resolution from time to time, but shall in no event exceed three months of then current monthly Common Expense Assessment for each Unit. Any Working Capital Fund Assessment not collected at closing, shall be immediately due and payable by Owner.

**E. Owner Liability, No Offsets and Past Due Assessments**

Each Owner is liable for all Assessments made against such Owner's Unit during the period of ownership of such Unit. The Declarant shall not be required to pay Assessments on nine Units prior to the time they are sold to parties other than the Declarant. The Declarant, may retain ownership or may transfer ownership of up to four Units to family members, and shall be required to pay Assessments on any Units retained, upon the passing of a Common Expense Assessment by the Association. No Owner may be exempt from liability for payment of the Assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the Assessments are made. All Assessments and Costs of Enforcement shall be payable in the amounts specified and no offsets or reductions thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board is not properly exercising its powers or fulfilling its duties under This Declaration, the Bylaws, Rules and Regulations or Board Resolutions. Any past due Assessment or installment thereof may incur late charges and shall bear interest at the rate established by the Association not to exceed the maximum rate allowed by law and shall become a lien against the Unit and may be foreclosed upon in the same manner as an Assessment lien.



F. Lien for Assessments

1. The Association has a statutory lien on a Unit for any Assessment levied against that Unit or fines, penalties, and other charges imposed against its Owner. Costs of Enforcement are also enforceable as Assessments. The amount of the lien shall include all those items set forth in this Section 4.06 and allowed by law 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.

2. Priority

a. A lien under this section is prior to all other liens and encumbrances on a Unit except:

(1) Liens and encumbrances recorded before the recordation of this Declaration.

(2) A security interest on the Unit which has priority over all other security interests on the Unit and which was recorded before the date on which the Assessment sought to be enforced became delinquent; and

(3) Liens for real estate taxes and other governmental assessments or charges against the Unit.

b. A lien under this section is also prior to the security interests described in Subparagraph (2) of Paragraph a. of this Subsection 2 to the extent of an amount equal to the Common Expense Assessments based on a periodic budget adopted by the Association which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association's lien created under this section, of an action or a non-judicial foreclosure either to enforce or to extinguish the lien.

3. Recording of This Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required.

4. The lien and foreclosure thereof herein provided for is not an exclusive remedy, and this section does not prohibit actions or suits to recover sums for which Subsection 1 of this section creates a lien. This section does not prohibit the Association from taking a deed in lieu of foreclosure or otherwise settling a claim.

5. The Association shall be entitled to all costs and reasonable attorney's fees incurred by the Association in a judgment or decree in any action or suit brought by the Association under this section.

6. In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the Court may appoint a receiver to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The Court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Assessments.

7. The Association's lien may be foreclosed in like manner as a mortgage on real estate or as otherwise provided by law.

8. The Association's lien on a Unit for Assessments and/or Costs of Enforcement shall be prior and superior to any homestead exemption now or hereafter provided by any State or Federal law. The acceptance of a deed to a Unit shall constitute a waiver of the homestead exemption and any other exemptions as against such lien.

#### **4.07 Acceleration**

In addition to all of the remedies available to the Association pursuant to This Declaration and by law, upon a default in the payment of Assessments or Costs of Enforcement, the Association may accelerate and declare immediately due and payable all unpaid installments of the Assessment otherwise due within the twelve (12) month period immediately following the default.

#### **4.08 Budgetary Requirements**

A. The Association shall adopt a budget annually which shall form the basis of the Common Expense Assessments. The budget shall also include an amount to be determined by the Owners in excess of the total budgetary requirements as a reasonable reserve. Surplus funds may be retained by the Association and added to the reserve fund.

B. Within ninety (90) days after adoption of any proposed budget by the Board, the Board shall mail, by ordinary first class mail, electronic mail, or otherwise, deliver a copy of the budget to all Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the budget, or as allowed for in the Bylaws. The Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Board 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 a majority of all Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the Budget last proposed by the Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board is not vetoed by a majority of the Owners.

#### **4.09 Insurance**

A. The Association shall continually maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements and the operation of the Association pursuant to this Declaration in an amount deemed sufficient in the judgment of the Board but not less than any amount specified in the Association documents, insuring the Board, the Officers, the Association, and their respective employees, agents, and all persons acting as their agents. The 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 Elements and the operation of the Association pursuant to this Declaration. Such insurance shall also cover claims of one or more insured parties against other insured parties. Insurance policies carried pursuant to this Subsection A must comply with the Act.

B. The Association shall continuously maintain property (broad form covered causes of loss) coverage on the Common Elements providing for maximum guaranteed replacement coverage sufficient to rebuild the Common Elements in a manner and quality substantially similar to the existing Common Elements.

C. If the insurance described in Subsections A and B of this section or any portion thereof is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners. The Association may carry any other insurance it considers appropriate, including insurance on Units it is not obligated to insure, to protect the Association or the Owners.

1. Insurance policies carried pursuant to Subsections A and B of this Section must provide that:

(a) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

(b) The insured waives its rights to subrogation under the policy against any Owner or member of his household;

(c) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

D. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

E. An insurer that has issued an insurance policy described in Subsections A and B of this section shall issue certificates or memoranda of insurance to the Association and to any Owner or holder of a security interest, upon request. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, and to each Owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

F. Each Owner shall continuously maintain property (broad form covered causes of loss) insurance providing for maximum guaranteed replacement coverage on the Unit. Each Owner is responsible for making sure that said insurance coverage is sufficient to rebuild the Owner's Unit in a manner and quality substantially similar to the then existing Unit. Additionally, each Owner shall continuously maintain general liability insurance in an amount determined reasonable by the Board, but in no event less than \$500,000. The Association shall be an additional insured under the liability policy. Owners shall provide the Association with proof of such coverages upon purchasing a Unit and at least annually thereafter. The Association may also reasonably require Owners to provide proof of such coverage satisfactory to the Board, from time to time. Said policies shall require that the Association be notified in writing at least thirty (30) days prior to termination or non-renewal. Failure to maintain such insurance coverage shall be a material breach of this provision entitling the Association to immediately arrange for and pay the premium for such insurance coverage, which amount shall be a lien against the Unit as an Individual Expense Assessment, and which may be foreclosed upon as an Assessment lien. The Association shall also be entitled to damages and injunctive relief.

Owners acknowledge that the Association's property insurance does not provide coverage for each Owner's individual Unit or for the contents of the Units and it is the Owner's responsibility to provide adequate property insurance coverage for such. In no event shall the Association or the Board be responsible if a Unit or its contents are underinsured or uninsured. Any expense incurred by the Association to repair or rebuild an underinsured or uninsured Unit shall be an Individual Expense.

G. Repair and Replacement

1. Any portion of the Common Interest Community for which Association insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(a) the Common Interest Community is terminated, in which case §38-33.3-218 C.R.S. applies;

(b) repair or replacement would be illegal under any Federal, State, or local statute or ordinance governing health or safety;

(c) sixty-seven percent (67%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild;

(d) prior to the conveyance of any Unit to a person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Common Interest Community rightfully demands all or a substantial part of the insurance proceeds; or

(e) no insurance proceeds are available.

2. The cost of repair or replacement of property insured by the Association in excess of insurance proceeds and deductibles is a Common Expense, unless such excess cost of repair or replacement has been classified as an Individual Expense hereunder. If the entire Common Interest Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements if any that are not rebuilt must be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lien holders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the Common Expense liabilities of all the Units.

H. The Association may carry officers and directors liability insurance, fidelity insurance or any other types of insurance coverage which the Board deems necessary and prudent.

#### ARTICLE 5.00 BOARD REVIEW AND APPROVAL

##### 5.01 General Rule

No repairs or improvements of any kind may be erected, placed, altered or maintained on the Property or to the exterior of the Units or to the Common Elements, nor may any trees or other vegetation on the Common Elements be altered, cut, or destroyed nor any landscaping performed by anyone other than the Board or a party authorized by the Board. No structural or material improvements or modifications to the Units shall be initiated by an Owner until written plans are submitted to the Board for review and a majority of the Board approves the plans, in writing. In the event the Board fails to approve or disapprove any submittal within thirty (30) days of receipt of a complete submittal, the submittal shall be deemed to have been disapproved. If construction is commenced without Board approval, the Owner shall, after notice and hearing, be subject to a fine of at least \$1,000.00, which fine shall become a lien against the Owner's Unit and may be foreclosed upon in the same manner as an Assessment lien. In addition, the Association or any other Owner shall be entitled to injunctive relief.

#### **5.02 Freedom from Liability**

Neither the Board nor any Member thereof shall be liable, in damages or otherwise, to any person or entity submitting any plans for approval, or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such plans.

#### **5.03 Review**

Board approval or disapproval of submitted plans shall be based solely on the considerations set forth in this Declaration, the Bylaws, Board Resolutions, the Rules and Regulations, if any, and the Board's reasonable discretion and shall not be arbitrary or capricious. The Board shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. In fulfilling its duties, the Board may request the submission of such plans, specifications, drawings and the like which it deems necessary to review any request. The thirty (30) day period set forth in Section 5.01 hereof shall not start to run until all requested items have been supplied. The Board may impose, in connection with any particular review, a reasonable fee to cover its anticipated expenses for conducting such review, including the anticipated cost of obtaining professional guidance from a licensed architect, engineer or other appropriate licensed professional. In the event such a fee is imposed, the review need not be completed until payment in full has been received.

#### **5.04 Rules and Regulations**

The Association may promulgate Rules and Regulations setting forth additional responsibilities of the Board or Owners and addressing other matters, as authorized by this Declaration. Rules and Regulations regarding the responsibilities of the Board must be promulgated or amended by the Owners. Other Rules and Regulations may be promulgated or amended by the Board, subject to revocation or revision by the Owners. Rules and Regulations regarding construction methods, including but not limited to excavation, drainage, utility lines, loading areas, waste storage, trash removal, materials storage, and transformers and meters, may be included. Such Rules and Regulations shall be printed and upon request and the payment of a reasonable charge, shall be made available to anyone requesting same. Any such Rule or Regulation or amendments thereto shall be effective immediately upon its adoption by the Owners or the Board as the case may be, and the Board shall immediately make such Rule, Regulation or amendment thereto part of the printed Rules and Regulations. Notwithstanding the provisions of this Section 5.04, no such Rule, Regulation or amendment thereto shall apply to plans which had already been completely submitted to the Board.

#### **5.05 Variances**

The Board may authorize variances from compliance with the terms of this Article 5.00 or with Board Rules and Regulations when circumstances, such as topography, natural obstructions, hardship, aesthetic or environmental considerations, indicate that it would be reasonable to do so;

provided, however, that such variances may not have a significant detrimental affect to the value of nearby property. Such variances must be in writing, shall state with particularity the grounds for and the nature of same, must be signed by at least a majority of the members of the Board. If such variances are granted, no violation of the terms of this Article 5.00 or the Rules and Regulations shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Article 5.00 or of the Board's Rules and Regulations except as to the particular property and particular provisions covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting use of the premises.

## **ARTICLE 6.00 VIOLATIONS, ENFORCEMENT AND DISPUTE RESOLUTION**

### **6.01 Violations**

Violation of any portion of this Declaration, the Bylaws, Rules and Regulations, Board Resolutions or requirements adopted thereunder, shall give to the Association and its agents or assigns, the right, but not the obligation, to enter upon the Property as to which such violation exists, and to summarily abate and remove, at the expense of the Owner thereof, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof of the Bylaws, the Rules and Regulations or Board Resolutions; and the Association, or its agents or assigns shall not thereby be deemed guilty or liable for trespass or in any manner for such entry, abatement or removal.

### **6.02 Enforcement**

A. The Association or any Owner shall have the right to prosecute any action to enforce the provisions of the Declaration by injunctive relief, and/or to recover damages. In the event of any such litigation, the prevailing party shall be entitled to recover its costs, including reasonable attorney's fees as part of any judgment.

B. The Association may adopt a schedule of fines for violation of any portion of the Declaration, Bylaws, Board Resolutions, the Rules and Regulations or requirements adopted thereunder; provided that the alleged violating party shall have a right to notice and a hearing before the Board before imposition of any fine. These fines may be levied as an Individual Expense Assessment, and shall be a lien against the Owner's Unit to be collected and enforced in the same manner as other Assessments made under the authority of the Association.

C. This Declaration shall bind and inure to the benefit of and be enforceable by any Owner, or their respective successors and assigns; and failure by the Board, or by any other Owner to enforce any portion of the Declaration shall in no event be deemed a waiver of the right to do so thereafter.

D. The Association, through the Board, or any Owner may enforce the provisions of this Declaration by whatever means may be available in law, in equity, and in accordance with this Declaration.

E. If any Owner fails to timely pay Assessments or any money or sums due to the Association, the Association, through the Board, may additionally require reimbursement for Costs of Enforcement incurred as a result of such failure without the necessity of commencing a legal proceeding, plus charge interest at a rate to be established by the Board, not to exceed the maximum allowed by law.

F. For any failure to comply with the provisions of the Act or any provision of this Declaration, Bylaws, Articles, Rules and Regulations, or Board Resolutions, other than the payment of Assessments or any money or sums due to the Association, the Association, through the Board, any Owner or any class of Owners adversely affected by the failure to comply may seek injunctive relief and seek reimbursement for Costs of Enforcement, without the necessity of commencing a legal action. Notwithstanding this provision, if the Court determines that the Owner prevailed because the Owner did not commit the alleged violation; the Court shall award the Owner reasonable attorney's fees and costs incurred in asserting or defending the claim.

#### 6.03 Dispute Resolution

A. In order to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation, mediation is made mandatory for the Association, Owners, and all persons subject to this Declaration ("Contestants"). All disputes or claims between or among those subject to this Declaration shall be mediated by a mediator mutually agreeable to the Contestants. The mediation agreement, if one is reached, may be presented to the Court as a stipulation and made an Order of Court. If either party subsequently violates the stipulation, the other party may apply immediately to the Court for relief.

B. The following claims shall be **EXEMPT** from the mediation requirements of this section:

1. any suit by the Association to enforce any Assessment.
2. any suit by the Association to obtain a temporary restraining order or equivalent emergency equitable relief and such other ancillary or related relief as the Court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the Design Review Guidelines, Board Resolutions or the Rules and Regulations.
3. any claim or dispute among Owners if such claim is not based upon this Declaration, the Articles, Bylaws, Rules and Regulations or Board Resolution, of the Association, or does not relate in any way to ownership of a Unit.
4. any suit by the Association in which similar or identical claims are asserted against more than one Contestant.



5. any suit, which does not include a claim for damages, by a Contestant for declaratory or injunctive relief which seeks a determination as to applicability, clarification or interpretation of any provision of this Declaration.

#### **ARTICLE 7.00 EASEMENTS**

##### **7.01 Emergency, Inspection and Enforcement**

A special easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons for use of Common Areas, and improvements thereof, in the performance of their duties. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons, to inspect for the purpose of ensuring compliance with This Declaration, the Bylaws, Board Resolutions, and the Rules and Regulations, and for the purpose of enforcement thereof. These rights may be exercised by the Association, through any Member of the Board, any officer, agent, employee or manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry by the Association shall only be during reasonable hours and after notice to the Owner.

##### **7.02 Utilities**

Non-exclusive easements over, across and under the Common Areas and over, across and under any and all Units shown on the Second Amended Final Plat, for the installation and maintenance of all utilities, including, but not limited to, electric, telephone, cable television, water, gas, irrigation, sewer and drainage facilities were previously reserved for the Association and the Owners and shall remain in full force and effect. The Association may make additional, non-exclusive grants of such easement rights to other entities in the future by recordable instrument. In the event an Owner does not properly remove and clean-up any residual debris after construction or installation of any utility, the Board is hereby authorized to cause the clean-up to be done at the Owner's expense and, if not timely paid, the Board may collect such unpaid sums as an Individual Expense.

#### **ARTICLE 8.00 AMENDMENT**

This Declaration may be amended only by a written instrument signed by sixty percent (60%) of the Owners. No amendment may in any way diminish the security of a lender who holds a security interest encumbering any Unit without such secured lender's written consent.

#### **ARTICLE 9.00 DECLARANT'S RIGHTS**

#### **9.01 Development Rights and Other Special Declarant Rights**

In addition to any rights hereinabove contained, the Declarant reserves the following Development Rights and Special Declarant Rights for a period of twenty (20) years. If any development right is exercised in any portion of the Property subject to that development right, that development right does not have to be exercised in all or in any other portion of the Property.

- A. The right to complete or make improvements indicated on the plat or maps;
- B. The right to maintain sales models in a Unit. Any such model may be located in any Unit.
- C. The right to maintain signs on the Property to advertise the Units so long as such signs conform to the then applicable sign code;
- D. The right to create and use, and to permit others to use, easements through the Property as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this Declaration;
- E. The right to appoint or remove any officer of the Association or any Director during the Declarant Control Period consistent with the Act;
- F. The right to transfer any one or all of the rights reserved herein subject to the requirements of the Act.

**9.02.** In addition to the foregoing reserved rights, the Declarant reserves the right to exercise all Development Rights and Special Declarant Rights provided for by the Act.

### **ARTICLE 10.00 GENERAL PROVISIONS**

#### **10.01 Severability**

Should any portion of this Declaration be declared invalid or unenforceable by any Court of competent jurisdiction, such invalid or unenforceable provision shall be reformed by the Court but only to the extent necessary to render it valid and enforceable and such decision(s) shall not affect the validity of the remainder of this Declaration.


#### **10.02 Duration**

This Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns.

### 10.03 Conflicts

In the event of any conflict between the terms and conditions of this Declaration and previously recorded declarations, the terms and conditions hereof shall govern. In the event of any conflict between the Second Amended Final Plat and previously recorded maps or plats, the Second Amended Final Plat shall govern. This Declaration is intended to comply with the requirements of the Act and the Colorado Revised Nonprofit Corporation Act. If there is any conflict between this Declaration and the provisions of the Act, the provisions of the Act shall control. In the event of any conflict between this Declaration and the Bylaws, the terms of this Declaration shall control.

Gregory A. Barnes Date \_\_\_\_\_

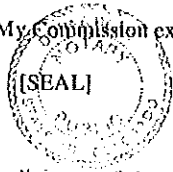
  
Carey A. Barnes Date


STATE OF COLORADO )  
 ) ss  
COUNTY OF GRAND )

Acknowledged before me this 7<sup>th</sup> day of April, 2012, by Gregory A. Barnes.

WITNESS my hand and official seal.

My Commission expires: 9-13-12



  
Notary Public


STATE OF COLORADO )  
 ) ss  
COUNTY OF GRAND )

Acknowledged before me this 7<sup>th</sup> day of April, 2012, by Carey A. Barnes.

WITNESS my hand and official seal.

My Commission expires: 9-13-12



  
Notary Public