

October 9, 2025

Paul Smith and Dave Reynolds
Town of New Castle
450 W Main St
New Castle, CO 81647

9 North Wildhorse PUD Minor Amendment Submittal

Pursuant to our meeting with the town in July and follow up correspondence with regards to revising the plans to create a “for sale” townhome product, we have prepared this Minor Amendment Submittal for the 9 North Wildhorse Development. As a brief summary, we decided that “for sale” townhomes would be desirable in this development; but, the plan would require some minor modification in order to offer a marketable, “for sale” townhome product. These revisions included: delivering 2 car garages, slightly increasing kitchen and storage space, and improving the master bathroom and bedroom size and layout. We also elected to add natural gas fireplaces to the townhomes as another feature in a “for sale” product. We believe that these revisions are generally consistent with the original PUD and have been advised to submit a Minor Amendment of the PUD for review.

With the limited real estate along Vista Loop, these changes required condensing the townhome buildings into mostly 5 plex buildings with two triplex buildings. Once we really dug into this site planning exercise and were grading out the two triplexes on the south side of Vista Loop, we realized that the natural grading of the site lent itself to creating walkout basements for the units at those two buildings. Without the walkout basements, there would be an excessive and underutilized crawl space so a walkout basement felt much more practical and natural. We made this change very recently and so we wanted to expressly point it out for your review.

As requested, we have provided the following documentation at the ShareFile link in the submittal email:

1. Submittal Cover Letter (this document)
2. Final Civil Plans for Final Amendment – to show new townhome building layout, utilities, grading, etc. We have confirmed that the new plan’s setbacks and lots conform to the current zoning.
3. Amended Plat
4. Amended Plat of Townhome Block 1A (as an example for each townhome building block plat)
5. Updated Declarations that contemplate the “for sale” townhome product along with the Live/Work apartments and Empty Nester apartments
6. Updated architectural package that shows new townhome layouts and elevations
 - a. Includes layout and elevations of maintenance building on Page 9
7. Updated elevations/perspectives of the townhomes from Vix Park as requested

Please let us know if you need any additional information or wish to discuss this material.

Thanks,
Dan Kunau
Andover Management Group



Planning Department
(970) 984-2311
Email:
psmith@newcastlecolorado.org

LAND DEVELOPMENT APPLICATION


Town of New Castle
PO Box 90
450 W. Main Street
New Castle, CO 81647

Note: All land use applications must be filed with the Town Clerk. Please consult the Town Planner for codes specific to the Land Development Application. All application materials are subject to the Colorado Open Records Act (CORA), C.R.S. §24-72-201 to 207.

Applicant: Dan Kunau	
Address: 333 E Main Street, Suite 300 Louisville, KY 40202	Phone: E-mail: 502-572-7880, dkunau@andovermgt.com
Property Owner: Wildhorse Apartments LLC	
Address: 333 E Main Street, Suite 300 Louisville, KY 40202	Phone: E-mail: 502-572-7880, dkunau@andovermgt.com
Contact Person: Dan Kunau	
Address: 333 E Main Street Suite 300 Louisville, KY 40202	Phone: E-mail: 502-572-7880, dkunau@andovermgt.com
Property Location/Address: 9 North Wild Horse New Castle, Colorado	
Legal Description: Lots 1,2, & 3 and Parcels 1 and 2 9 North Wild Horse Subdivision	Acres: ~60
Existing Zone (e.g., Residential R-1, Commercial C-1): PUD	Existing Land Use: Vacant

TYPE(S) OF LAND USE(S) REQUESTED

- | | |
|--|--|
| <input type="checkbox"/> Pre-Annexation Agreement | <input type="checkbox"/> Conditional Use Permit or Special Review Use Permit |
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Lot Line Adjustment or Dissolution |
| <input type="checkbox"/> Subdivision (including Minor and Major Subdivisions, Lot Splits, Sketch Plans, Subdivision Preliminary Plans, Subdivision Final Plans, & Condominiumizations) | <input type="checkbox"/> Site Specific Development Plan/Vested Rights |
| <input type="checkbox"/> Amended Plat | <input type="checkbox"/> Variance |
| <input checked="" type="checkbox"/> Planned Unit Development (including PUD Sketch Plans, Preliminary PUD Development Plans, PUD Master Plans and Final PUD Development Plans) | <input type="checkbox"/> Zoning |
| <input type="checkbox"/> Master Plan Amendment | <input type="checkbox"/> Zoning Amendment |
| | <input type="checkbox"/> Re-zoning |
| | <input type="checkbox"/> Watershed Permit |

 Applicant Signature	10/16/25 Date
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AGREEMENT TO PAY CONSULTING AND ADMINISTRATIVE COSTS

Pursuant to municipal code section 16.08.070, for any land use application, the applicant shall pay all costs incurred by the town for the preparation of plats, plans, other required data and documents, recording fees, publication costs, legal and engineering review and advice, planning review and advice, inspections and all other out-of-pocket costs incurred by the town in connection with the land use application. In the case of withdrawal or denial of a land use application, the applicant shall be responsible for all costs actually incurred by the town in connection with such application regardless of the state of the review process at which the application is withdrawn or denied.

To secure payment of costs incurred by the town, the owner of the land proposed for development (and the applicant, if different) shall be required to sign the following agreement:

By signing below, the applicant and property owner hereby agree to reimburse the Town the actual costs to the Town for engineering, planning, surveying, legal services, and all other costs incurred by the Town in connection with the review and approval of the land use application. I also agree to reimburse the Town for the cost of making any correction or additions to the master copy of the official Town map and for any fees for recording any plats and accompanying documents with the County Clerk and Recorder of Garfield County. I agree that interest shall be imposed at the rate of 1.5% per month on all balances not paid within thirty (30) days of a statement. In the event the Town pursues collection of any amounts due and unpaid, the Town shall be entitled to collect attorney's fees and costs. In addition to all other remedies allowable by law, I agree that in the event any amounts remain due and unpaid for sixty (60) days the Town shall have the power and authority to certify such amounts, plus a ten percent penalty, to Garfield County to be imposed as a tax lien against the real property subject to the development application.

SO AGREED this 16 day of October, 2025

Dan Kunau

Applicant (Print Name)

502-572-7880

Telephone Number

dkunau@andovermgt.com

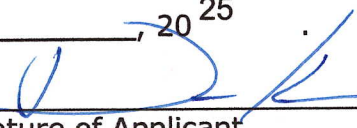
Email

Allen Schubert

Property Owner

Same Company

Relationship of Owner to Applicant



Signature of Applicant

333 E Main Street Suite 300 Louisville, KY 40202

Mailing Address of Applicant

dkunau@andovermgt.com

Email Address of Applicant



Signature of Property Owner

333 E Main Street Suite 300 Louisville, KY 40202

Owner Mailing Address

Type of application: Minor PUD Amendment and Amended Plat

Property description: 9 North Wild Horse Property

Town of New Castle
 Jeff Simonson, PE, Town Review Engineer
 John Wenzel, Public Works Director

RE: 9 North Wild Horse Subdivision –Response to Minor Amendment comments
 SE Job No. 33011.01

Jeff, John,

The 9NWH development team has prepared this response letter to respond to the Town Public Works and Town Review engineer's 9NWH minor amendment plan review comments. The comments are listed below, the SE response follows in red font preceded by (SE:)

Please Call or email with any questions or to discuss further.

Town Public Works Comments, John Wenzel 10/24/2025 email to Paul Smith + others:

The Public Works Department has had the chance to review 9 N. Wild Horse Minor Amendment and has no comments on the changes.

Before construction begins it will be important for us to review and approve the proposed raw water system design. Our design expectations are as follows:

1. The system should be looped
 - (SE) The civil plans show the looped line in Vista Loop ROW
2. Bury depth approximately 2 feet
3. Pipe material type to be purple 4" gasketed bell C900 DR18
4. Fittings to be MEGALUG mechanical joint or standard mechanical joint with concrete thrust block.
5. Each tap should include saddle at the main and a weeping curb stop with proper drainage
 - (SE) The civil plan cover sheet has notes that require items noted in comments 2-5.
6. Identify air release valve locations
7. Identify isolation valve locations
8. Identify gravity drainage locations for winterization.
 - (SE) The civil plans will be revised to add plan/profile sheets to detail the air release valve, isolation valves, & gravity drain locations.
 - We will coordinate this final design with Town Public Works and Engineering prior to grading permit submittal.
9. The curb/gutter and drainage bordering VIX Park is also a concern of ours. There has been some back and forth discussion on vertical curb and gutter with periodic scuppers for drainage or a simple ribbon drain along the entire length of the park boundary. We would prefer the 6" vertical curb and gutter with periodic scuppers.
 - (SE) The civil plans and sections will be revised to show curb with drainage scuppers under sidewalk.
 - We will coordinate this final design with Town Public Works and Engineering prior to grading permit submittal.



- One specific question; should the curb at the back of parking be vertical curb pre the comment, or mountable curb to match the rest of the curb on North Wild Horse Driveway as coordinated with the Town previously?

Town Engineer Comments, Jeff Simonson's 10/31/2025 letter to Paul Smith:

The purpose of this letter is to provide our comments and concerns regarding the Minor Amendment Permit Package submitted to the Town for 9 North Wild Horse. Please note the following:

1. With the minor amendment, we note that the proposed 5-plex building arrangement likely will modify the proposed drainage conditions for the affected basins within the site. As no revised drainage report has been provided, we are not able to discern whether modifications to the prior proposed drainage infrastructure is in order. We recommend that the drainage report be revised and the drainage infrastructure redesign (if necessary) be provided prior to construction.
 - (SE) Refer to the attached civil drainage plans and the engineering letter with revised drainage calculations. There are no changes to the overall grading and drainage concept. The sub-basin drainage routing has been adjusted to reflect the change to 5-plex buildings.
2. Given review of the anticipated additional disturbed area in the southwest corner of the site, we would recommend that the erosion control plan be updated as appropriate to address the additional grading proposed with the amendment.
 - (SE) Erosion control plan has been updated.
3. Given the 5-plex construction, is there a requirement now to provide interior fire suppression systems in the units? If so, the utility drawings need to be updated to reflect the locations, sizing, valving and reaction blocks for the fire suppression supply lines into each of the 5 plex units. Likewise, the cost estimates for the SIA need to be updated to include these fire lines.
 - (SE) The townhomes were previously fire sprinklered and the 1" water service size was adequate. This will be confirmed prior to grading permit submittal.
4. As we noted in our 10/2/25 email to you, the final design of the potable irrigation system needs to be provided which includes the valves, backflow prevention devices, bend locations, service line connection points, line types and sizes, blow off locations and drains. In John Wenzels email, he further refines his recommendations for the facilities needed as well. As with the water system revision noted in the prior comment, SIA costs need to be updated to include these facilities.
 - (SE) The SIA cost estimate will be updated to reflect the plan changes prior to final Town approval.
5. With the given changes in the grading plan and the fact that the grading permit under the prior site plan was performed, we expect that prior to construction, the drawings will be updated for the grading permit and that all the conditions outlined in our prior review of the grading permit be addressed.
 - (SE) All drawings will be updated to final for the grading permit.
6. In reviewing the final plat, it does not appear that the 12' emergency access easement has been modified as it has been so on the Civil Drawings. Currently on the plat, the easement will be traversing through TH-B8.



- (SE) The amended plat has been updated to reflect the current alignment for the 12' emergency access easement.
7. Also, in the plat, we would recommend that the Certificate of Dedication and Ownership statement assure that the areas other than the building footprints within Lot 1 provide the Town of New Castle and HOA a blanket drainage easement to assure that both offsite and on-site drainage facilities are adequately maintained and functional to assure compliance with the intended drainage plan is provided in perpetuity.
- (SE) The amended plat dedication statement has been revised to provide a blanket drainage easement.

Upon your receipt and review, if you have any questions, please don't hesitate to contact me.



From: [John Wenzel](#)
To: [Paul Smith](#); [Harper E. Powell](#); mjs@mountainlawfirm.com; [jeffs \(jeffs@sgm-inc.com\)](mailto:jeffs@sgm-inc.com); Orrin.Moon@Crfr.us
Cc: [Dave Reynolds](#); [Michelle Huster](#); [Mindy Andis](#); [Cody Kessel](#)
Subject: RE: 9 North Wild Horse Minor Amendment - Submittal
Date: Friday, October 24, 2025 10:34:44 AM
Attachments: [image002.png](#)
[image003.png](#)

Hi Paul,

The Public Works Department has had the chance to review 9 N. Wild Horse Minor Amendment and has no comments on the changes.

Before construction begins it will be important for us to review and approve the proposed raw water system design. Our design expectations are as follows:

- The system should be looped

- Bury depth approximately 2 feet

- Pipe material type to be purple 4" gasketed bell C900 DR18

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- Each tap should include saddle at the main and a weeping curb stop with proper drainage

- Identify air release valve locations

- Identify isolation valve locations

- Identify gravity drainage locations for winterization.

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Thank you.

John

From: Paul Smith <psmith@newcastlecolorado.org>
Sent: Friday, October 17, 2025 10:24 AM
To: Harper E. Powell <hep@mountainlawfirm.com>; mjs@mountainlawfirm.com; [jeffs \(jeffs@sgm-inc.com\)](mailto:jeffs@sgm-inc.com) <jeffs@sgm-inc.com>; John Wenzel <jwenzel@newcastlecolorado.org>; Orrin.Moon@Crfr.us
Cc: Dave Reynolds <dreynolds@newcastlecolorado.org>; Michelle Huster

<mhuster@newcastlecolorado.org>; Mindy Andis <mandis@newcastlecolorado.org>

Subject: FW: 9 North Wild Horse Minor Amendment - Submittal

Hello,

The R2 team (now Wild Horse Apartments) has submitted their application for the minor PUD amendment (*****SEE LINK BELOW*****). A minor PUD amendment is a one-off with P&Z subject to section 17.100.110:

- These are secondary comments:
- B. Minor amendments are alterations to an approved PUD development plan that require increased review and scrutiny. Minor amendments may be approved by resolution of the planning commission following a noticed public hearing. The planning commission may condition such approval as necessary to ensure that the development will be compatible with current community standards, infrastructure, and regulations. Minor amendments include, but are not limited to:
1. An increase or decrease equal to or less than three (3) percent of the overall coverage of residential structures as originally approved within the PUD;
 2. An increase or decrease equal to or less than three (3) percent or one thousand (1,000) square feet (whichever is less) of the overall coverage of commercial/light industrial structures as originally approved within the PUD;
 3. A reduction in the number of residential dwelling units not including designated affordable housing units;
 4. An increase of the originally approved common or public open spaces;
 5. Improvements to site circulation such as deceleration lanes, increased street connectivity, improved/expanded non-motorized access routes, etc.;
 6. Alterations to the applicable PUD dimensional standard(s) (e.g., setbacks, building height, F.A.R) of less than ten percent (10%).

Please review and provide a referral statement as necessary addressing any concerns you may have. They are attempting to get this piece finalized this year before permit applications are submitted.

Thank you,

Paul Smith

Town Planner/Inspector

psmith@newcastlecolorado.org

(970) 984-2311 #108



From: Dan Kunau <dkunau@andovermgt.com>

Sent: Monday, October 13, 2025 10:10 AM

To: Paul Smith <psmith@newcastlecolorado.org>

Subject: 9 North Wild Horse Minor Amendment - Submittal

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Paul,

I hope you are doing well.

At the ShareFile link below, please find documents for our Minor Amendment Submittal for 9 N Wild Horse.

1. Submittal Cover Letter
2. Final Civil Plans for Final Amendment – to show new townhome building layout, utilities, grading, etc. We have confirmed that the new plan’s setbacks and lots conform to the current zoning.
3. Amended Plat
4. Amended Plat of Townhome Block 1A (as an example for each townhome building block plat)
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6. Updated architectural package that shows new townhome layouts and elevations
 - a. Includes layout and elevations of maintenance building on Page 9
7. Updated elevations/perspectives of the townhomes from Vix Park as requested

Please let me know if you have any comments/questions or need any additional information.

Thanks,
Dan

ShareFile Attachments

Expires April 14, 2026

Wildhorse Minor Amendment Submittal 10.13.25

34.3 MB

[Download Attachments](#)

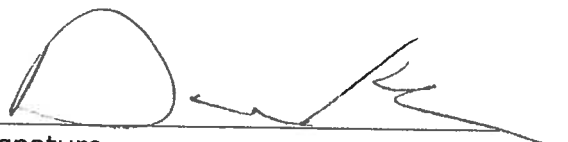
Dan Kunau uses ShareFile to share documents securely.



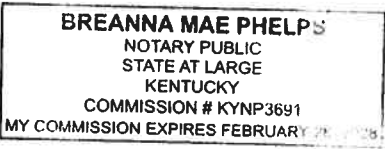
AFFIDAVIT AS TO NOTICE OF PUBLIC HEARING

We, **Wildhorse Apartments, LLC**, do hereby certify that pursuant to ordinances of the Town of New Castle, Colorado, we provided notice of a Public Hearing on **January 14th, 2026**, regarding a **Minor PUD Amendment** by doing the following:

1. At least fifteen **(15) days prior** to such hearing, we sent a copy of the attached Notice of Public Hearing by **certified mail to the owners of all property within two hundred fifty (250) feet** of the subject property and to the Town of New Castle.
2. If required by Chapter 16.10 of the new Castle Municipal Code, at least thirty **(30) days prior** to such hearing, I sent a copy of the attached Notice of Public Hearing by certified mail to the **owners of mineral estates** who have requested notification with respect to the subject property at the Garfield County Clerk and Recorder.
3. At least fifteen (15) days prior to such hearing, **we posted Notice of Public Hearing on the property on a sign** approved by the Town at least twenty-two (22) inches wide, twenty-six (26) inches high, with letters at least one (1) inch in height. The sign was posted so that it was visible from a public street.
4. At least (15) days prior to such hearing, the attached Notice of Public Hearing was published on the **Town's website**.


Signature

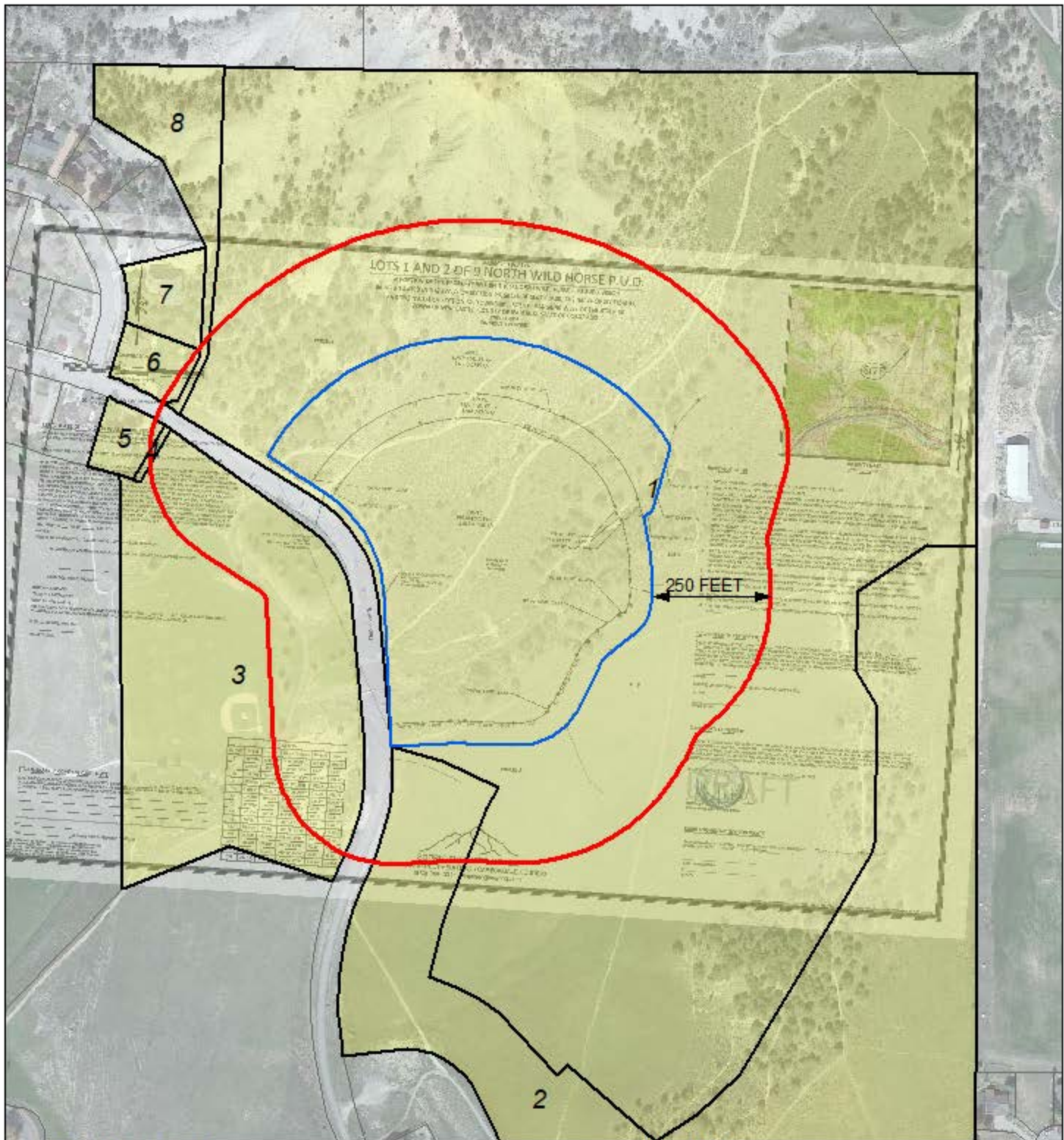
STATE OF COLORADO)
) ss.
COUNTY OF _____)



Subscribed and sworn to before me this 2nd day of January, 2026, by Breanna Mae Phelps.

Witness my hand and official seal.

Breanna Mae Phelps
Notary Public
My commission expires: 02/28/2028

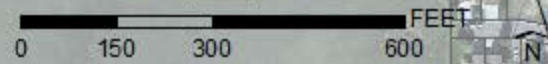


ID	PARCEL No	OWNER	OWNER ADDRESS
1	212329300194	CTS INVESTMENTS, LLC	343 DAKOTA BLVD BOULDER, CO 80304
2	212329300197	CVR INVESTORS INC	PO BOX 1380 CAREFREE, AZ 85377
3	212330400003	NEW CASTLE, TOWN OF	PO BOX 90 NEW CASTLE, CO 81647
4	212330423037	NEW CASTLE, TOWN OF	PO BOX 90 NEW CASTLE, CO 81647-0166
5	212330423008	RATAJCZAK, ZDZISLAW & HALINA	627 NORTH WILDHORSE DRIVE NEW CASTLE, CO 81647
6	212330423009	YOUNG, DAVID A & FRAMBACH, JANE	6 BUCKSKIN CIRCLE NEW CASTLE, CO 81647
7	212330423010	CLASSEN, ROBERT SETH & GONZALEZ CLASSEN, GLORIA ELIZABETH	10 BUCKSKIN CIRCLE NEW CASTLE, CO 81647
8	212330423036	NEW CASTLE, TOWN OF	PO BOX 90 NEW CASTLE, CO 81647-0166

OWNER INFORMATION GARFIELD COUNTY GIS 12/09/2025

NORTH WILD HORSE PUD

PARCELS WITHIN 250 FT.



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**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR
9 NORTH WILDHORSE**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for 9 North Wildhorse (this “**Declaration**”) is made as of the ____ day of _____, 202__ by the undersigned owner (“**Declarant**”) being the owner of Blocks 1A, 1B, 1C, 1D, 2A, 2B, Amended Lot 2, and Lot 3 as well as Parcels 1 and 2, all as described in the Plat (defined below) (the “**Property**”).

RECITIALS

- A. Declarant recorded the Covenants, Conditions, and Restrictions of 9 North Wildhorse PUD Subdivision on May 22, 2025, at Reception 1007200 in the real property records of Garfield County, Colorado (the “**Original Declaration**”).
- B. The Original Declaration is hereby terminated and replaced in its entirety with this Declaration.
- C. As all the Property is owned by the Declarant, no other approval is required to terminate the Original Declaration and approve this Declaration other than Declarant’s signature which appears below.

DECLARATION

Declarant hereby establishes a plan for ownership of real property estates in fee simple consisting of the air space contained in each of the Units and the co-ownership, by the individual and separate owners thereof, as tenants in common, of all the Common Elements of the Property. Declarant hereby makes, publishes and declares that the following terms, covenants, conditions, easements, restrictions, uses, reservations, grants, limitations and obligations shall be deemed to run with the Property and shall be a burden and benefit to Declarant, its successors and assigns, and to any person acquiring or owning any interest in the Property, their grantees, successors, heirs, executors, administrators, devisees or assigns.

ARTICLE 1
DEFINITIONS

- 1.1 “**Act**” means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et seq.*
- 1.2 “**Allocated Interests**” means the undivided ownership percentage interest in the Common Elements in the Property appurtenant to a Unit, together with the same percentage liability of such Unit for the Common Expenses. The Allocated Interest appurtenant to each Unit is set forth in Exhibit B attached hereto. The Allocated Interests are based on the ground level square footage of each Unit and does not include any loft areas located within a Unit.

- 1.3 “**Articles**” means the articles of incorporation for the Association will be filed with the Colorado Secretary of State, and any amendments that may be made to those articles from time to time.
- 1.4 “**Assessment**” means the Regular Assessments, Special Assessments, or a Specific Assessment as described herein below.
- 1.4.1 “**Project Regular Assessments**” means those Regular Assessments which apply to all Lots in the Project.
- 1.4.2 “**Lot 1 Regular Assessments**” means those Regular Assessments which apply only to the Townhome Units which are located in Block 1A, Block 1B, Block 1C, Block 1D, Block 2A and Block 2A.
- 1.4.3 “**Lot 2 Regular Assessments**” means those Regular Assessments which apply to only Amended Lot 2 and the future Live Work Units.
- 1.4.4 “**Lot 3 Regular Assessments**” means those Regular Assessments which apply to only Lot 3 and the future Empty Nestor Units.
- 1.5 “**Association**” means the 9 North Wildhorse Property Owner’s Association.
- 1.6 “**Board**” means the Board of Directors of the Association. There are three (3) members of the Board.
- 1.7 “**Building**” means the structures (including all fixtures and improvements contained within them) containing the Units and certain Common Elements as depicted on the Map (defined below).
- 1.8 “**Budget**” means a written estimate of the Common Expenses to be incurred by the Association in performing its functions under this Declaration and adopted in accordance with the provisions of this Declaration.
- 1.9 “**Bylaws**” means the bylaws of the Association.
- 1.10 “**Common Elements**” or “**General Common Elements**” means all portions of the Project other than the Units, including the real estate. Without limiting the generality of the foregoing, Common Elements include all structural components of the Building, all mechanical systems and equipment in the Buildings which exist for common use of some or all the Owners, and all other parts of the Project used in common by some or all the Owners as necessary or convenient to the Project’s existence, maintenance or safety.
- 1.10.1 “**Project Common Elements**” means those portions of the Project other than the Units, which are common to all the Lots, Blocks and Units. This includes the Open Space.
- 1.10.2 “**Lot 1 Common Elements**” means those portions of Block 1A, Block 1B, Block 1C, Block 1D, Block 2A and Block 2B which contain the Townhome Units other than the Townhome Units, which are common to the Townhome Units and includes the dedicated trash enclosure for the Townhome Units.
- 1.10.3 “**Lot 2 Common Elements**” means those portions of Amended Lot 2 other than the Buildings located thereon and the Live Work Units which are common to Amended Lot 2 and include the following: (i) any dedicated trash enclosure for the Buildings on Lot 2 (excepting the Buildings which contain the Townhome Units on Lot 2), (ii) hallways and other designated common areas in the Buildings located on Amended Lot 2, (iii) any maintenance building located on Amended Lot 2, (iv) any trash enclosure dedicated to Amended Lot 2, and (v) the Building located on Amended Lot 2.

- 1.10.4 **“Lot 3 Common Elements”** means those portions of Lot 3 other than the Buildings located thereon and the Empty Nestor Units which are common to Lot 3 and include the following: (i) the Buildings located on Lot 3, (ii) hallways and other designated common areas in the Buildings located on Lot 3, (iii) any maintenance building located on Lot 3, and (iv) any trash enclosure located on Lot 3 and dedicated to Lot 3, and the road known as Medaris Loop.
- 1.11 **“Common Expenses”** means all Common Expenses for any Lot or the Project.
- 1.11.1 **“Project Common Expenses”** or **“General Common Expenses”** means all Project Common Expenses. Subject to certain exceptions listed herein, the Project Common Expenses include without limitation the following:
- 1.11.1.1 The costs and expenses of maintenance, management, operation, repair and replacement of the Project Common Elements, including the real estate and the landscaping thereon for all the Blocks, all the Lots and the Open Space.
- 1.11.1.2 The cost of the fire access on Block 1D and the maintenance of any culverts in the Project.
- 1.11.1.3 The costs and expenses of administration and management of the Project, and of the Association, including, but not limited to compensation paid by the Association for the manager, accountant, attorney, or other employee or independent contractor.
- 1.11.1.4 The costs and expenses of utilities and services which are provided to the Association or to the Project or parts thereof, which are not separately metered, and which are not separately allocated or allocable to less than all Units, Buildings, or to categories of Units.
- 1.11.1.5 The costs and expenses of insurance carried by the Association on the Project Common Elements, as required or permitted herein.
- 1.11.1.6 Reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Board to meet anticipated costs and expenses including, but not limited to, maintenance, repair and replacement of any portion of the Project Common Elements, that must be maintained, repaired or replaced on a periodic basis.
- 1.11.1.7 The costs of bonding the members of the Board, the officers of the Association, the agent, or any other person handling the funds of the Association.
- 1.11.1.8 Amount paid by the Association for the discharge of any lien or encumbrance levied against the Project Common Elements or any portion thereof.
- 1.11.1.9 Any valid charge against the Project as a whole, and any costs or expenses incurred by the Association in connection with regulatory compliance.
- 1.11.1.10 All expenses incurred expressly declared to be Project Common Expenses by this Declaration, and all expenses lawfully determined to be Project Common Expenses by the Board.
- 1.11.1.11 Any other costs or expenses incurred by the Association in the operation, maintenance and repair of the Project Common Elements that cannot be properly allocated to a particular Unit, Building, Owner or to a group,

class or category thereof, and any other costs or expenses incurred by the Association in carrying out its rights, powers and duties pursuant to the Governing Documents or in furtherance of the purposes of the Association or in the performance of any duties or powers of the Association.

- 1.11.2 “**Lot 1 Common Expenses**” means expenses for Blocks 1A, 1B, 1C, 1D, 2A and 2B Common Elements including, but not limited to: (i) insurance for the exterior of the Buildings on the Blocks, (ii) driveways from Vista Loop to Townhome Unit garages, and (iii) the dedicated trash enclosure for the Townhome Units.
- 1.11.3 “**Lot 2 Common Expenses**” means the expenses for the Amended Lot 2 Common Elements including, but not limited to: (i) insurance for the exterior of the Buildings on Amended Lot 2, (ii) the exterior parking located on Lot 2, (iii) any dedicated trash enclosure for the Live Work Units or Buildings on Amended Lot 2, and (iv) any maintenance building located on Amended Lot 2.
- 1.11.4 “**Lot 3 Common Expenses**” means the expenses for Lot 3 Common Elements including, but not limited to: (i) insurance for the exterior of the Buildings on Lot 3, (ii) the exterior parking located on Lot 3, (iii) all costs associated with the maintenance, repair and/or replacement of Medaris Loop road, (iv) any dedicated trash enclosure for Lot 3, and (v) any maintenance building on Lot 3.
- 1.12 “**Declarant**” means Wildhorse Apartments, LLC, a Colorado limited liability company.
- 1.13 Declarant Control Period
- 1.14 “**Declaration**” means this instrument, as this instrument may be amended from time to time.
- 1.15 “**Director**” means a member of the Board of Directors.
- 1.16 “**First Mortgage**” means any unpaid and outstanding mortgage, deed of trust or other security interest recorded in the real property records of Garfield County, Colorado, which encumbers and Unit or Lot in the Project and which has priority over every other type of encumbrance except those securing real estate taxes, governmental obligations and, to the extent permitted by law, Association Assessments.
- 1.17 “**First Mortgagee**” means any person or entity named as a beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.
- 1.18 “**Governing Documents**” means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the Articles, the Bylaws, the Plat, the Map and any rules and regulations or policies and procedures adopted by the Board.
- 1.19 “**Limited Common Elements**” means Common Elements allocated to by the Plat or Map and/or by this Declaration for the exclusive use of one or more of the Units or Lots but fewer than all the Units or Lots. Limited Common Elements may be designed on the Map, Plat or this Declaration by reference to the category of Unit or Lot to which such use is associated.
- 1.20 “**Lot(s)**” means each of Lot 1, Amended Lot 2 and Lot 3. Blocks 1A, 1B, 1C, 1D, 2A and 2B are also collectively referred to herein a “**Lot 1**” or the “**Block(s)**.”
- 1.21 “**Lot 1**” means the Blocks as shown on the Plat as divided into 26 “**Townhome Units**” as shown on the Map.
- 1.22 “**Lot 2**” means Amended Lot 2 consisting of 4 separate buildings containing multiple units which may be later subdivided into individually owned units to be known as the “**Live Work Units**.”

- 1.23 “**Lot 3**” means Lot 3 consisting of 2 Buildings which may later be subdivided into individually owned units to be known as the “**Empty Nester Units.**”
- 1.24 “**Map**” is defined and described in Article II.
- 1.25 “**Member**” means each Owner, including the Declarant. Membership in the Association shall be appurtenant to, and may not be separated from, Ownership of a Lot or Unit.
- 1.26 “**Occupant**” means any person holding any portion of the Property in actual possession, for example, residing in any improvement on the Property.
- 1.27 “**Open Space**” means Parcels 1 and 2 as depicted on the Plat.
- 1.28 “**Owner**” means the owner of record, whether one or more person (a person means a natural person, a corporation, a partnership, an association, a trust, or any other entity or any combination thereof) or entities, of fee simple title to any Unit.
- 1.29 “**Party Wall**” is defined in Section 10.2.
- 1.30 “**Person**” means an individual or entity.
- 1.31 “**Plat**” means the Final Plat of 9 North Wild Horse, Castle Valley Ranch Filing 12, PA 8 & PA 9, recorded in the Garfield County real property records at Reception No. 1007191 on May 22, 2025.
- 1.32 “**Project**” means the real estate and the Buildings, together with and including all Units, Project Common Elements, Lot 1 Common Elements, Lot 2 Common Elements, Lot 3 Common Elements, the Open Space and the Limited Common Elements, together with and including all fixtures, improvements, and other amenities now or hereafter located thereon, and together with all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.
- 1.33 “**Unit**” or “**Units**” means the Townhome Units and if later created, includes the Live Work Units and the Empty Nestor Units. The term “Unit” does not include any utility facility running through the Unit that serves more than one Unit, or any other Common Element or part thereof located within the Unit.
- 1.33.1 The Townhome Units are designed on the Map and are subject to the party wall provisions in Section 10.2. Ownership of a Townhome Unit includes ownership of the exterior Building in which such Townhome Unit is located, including the shared Party Wall, the garage and all interiors.
- 1.33.2 The Live Work Units and the Empty Nestor Units, regardless of when created, are airspace units which are bounded by the unfinished interior surfaces of the exterior walls (or the demising walls, where two such Units adjoin each other), floors, ceilings, windows, window frames and doors and door frames of the Buildings where applicable, and which is separately identified on the Map. The boundaries of those Units shall be further defined by the provisions of Section 38-33.3-202 of the Act.
- 1.33.3 In addition to the Townhome Units including their exteriors and garages, all Units include the interior surfaces of the perimeter walls, floors, ceilings, windows and doors, including the garage doors, of each Unit are designated as boundaries of such Unit. All unfinished wall panels and similar items on such perimeter walls and ceilings, and all plaster, finished paneling, paint, wallpaper, finished flooring and any other materials constituting any part of the finished surfaces thereof, together with all spaces, interior partitions, and other fixtures within the boundaries of a Unit are a part of the Unit, provided that Common Elements located within a Unit shall not be part of such Unit. The portions of perimeter

walls, floors or ceilings which are not part of a Unit are part of the Common Elements. Some Units may have balconies and/or or patios which will be identified as Limited Common Elements for the exclusive use of the Unit to which the same are attached.

- 1.33.4 The Townhome Units boundaries include the entirety of the exterior of the Building in which such Unit is located and the entire interior of the Townhome Unit. Once created, the air space of the Live Work Units and the Empty Nestor Units will be further described as follows:
- i. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces in the Buildings are part of the Unit, including the Unit's doors and windows. All other portions of the walls, floors, or ceilings are part of the Common Elements.
 - ii. If any chute, flue, duct, 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 only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is part of the Common Elements.
 - iii. Subject to the above, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.
 - iv. Any exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.
 - v. A Unit shall include any heating and refrigerating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes and all other related equipment to provide heating, ventilation, hot and cold water, electrical or other utility services to the Unit and located within the boundaries of the Unit; provided, however, that a Unit shall not include any of the structural components of the building or utility or service lines located within a Unit but serving more than one Unit.

ARTICLE 2 **CREATION OF THE PROJECT; UNITS AND ALLOCATIONS**

2.1 **Creation.** Declarant declares that, upon the recording of this Declaration executed pursuant to the Act, the Property will be a "condominium" within the meaning of Section 103(9) of the Act and, thus, constitutes the Project.

2.2 **Name.** The name of the Project is "9 North Wildhorse."

2.3 **Board of Directors.** The Board of Directors shall govern the affairs of the Association in accordance with the Bylaws and applicable Law. The number of members of the Board shall be three (3).

2.4 **Separate Assessment.** Declarant shall give written notice to the Assessor of Garfield County, Colorado requesting that the Units and/or Lots be separately assessed and taxed and, if appropriate, that the total value of the Common Elements to be assessed and taxed proportionately in accordance with the Allocated Interest of such Lots and Units in the Common Elements. After this Declaration has been recorded in the real estate records of Garfield County, Colorado, Declarant shall deliver a copy of this Declaration as recorded to the Assessor of Garfield County, Colorado.

2.5 **The Map and Plat.**

2.5.1 **Recording Information.** The Map will be recorded in Garfield County, Colorado real estate records under the reception number set forth in _____. The Final Plat or Plat of 9 North Wild Horse, Castle Valley Ranch Filing 12, PA 8 & PA 9, recorded in the Garfield County real property records at Reception No. 1007191 on May 22, 2025.

2.5.2 **Amendments to Map.** The Map and/or Plat may be amended from time to time pursuant to this Declaration and shall be amended upon relocation of the boundaries of adjoining Units or the exercise of any Development Rights or for the creation of the Live Work Units and/or the Empty Nestor Units.

2.6 **Units.**

2.6.1 **Number of Units.** The real property identified in Exhibit A, together with all improvements now or hereafter situated thereon, are hereinafter collectively referred to as the “**Project.**” Declarant hereby divides the Property into twenty-six (26) Townhome Units (identified in Exhibit B and depicted on the Map) and the Common Elements and designates Units for separate ownership and the Common Elements for common ownership solely by Unit Owners. Each Unit has an Allocated Interest in the Common Elements set forth in Exhibit B. Exclusive or non-exclusive use of certain Limited Common Elements may also be allocated to Units. The Declarant may further subdivide the Project by adding Live Work Units and Empty Nestor Units. The maximum number of Units in the Property shall be one hundred thirty (130) Units.

2.6.2 **Division of the Property into Units.** The real property described in Exhibit A and improvements thereon are hereby divided into the following fee simple estates: Twenty-Six separate Townhome Units, each such Townhome Unit consisting of one Townhome Unit together with an appurtenant undivided allocated interest in and to the Common Elements as provided in Exhibit B. The Common Elements shall be held in common by the Owners thereof. Each Townhome Unit shall be identified on the Map by the number and Building as is shown on Exhibit B. The Declarant may construct the Buildings shown on the Map on Lot 2 and Lot 3 for the Live Work Units and the Empty Nestor Units, however, Declarant is not obligated to subdivide those Buildings but may rent any units therein and reserves the right to subdivide the same at a later date.

2.6.3 **Method of Description.** Every contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number and Building symbol

shown on the Map with the appropriate reference to the Map and to this Declaration, as each appears on the records of the County Clerk and Recorder of Garfield County, Colorado, in the following fashion:

Townhome Unit/Live Work Unit/ Empty Nestor Unit _____, 9 North Wildhorse, according to the Map appearing in the records of the County Clerk and Recorder of Garfield County, Colorado, recorded on _____ as Reception No. _____, and as defined and described in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for 9 North Wildhorse recorded on _____ as Reception No. _____ in the Office of the Clerk and Recorder of Garfield County, Colorado.

The above description will be construed to describe the Unit, together with the appurtenant Allocated Interests in the Common Elements, and to incorporate all the rights incident to ownership of a Unit and all the limitations on such ownership as described in this Declaration.

2.6.4 Allocated Interests. The percentage Allocated Interest appurtenant to each Unit is set forth in Exhibit B.

2.6.5 No Re-Subdivision of Units. Units may not be subdivided unless prior written permission is obtained from the Board which such permission may be withheld in the Board's sole subjective discretion.

2.6.6 Relocations of Boundaries of Units. Upon prior written approval by the Board, the boundaries between adjoining Units may be relocated by an amendment to the Declaration, and each Unit whose boundaries are so relocated shall be deemed a separate Unit under this Declaration. To relocate the boundaries between adjoining Units, the Owners of such Units shall submit to the Board an application which includes information requested by the Board. The Board shall approve or deny such application within twenty (20) business days and shall communicate conditions of approval or the reasons for denial. Relocation of the boundaries between such Units shall be accomplished by an amendment to the Declaration, prepared in accordance with this Declaration, amendment of the Map, executed by the Owners of the Units whose boundaries are relocated and by the president of the Association, and recorded in Garfield County real property records. All costs and expenses resulting from the preparation and recording of an amendment to the Declaration and Map shall be paid by the Owners of the Units whose boundaries are relocated. The provisions of this paragraph shall not be applicable to and shall not restrict Declarant from relocated boundaries of Units owned by Declarant. Units may be combined upon the prior written approval of the Association upon such terms as the Board shall determine in its sole subjective discretion.

2.6.7 Alterations of Units. Any Owner may alter such Owner's Unit as permitted by this Declaration and any rules adopted by the Board.

2.7 Title. Title to a Unit may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship under the laws of Colorado.

ARTICLE III
COMMON ELEMENTS; LIMITED COMMON ELEMENTS

3.1 **Ownership of Project Common Elements.** All the Project Common Elements shall be owned only by the Owners of the Units then subject to this Declaration, as tenants in common subject to the reserved Special Declarant Rights described herein below. The Association has the right and power to cause additional improvements to be made to or upon the Project Common Elements, as part of the Project Common Elements.

3.2 **Use of Common Elements.** Each Owner shall be entitled to use the Common Elements in accordance with the purposes for which they are intended, without hindering, impeding or imposing upon the rights of the other Owners, but subject to the limitations and restrictions contained in this Section 3, and provided that such use shall be in accordance with the Rules and Regulations duly established from time to time by the Association.

3.3 **Allocation and Description of Limited Common Elements.** All exterior garage doors or other fixtures designed to serve a single Unit but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit. Any such items designed to serve more than one but less than all Units are Limited Common Elements allocated to the Units served by the items in question. A Unit may also have additional Limited Common Elements allocated to such Unit as depicted on the Map.

3.4 **No Reallocation of Common Elements as Limited Common Elements.** Common Elements which are not described as Limited Common Elements elsewhere in this Declaration or on the Map may not hereafter be allocated as Limited Common Elements.

3.5 **Alteration of Any Common Elements.**

3.5.1 No improvement of any nature, including decks, patios, sheds, fences, shelters, lights, satellite dishes, antennas, sidewalks, landscaping or signs, shall be erected, placed, altered or rebuilt on any Common Elements, not shall there be any alteration of the exterior, foundations, subfloor, roof or structural components of any Building or of any other Common Elements, including without limitation any alteration of colors, materials or landscaping, unless such action shall have been approved in writing by the Board.

3.5.2 Without limiting the foregoing, improvements and facilities for utilities which are part of the Common Elements and which are located in whole or in part within Units shall not be removed, relocated, disconnected or otherwise tampered with without the prior written consent of the applicable utility company and the prior written approval of the Board.

3.5.2.1 The Board may condition the issuance of consent or approval upon (i) the payment of its fees and reimbursement of expenses,

3.5.2.2 the applicant's agreement to make payment of its fees and reimbursement of expenses,

the applicant's agreement to make modifications to the proposed action or matter,

3.5.2.3 the applicant's agreement to maintain and repair any improvements the applicant desires to construct, and/or

3.5.2.4 such other matters related to the proposed action or matter as the Board shall reasonably determine.

3.5.2.5 Prior to the commencement of any action or matter requiring approval of the Board, the applicant shall submit to the Board plans and specifications of the proposed work in such detail as the Board requires. The decision of the Board shall be made within a reasonable time after receipt of all materials required by it. The vote of a majority of the members of the Board shall be necessary to approve any action or matter. Any action or matter approved by the Board shall be promptly completed in accordance with the terms and conditions of the approval and the materials submitted to the Board upon which the approval was based, In considering such action or matter, the Board may consider, among other factors it deems relevant, the compatibility and consistency of the proposed action or matter with the remainder of the Property. Notwithstanding any other provision of this Declaration or any rule of law, the Board shall have no obligation to give consent or approval to any proposed addition or modification of the exterior, foundations, floor, roof or structural components of any Building or any other Common Elements, or any item which the Association has an obligation to maintain. The Board, its representatives, employees and agents, shall not be liable to any owner, occupant or any party for any matter resulting in mistakes in judgments, negligence, nonfeasance or any other action related to approval, disapproval or failure to approve any action or matter, and in no event shall the Board or its representatives be responsible for the design, construction or any other matter related to the action or matter approved.

3.6 Limitation of partition, conveyance, sale or transfer of Common Elements. The Common Elements are not subject to partition and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements is void.

ARTICLE IV **THE BOARD**

4.1 The Board. The affairs of the Association shall be managed by a Board. During the Period of Declarant control, the Board shall have three (3) members. Upon the termination of the Period of Declarant Control, to protect the valid interests of the three (3) classes of in the Association, the Board shall be enlarged to seven (7) members, of which Class 1 shall be entitled to nominate and elect two (2) members (the "Townhome Directors"), Class 2 shall be entitled to nominate and elect three (3) members (the "Live Work Directors"), and Class 3 shall be entitled to nominate and elect two (2) members (the "Empty Nestor Directors"). The qualifications and terms of the members of the Board shall be set forth in the Bylaws.

4.1.1 Each director shall have one vote. In the event Owners of more than one Lot appoint the same director, such director shall have one vote for each Lot for which the director was appointed.

4.1.2 The right to vote may not be severed or separated from the ownership of the parcel of property conferring the right to vote.

4.1.3 Assignment of the right to vote to designee, lessee, or beneficiary, as provided herein is permitted.

4.1.4 A quorum shall be deemed present throughout any meeting of the Board if persons entitled to cast at least fifty percent (50%) of the votes on the Board are present at the beginning of the meeting or grant their proxy as provided in C.R.S. Section 7-128-205(4) With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3-7) of the Act, all regular and special meetings of the Board or any committee thereof shall be open to attendance by all Owners or their representatives. Without limiting the generality of the foregoing, no rule or regulation may be validly adopted during executive session. Agendas for meetings of the Board shall be made reasonably available for examination by all Owners or their representatives.

4.1.4 The Board shall have all the powers, authority and duties granted or delegated to it by the Colorado Revised Nonprofit Corporation Act, this Declaration, the Articles or Bylaws.

4.1.5 The Board may act in all instances on behalf of the Association. The Board may not, however, act on behalf of the Association to amend this Declaration (excepting as permitted by Section _____ below), to terminate the Project, or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of the Board, but the Board may fill vacancies in its membership for the unexpired portion of any term.

4.1.6 The Board may, by resolution, delegate portions of its authority to officers or a manager of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for management of the affairs of the Association.

4.2 Voting by Board. During the Period of Declarant Control, all members of the Board shall be entitled to vote on all Association matters. Upon the termination of the Period of Declarant Control and the enlargement of the Board to seven (7) members, all members of the Board shall be entitled to vote on Association matters which affect the Project in its entirety, including without limitation the General Common Elements, and the Common Expenses. The Townhouse Directors shall have the sole and exclusive authority and voting rights with respect to matters which relate uniquely to the Townhome Units including, but not limited to, the Limited Common Elements to Townhome Units. The Live Work Directors have the sole and exclusive authority and voting rights with respect to matters which relate uniquely to the Live Work Units including, but not limited to, the Limited Common elements to Townhome Units. The Empty Nestor Directors have the sole and exclusive authority and voting rights with respect to matters which relate uniquely to the Empty Nestor Units including, but not limited to, the Limited Common Elements to the Empty Nestor Units.

4.2.1 The foregoing provisions of this Article IV describe the intent of this Declaration with the allocation of decision-making authority in connection with the various issues that may arise under this Declaration. If a bona fide dispute among members of the Board as to whether a matter relates uniquely to Townhome Units, Live Work Units, or Empty Nestor Units or whether it is a matter for the consideration of the entire Board, the Board shall use their reasonable, good faith judgment in determining such issue, and the decision on the matter shall require the affirmative majority of each class of Directors.

4.2.2 If (i) a vote by the Board to determine whether a matter should be for the consideration of the entire Board results in an affirmative vote a majority of one class of Directors

but fails to result in the affirmative vote of all three classes of Directors, and (ii) a majority of one class of Directors vote within fifteen (15) days thereafter to submit the issue to arbitration, then the issue of whether a matter should be considered by the entire Board shall be submitted to binding arbitration in Garfield County, Colorado, in accordance with the rules of the American Arbitration Association then in effect. The decision shall be final and binding on the parties and judgment may be entered thereon in a court having jurisdiction over the Association. The arbitrator shall be appointed by the Board by a vote of at least 5 Board members approving such arbitrator. If the Board is unable to do so within ten (10) days of submitting the matter to arbitration, the arbitrator shall be designated by a judge of the District Court of Garfield County, Colorado. The cost and expenses of the arbitrator shall be deemed to be a General Common Expense.

4.2.3 If there is a vote in a class of Directors that is a tie which remains for ten (10) days, then the Directors of that class shall submit the matter to binding arbitration in Garfield County, Colorado, in accordance with the rules of the American Arbitration Association then in effect. The decision shall be final and binding on that class and judgment may be entered thereon in a court having jurisdiction over the Association. If the Directors of the class cannot agree on an arbitrator, the arbitrator shall be designed by a judge of the District Court of Garfield County, Colorado. The costs and expenses of the arbitrator shall be deemed a Common Expense for that class of ownership.

4.2.4 Notwithstanding any provision of this Declaration to the contrary, to the extent an issue is required to be submitted to arbitration pursuant to the terms of this Article IV, and the issue involves an emergency requiring immediate action by the Board, a majority of the entire Board shall make such decisions and take such actions as may be necessary to advance the interests of the Project as a whole pending the outcome of the arbitration proceeding, at which time such Directors which are determined to be entitled to participate in the decision shall resolve the remaining issues.

4.3 **Fairness Standard.** The Board, the officers, the manager, and the Association shall have the duty to represent the interests of the Owners of all Units in a fair and just manner on all matters that may affect one, two, or all three classes of membership. In upholding their duties, the Board, the officers, the manager, and the Association shall be held in their decisions, including, without limitation, the determination of whether a matter should be for the separate consideration of the Townhome Directors, the Live Work Directors, the Empty Nestor Directors, or the entire Board, to the standards of good faith and reasonableness with respect to decisions, taking into account the effect, if any, of the decision on the Project as a whole.

ARTICLE V **THE ASSOCIATION**

5.1 **Membership in Association.** There shall be one Membership in the Association for each Unit in the Project. The person or persons who constitute the Owner shall automatically be the holder of the Membership appurtenant to such Unit and shall collectively be a “Member” of the Association with respect to that Unit, and the Membership appurtenant to that Unit shall automatically pass with fee simple title to the Unit. Membership in the Association shall not be assignable separate and apart from fee simple title to a Unit and may not be separated from ownership of a Unit.

5.2 **Classes of Membership.** The Association shall have the three (3) classes of voting Membership set forth below. A Member may belong to more than one class:

(i) Class 1. All the Owners of the Townhome Units on Block 1A, 1B, 1C, 1D, 2A and 2B, including the Declarant so long as the Declarant continues to own an interest in a Townhome Unit on the Blocks listed herein.

(ii) Class 2. All the Owners of the Live Work Units or the Buildings on Amended Lot 2, including the Declarant so long as the Declarant continues to own an interest in the Live Work Units or the Buildings on Amended Lot 2.

(iii) Class 3. All the Owners of the Empty Nestor Units or the Buildings on Lot 3, including the Declarant so long as the Declarant continues to own an interest in the Empty Nestor Units or the Buildings on Lot 3.

5.3 **Voting Rights of Members: General.**

5.3.1 Each Unit in the Project shall have that allocated portion of the votes in the Association as is set forth on attached Exhibit B. Declarant shall be entitled to vote with respect to Units or Lots owned by Declarant. Occupants of Units or Buildings shall not have voting rights. Furthermore, voting rights of an Owner shall be deemed automatically suspended during period in which said Owner is delinquent in the payment of an Assessment (or the installment of an Assessment) to the Association. The Term "delinquent" is defined _____ below.

5.3.2 If title to any Unit or Lot is owned by more than one (1) person, such persons shall collectively cast their allocated votes. If only one of the multiple members of a Unit or Lot is present as an Association meeting, such Owner is entitled to cast the votes allocated to that Unit or Lot. If more than one of the multiple Owners is present, the votes allocated to that Unit or Lot may be cast only in the agreement of a majority in interest of the Owners. There is majority agreement if any of the multiple Owners casts the votes allocated to that Unit or Lot without protest being made promptly to the person presiding over the meeting. If there is a protest and a majority of the multiple Owners cannot agree on how to cast their votes, any votes cast for the Unit or Lot shall be null and void in regard to the issue being voted upon. Such multiple Owners of such Units or Lots will nevertheless be counted in determining the presence of a quorum with respect to the issue being voted upon.

5.3.3 A quorum is deemed present throughout any meeting of the members of the Association if persons entitled to cast at least forty percent (40%) of the total allocated votes in the Association are present, in person or by proxy, at the beginning of the meeting.

5.3.4 Provided a quorum of allocated votes is present in person or by proxy, the affirmative vote of a majority of the total allocated votes so present shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the Colorado Revised Nonprofit Corporation Act, the Act, this Declaration, the Articles, or the Bylaws.

5.3.5 The votes allocated to a Unit or Lot may be cast pursuant to a proxy duly executed by a Unit or Lot Owner. If a Unit or Lot is owned by more than one Owner, each Owner of the Unit or Lot may vote or register protest to the casting of a vote by the other Owners of the Unit or Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding at the meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after its date, unless a different termination date is otherwise set forth on its face.

5.3.6 The Class 1 members, by a vote of sixty-seven (67%) if all allocated votes present and entitled to vote at any meeting of the Class 1 members at which a quorum is present, may remove any Townhome Director on the Board with or without cause, in which event the remaining Townhome Director shall appoint another Townhome Director to serve for the un-expired term of the removed Townhome Director.

5.3.7 The Class 2 members, by a vote of sixty-seven (67%) if all allocated votes present and entitled to vote at any meeting of the Class 2 members at which a quorum is present, may remove any Live Work Director on the Board with or without cause, in which event the remaining Live Work Director(s) shall appoint another Live Work Director to serve for the un-expired term of the removed Live Work Director.

5.3.8 The Class 3 members, by a vote of sixty-seven (67%) if all allocated votes present and entitled to vote at any meeting of the Class 3 members at which a quorum is present, may remove any Empty Nestor Director on the Board with or without cause, in which event the remaining Empty Nestor Director shall appoint another Empty Nestor Director to serve for the un-expired term of the removed Empty Nestor Director.

5.4 Period of Declarant Control of Association. Notwithstanding any other provisions hereof, Declarant shall have and hereby reserves the power to appoint and remove, in its sole discretion, the members of the Board and the officers of the Association during the period commencing on the recording of this Declaration and terminating no later than the earlier of (a) sixty (60) days after the conveyance of seventy-five percent (75%) of the Units that may be created to Owners other than Declarant, (b) two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business, or (c) two (2) years after the right to add new Units was last exercised by Declarant. For the purposes of determining said "Period of Declarant Control" under this Declaration and the Articles and Bylaws, a Unit or Lot shall be deemed conveyed by Declarant only upon the conveyance of fifty-one percent (51%) of the Units and Lots in the Association.

5.4.1 During said Period of Declarant Control

- (a) Not later than sixty (60) days after the conveyance of twenty-five percent of the Units that may be created to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board must be elected by the Unit or Lot Owners other than Declarant, with all three classes voting together.
- (b) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Owners other than Declarant, not less than thirty-three and one-third percent (33.33%) of the members of the Board must be elected by the Unit or Lot Owners other than Declarant, with all three classes voting together.

5.4.2 At any time prior to the termination of the Period of Declarant Control of the Association, the Declarant may voluntarily surrender and relinquish the right to appoint and remove officers and members of the Board, but in such event Declarant may require for the duration of the Period of Declarant Control of the Association, that specified actions of the Association or the Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. As to such actions, Declarant may give its approval or disapproval in its sole discretion and option, and its disapproval shall invalidate any such action by the Board or the Association. Not later than the termination of the Period of

Declarant Control, the Owners (including Declarant) shall elect a Board of seven (7) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant and the Board shall elect the officers with such Board members and officers to take office upon election. Pursuant to Section 38-33.3-303(9) of the Act, within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and of the Association being held or controlled by Declarant.

5.5 Class Voting of Members. All members of the Association shall be entitled to vote in all matters affecting the Project which are required by this Declaration or the Act to be submitted to a vote of the members. However, certain issues relating to the operation, maintenance, administration and management of elements of the Project do and may affect the valid interests of only the Class 1 Owners, the Class 2 Owners or the Class 3 Owners, as more specifically described herein in connection with the allocation of decision-making authority between the different classes of Owners, each class requires independent representation on the Board and is entitled to elect certain Directors thereto (as described above), and the following matters shall be voted on each class as applicable:

5.5.1 Election of Directors. After expiration of the Period of Declarant Control, the Townhome Unit Members shall be entitled to nominate and elect two (2) of the members of the Board, the Live Work Unit Owners shall be entitled to nominate and elect three (3) of the members of the Board, and the Empty Nestor Unit Owners shall be entitled to nominate and elect two (3) members of the Board.

5.5.2 Budgets. Approval of Budgets in accordance with the procedure set forth in this Declaration.

5.5.3 Valid Class Interests. In addition to the foregoing, if the Board, by the affirmative vote of a majority of the Townhome Unit Board members, a majority of the Live Work Unit Board members and the a majority of the Empty Nestor Unit Board members determines that a particular matter relates uniquely to the Townhome Units, the Live Work Units or the Empty Nestor Units, the Board may give notice of a meeting of the Townhome Unit Owners, the Live Work Unit Owners or the Empty Nestor Unit Owners and may conduct a vote on the matter affecting only that class in order to protect the valid interest of such class. In the event that (i) a vote by the Board to determine whether a matter should be for the consideration of the entire Membership results in the affirmative vote of a majority of one class of Directors but fails to result in the affirmative vote of all classes of Directors, and (ii) a majority of one class of Directors vote within fifteen (15) days thereafter to submit the issue to arbitration, then the issue of whether the matter should be considered by the entire Membership shall be submitted to binding arbitration in Garfield County, Colorado in accordance with the rules of the American Arbitration Association then in effect. The decision of the arbitration shall be final and binding on the parties and judgment may be entered thereon in a court having jurisdiction over the Association. The arbitrator shall be appointed by the Board, which appointment shall require the affirmative vote of each class of Directors. If the Board is unable to do so within ten (10) days of submitting the matter to arbitration, the arbitrator shall be designated by a judge of the District Court of Garfield County, Colorado. The cost and expense of the arbitrator shall be deemed a General Common Expense.

5.5.3.1 Where a class vote by a class of Membership is required as set forth above, only those votes cast by the class of Members entitled to vote on the issue shall be counted, with a majority of the votes cast constituting the decision of the class on the issue.

5.6 **Entitlement to Vote:** No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. If a Membership in any class is held by more than one person or entity and only one of the holders is present at the meeting, such holder is entitled to cast all the votes allocated to that Membership. If, however, more than one of the holders are present, such holders may vote in any manner in which they all agree. If such holders cannot agree about how to cast their vote on any specific issue, no vote for that issue shall be recorded for their Membership.

5.7 **Declarant.** So long as Declarant is an Owner, Declarant will have all the rights and duties given to Members under the Association Documents and will have all the rights belonging to Declarant under the Association Documents.

ARTICLE VI
THE ASSOCIATION
THE 9 NORTH WILDHORSE PROPERTY OWNER ASSOCIATION

6.1 **Association.** The Association has been organized as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act, and shall be operated to provide for the acquisition, construction, management of maintenance of “association property” as that term is used and defined in Section 528 of the Internal Revenue Code and its regulations. The Association shall serve as the governing body for all the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Elements, the levying and collection of assessments for Common Expenses and other expenses of the Association, and all other matters as may be provided in this Declaration, the Articles and the Bylaws.

6.2 **Association Authority.** The affairs of the Association shall be administered and managed by the Association, pursuant to this Declaration, the Articles of Incorporation, Bylaws, and any Rules and Regulations of the Association.

6.3 **Delegation of Management Responsibilities.** The Board may delegate all or any part of its powers and responsibilities to one or more Managers. The management agreement for any such manager shall allow for either party to terminate (i) for cause, upon thirty (30) days' written notice and (ii) without cause, upon not more than ninety (90) days' written notice. Termination by the Association with cause shall be without penalty to the Association. Termination by the Association without cause shall require a majority vote of the Board including the affirmative vote of a majority of the Townhome Unit Directors, the Live Work Unit Directors and the Empty Nestor Unit Directors to which a majority of the votes in the Association are allocated. Notwithstanding the delegation of duties by the Board to a manager, the Board shall not be relieved of its responsibilities under this Declaration.

6.4 **Powers.** The Association shall have the following powers and authority:

- vi. To determine, levy and collect Assessments.
- vii. To determine, levy and collect charges and fees for violations.
- viii. To make, establish and promulgate Rules as provided for in this Declaration. Owner, occupants and guests shall be subject to the Rules and such Rules shall have the same purpose and effect as the covenants, conditions and restrictions included in this Declaration and shall be treated as incorporated herein.
- ix. Adopt and amend bylaws.
- x. To enforce, on its own behalf and on behalf of all Owners, the covenants, conditions and restrictions set forth herein, and to perform all other acts reasonable necessary to enforce any of the provisions and the Rules, including without limitation, the suspension of any privileges of membership and the imposition of fines on Owners, occupants and guests who violate or permit violations of this Declaration and the Rules.
- xi. To retain the services of a professional management company to manage some or all the affairs of the Association.
- xii. To borrow money and to incur indebtedness for the purposes of the Association.
- xiii. To assign its rights to future income, including the right to receive Assessments.
- xiv. To maintain insurance coverage as required by this Declaration.
- xv. To make contracts and incur liabilities in furtherance of its purposes.
- xvi. To cause additional improvements to be made as part of the Common Elements, including the construction of any capital asset, in whole or in part, for the benefit of some or all of the Units or Owners, including, without limitation, access roads, paths, walkways, any facilities necessary for transit purposes, entry features, retaining walls, fences, gates, and the additional right to construct any and all types of structures, facilities and improvements useful or necessary to benefit the Owners or to provide services to the Association.

- xvii. To acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property.
- xxviii. To impose and receive charges for late payments of Assessments, recover reasonable attorneys' fees and disbursements and other costs of collection for Assessments and other actions to enforce the rights of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines and penalties for violations of the Declaration and Rules, including suspension of membership privileges.
- xix. Impose and receive reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments.
- xx. Provide for the indemnification of the Association's offices and Directors and maintain Directors' and Officers' liability insurance.
- xxi. To obtain and pay for legal, accounting and other professional services.
- xxii. To perform any of its functions by, through or under contractual arrangements, licenses, or other arrangements with any governmental, quasi-governmental or private entity as may be necessary or desirable.
- xxiii. To exercise any right or privilege given to the Association by Law.
- xxiv. To carry out all other duties, functions or rights of the Association as set forth in this Declaration and the Rules.
- xxv. To exercise any power or authority as may be necessary, convenient or desirable to fulfill or exercise any duty, function or power that the Association may otherwise have or enjoy.
- xxvi. The Association shall provide a financial statement (which need not be audited) for the immediately preceding fiscal year, free of charge, to a member so requesting within a reasonable time after such request.
- xxvii. The Association shall make available to Owners current copies of this Declaration, the Articles of Incorporation, Bylaws, Rules, books, records and financial statements of the Association. "Available" shall mean available for inspection, upon request, at the office of the Association or its managing agent during normal weekday business hours.

6.5 Declarant Control. The Declarant hereby reserves and shall have the Special Declarant Right for Declarant, or any Person designated by Declarant in a writing delivered to the Board, to appoint and remove the members of the Board and the officers of the Association at any time and from time to time, in the sole discretion of the Declarant, with or without cause, but only during the Declarant Control Period. Declarant may voluntarily surrender the right to appoint and remove the members of the Board and the officers of the Association before the termination of the Association control period, but in that event the Declarant may require, for the duration of the Association Control Period, that specified actions of the Association or the Board, as described in a recorded instrument executed by the Declarant, shall be approved by the Declarant before such actions become effective. The Special Declarant Right described above shall terminate when the Declarant Control Period terminates.

6.6 Membership in Association. Each Owner (including Declarant with respect to Units from time to time owned by Declarant) shall be a member of the Association and shall remain a

member until ceasing to be an Owner. Each Owner of an undivided fee interest in a Unit amount to less than the entire fee interest in such Unit, including a co-owner as tenant in common or in joint tenancy, shall be a member of the Association. Each member shall strictly comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and the Rules of the Association.

6.7 Votes. Each Owner (including Declarant with respect to Units from time to time owned by Declarant) shall be a member of the Association and shall remain a member until ceasing to be an Owner. Each Owner of an undivided fee interest in a Unit amount to less than the entire fee interest in such Unit, including a co-owner as tenant-in-common or in joint tenancy, shall be a member of the Association. Each member shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and any Rules and Regulations of the Association.

6.8 Rules. Each member and its guests, occupants, invitees and tenants shall be bound by and shall comply with the Rules of the Association duly adopted. After notice and an opportunity to be heard by the Board, the Association shall levy reasonable fines for violations of this Declaration, the Articles of Incorporation, the Bylaws or the Rules of the Association. Any fine levied against an Owner, or against any Person occupying such Owner's Unit with the consent of the Owner, shall be a Specific Assessment to such Owner's Unit. Unit Owners are obligated to provide the Association with the name and contact information for any tenant in a Unit.

6.9 Design Review. The Board shall serve as the design review committee the Association. No exterior alterations may be made to any Block, Building, Lot or Unit by an Owner without the prior written approval of the Board, which such approval may be withheld in the Board's sole subjective discretion.

6.10 Rights of Action. The Association on behalf of itself and any aggrieved Owner shall be granted a right of action against all Owners for failure to comply with the provisions of the Governing Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Governing Documents. The Owners shall have a right of action against the Association for failure to comply with the provisions of the Governing Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Governing Documents. In any action covered by this section, the Association or any Owner shall have the right but not the obligation to enforce the Governing Documents by any proceeding at law or in equity, or as set forth in the Governing Documents, or by mediation or binding arbitration if the parties so agree. Failure by the Association or by any Owner to enforce compliance with any provision of the Governing Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

6.11 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Governing Documents or by the Colorado Nonprofit Corporation Act.

6.12 **Notice.** Any notice to an Owner of matters affecting the Property by the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, or the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Lot.

ARTICLE VII **PROPERTY OF THE ASSOCIATION**

7.1 **Rights.** The Association may acquire, own, and hold for the use and benefit of all Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests (**Allocated Interests**) in the Common Elements. Such interests shall not be transferable except with the transfer of a Unit. A conveyance of a Unit shall transfer ownership of the transferor's beneficial interest in such personal property without any reference thereto. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

7.2 **Duty to Accept Property and Facilities Transferred by Declarant.** The Association shall accept title to any real or personal property, or interests in real or personal property, including any improvements thereon, transferred to the Association at any time by the Declarant, or Declarant's successors or assigns. Property interests transferred to the Association by Declarant, its successors or assigns may include fee simple title, undivided interests, easements, leasehold interests and licenses to use. Except as may otherwise be approved by the Board, any property or interest in property transferred to the Association by Declaration or its successors or assigns shall be within the boundary of the Project; provided, however, that Declarant shall be entitled to transfer and convey the beneficial use of an easement, subject to any obligations thereof, located outside the Project but which benefits the Association and the Owners.

7.3 Any property or interest in property transferred to the Association by Declaration, shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association free and clear of all monetary obligations, liens, and encumbrances (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, and easements, covenants, conditions, restrictions, and equitable servitudes or other encumbrances of record or otherwise in existence. Except as otherwise specifically approved by resolution of the Board, no property or interest in property transferred to the Association by Declarant shall impose until the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee.

7.4 Any improvements of personal property transferred to the Association by Declarant shall be in good working order, ordinary wear and tear excepted, and at the time of transfer Declarant shall make any repairs reasonably required to bring the transferred property into good working order. Subject to the foregoing, the Association shall accept all properties transferred to it by the

Declarant in their “Where As Where Is” condition, without recourse of any kind, and Declarant disclaims and shall not be deemed to have made any representations or warranties, express or implied, by fact or law, with respect to the transferred properties or any aspect of element thereof, including without limitation warranties of merchantability, habitability, fitness for a particular purpose, or workmanlike construction.

ARTICLE VIII EASEMENTS

8.1 **General Access.** The Association and parties grant the Association (including any manager of the Association and utility suppliers) a non-exclusive easement for access to and within the Units for purposes of operating, maintaining, modifying, repairing, replacing, and removing Common Elements located in whole or in part within the boundaries of the Units.

8.2 **Easement for Encroachments.** Each Unit Owner shall have a nonexclusive easement for lateral and subjacent support from every other Unit and from the Unit Owners with respect to the Common Element property upon which the Unit is located. If for any reason any part of a Unit encroaches upon the Property or encroaches upon any other Unit, valid easements for the existence of such encroachments are hereby established for so long as the encroaching improvement remains standing. No easement for any encroachment is created for the benefit of the encroaching party if the encroachment occurred due to willful misconduct.

8.3 **Association Utility Easement over Common Elements.** There is hereby created, granted and reserved to the Association, its agents, employees, service providers, and assigns a perpetual, non-exclusive easement over, across, upon and under the Common Elements for construction, installation, operation, maintenance, repair, removal and replacement of utilities and utility lines, pipes, wires, conduits, circuits, meters, fire sprinkler systems, facilities and systems for the benefit of the Project or any part thereof, including but not limited to water, sewer, gas, electricity, together with an easement for access, ingress and egress to accomplish such purposes. The Association or other Person exercising such utility easement rights shall be obligated to restore, reseed, replant and re-landscape the surface of any disturbed areas to as close to its original condition as possible, as promptly as possible following completion of the utility work.

8.4 **Easement for Maintenance, Repair and Emergencies.** There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement and right to enter upon and in all Units as necessary for the performance of the Association's rights and responsibilities under this Declaration (including the exercise of the Association's common utility easement rights) and for the making of emergency repairs or reconstruction to the Units, and/or the Common Elements. For routine maintenance and non-emergency repairs (including routine maintenance and repair of common utility lines within Units), entry to a Unit shall be made only on a regular business day during regular business hours, after giving at least one day's notice in writing to the Owner or occupant. In case of emergency, where there is an imminent threat of damage or injury to person or property, entry shall be made at any time provided that a reasonable effort is made, under the circumstances, to give notice of

such intended entry. The Board of Directors is hereby granted the authority to use such reasonable force as may be necessary under the circumstances to gain entry into a Unit in case of an emergency, if no other reasonable means of entry is available. The Association shall be responsible for the cost and expense of repairing all damages to property occurring as a result of such forcible entry, which costs shall be considered Common Expenses, unless the emergency and damage results from the willful act or negligence of an Owner or occupant, in which event such Owner shall be solely responsible for the costs of repairing/restoring such damage. These costs can be levied, assessed and collected by the Board as a Specific Assessment pursuant to the provisions of this Declaration.

- 8.5 Blanket Emergency Services Easement.** There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or Persons, now or hereafter serving the Project and its Owners and occupants, a perpetual, non-exclusive blanket Emergency Services Easement over, upon, along and across all properties and areas within the Project, for use in the lawful performance of their duties.
- 8.6 Recorded Easements and Licenses.** In addition to the easements described in this Declaration, any recorded easements and licenses appurtenant to or included in the Project are made a part hereof by this reference, including, but not limited to those encumbrances listed on attached Exhibit C.
- 8.7 Easements Deemed Created.** All conveyances of Units hereafter made shall be construed to grant and reserve such reciprocal easements as are provided for herein, even though no specific reference to such easements appears in any such conveyance.
- 8.8 Declarant Easement over all Common Elements.** There is hereby created and reserved to Declarant and its successors and assigns a non-exclusive easement over, across, upon and under all Common Elements (including Limited Common Elements, and including without limitation all easements benefiting the Association), including a right of access, ingress and egress thereto, and a right to use such Common Elements and each and every part thereof for all purposes reasonably related to (a) Declarant's development, improvement, completion, maintenance, repair, alteration, management, marketing, sale, resale, customer service and rental of the Units or Buildings in the Project; and/or (b) Declarant's exercise and implementation of the rights reserved to Declarant under this Declaration, and/or (c) the discharge of Declarant of any of its obligations under this Declaration or any other Declarant obligations relating to the Project; and/or (d) compliance with applicable permits, laws, rules, regulations, ordinances and other governmental requirements. Declarant also reserves the right to grant non-exclusive easements over, across, upon and under the Common Elements or any part thereof to utility companies for lines or facilities serving the Project. Declarant's reserved rights under this paragraph shall terminate ten (10) years after the date of recording of this Declaration, and no amendment to this Declaration shall impair or diminish any of such reserved easements or rights unless Declarant expressly consents in writing to such amendment.

- 8.9 **Declarant Easement for Improvements, Maintenance and Repair.** Declarant, for itself and its successors, assigns, agents, employees, contractors, subcontractors and other authorized personnel, expressly reserves, a non-exclusive easement and right of access in, over and through all Common Elements and Units therein to construct and otherwise improve the Units, Buildings, and Common Elements, and to perform such inspections, maintenance and repair work as may be reasonably required, in Declarant's discretion, under any warranties provided by Declarant (i) to the Owners under any purchase and sale contract, or (ii) to the Owners and the Association.
- 8.10 **Recorded Easements and Licenses.** In addition to the easements described in this Declaration, the recorded easements and licenses appurtenant to or included in this Project are set forth in Exhibit C attached hereto and made a part hereof by this reference.
- 8.11 **Easements Deemed Created.** All conveyances of Units and Lots hereafter made shall be deemed and construed to grant and reserve all the easements referred to in this Declaration, even if no specific reference to such easements appear in the conveyancing instruments.
- 8.12 **Declarant Easement Rights.** Declarant may use the Easements described in this Article VIII for so long as those Easements remain in effect.

ARTICLE IX **COVENANTS, CONDITIONS AND RESTRICTIONS**

- 9.1 **Administration.** The Project will be administered in accordance with the provisions of the Act, this Declaration and the Bylaws. All Common Elements are subject to the reasonable supervision, operation, management and control of the Association.
- 9.2 **Use and Occupancy of Lots.** All Lots shall be used in accordance with the Governing Documents and any other applicable laws. Each Owner shall be entitled to the exclusive ownership and possession of his or her Block, Lot or Unit, subject to the rights of the Declarant and the Association provided in this Declaration. Occupancy of the Blocks, Lots or Units shall be exclusively used for residential purposes. Home occupations are permitted (e.g. remote work).
- 9.3 **Compliance with Laws, Ordinances, Development Agreement and Association Documents.** No Lot shall be used for any purpose not permitted by the PUD Guide for the Project, the Development Agreement, applicable law, or this Declaration.
- 9.4 **Prohibition of Increases in Insurable Risks and Certain Activities.** Nothing shall be done or kept in any Lot, Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Board of Directors. Nothing shall be done or kept in any Block, Lot, Unit or in or on the Common Elements which would be in violation of any applicable law. No damage to or waste of the Common Elements shall be committed by any Owner or Occupant, and each Owner shall indemnify and hold the Association

and the other Owners harmless against all loss resulting from any such damage or waste caused by such Owner or an Occupant of such Owner's Lot (including all costs of enforcement incurred in the defense of claims arising by reason of this Section or incurred in establishing the right to indemnification). Failure to indemnify shall be a default by such Owner under this Section and shall give rise to a Default Assessment against such Owner's Block, Lot or Unit. At its own initiative or upon the written request of any Owner, if the Association determines that further action by the Association is proper, the Association shall enforce the foregoing indemnity as a Specific Assessment levied against such Block, Lot or Unit.

9.5 **Lighting.** No lights shall be emitted which are unreasonably bright or cause unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is nauseous or unreasonably offensive to others. The Association may adopt additional restrictions regarding these matters in the rules and regulations or in a separate policy.

9.6 **Parking.** All exterior parking is unassigned except for the driveways for the Townhome Units. The driveway for each Townhome Unit is a Limited Common Element for each Townhome Unit. The use of all other exterior parking spaces shall be subject to such rules and regulations as may be adopted from time to time by the Board.

9.6.1 With the exception of passenger automobiles and three-quarter (3/4) ton or smaller pickup trucks, no boats, trailers, buses, motor homes, campers (on or off supporting vehicles), motorcycles, snowmobiles, recreational vehicles, trucks, industrial or commercial vehicles (both cabs or trailers), or any other vehicles shall be parked or stored anywhere within the Project and no vehicles of any kind shall be maintained, repaired, repainted, serviced or rebuilt anywhere within the Project.

9.6.2 Notwithstanding the foregoing, vehicles may be temporarily parked with the Project for loading, delivery or emergency purposes, but only for the time required to accomplish such purposes and in areas provided for such purpose, and as necessary on a daily basis for authorized construction, maintenance, repair or other service activities within the Project. No such vehicle shall be parked so as to obstruct access to any parking space.

9.6.3 Snowmobiles, motorcycles, trail bikes, dirt bikes, all-terrain vehicles, and similar vehicles shall not be parked, stored, used, or operated within the Project.

9.6.4 No parking shall be permitted at any location or within the Project unless specifically designated for parking on the Map or in this Declaration or by the Association from time to time. No storage is permitted outside of Units or Buildings except in specially designated storage areas, if any. No Owner may use any parking space for storage or use any parking or storage space in any manner that obstructs or interferes with any other parking space. Without limiting the generality of the powers of the Association with respect to parking, the Association is specifically authorized, but not obligated, to remove any vehicle parked in violation of any rules and regulations, or any vehicle parked in any area not designated for parking, or any vehicle parked in an obstructing or hazardous manner, or to remove any improperly stored or hazardous materials, in all cases at the expense of the Owner or Occupant that owns such vehicle or materials. Expenses incurred by the Association in connection with such removal (and storage, if necessary) shall be a personal obligation of such Owner and, if the Owner fails to pay such amount when due within seven (7) days after notice to the Owner of the amount due, then the failure to pay shall be a default by the Owner and such expenses shall automatically become a

Specific Assessment determined and levied against such Unit or Lot enforceable by the Association as provided in this Declaration.

9.6.5 Neither the Association nor the manager shall be responsible for loss or damage to vehicles using the parking spaces, or for loss or damage to the contents of such vehicles.

9.7 **Pets.** No more than 2 pets shall be kept within any single residential dwelling unit at any time, and only domestic dogs or cats may be kept. The Association may enact further rules and policies regarding pets.

9.8 **Unsightliness, Storage.** Decks, patios, balconies, porches, and General and Limited Common Elements (excepting enclosed storage areas, if any) shall not be used for the storage of personal property of any kind, and nothing shall be placed on or in windows or doors or otherwise on the exterior of Units or Buildings or Common Elements which create an unsightly appearance. Sporting equipment (e.g., skis, bikes, snowboards, mountain bikes, kayaks, etc.) must be stored completely the Unit or Buildings or in the storage areas designated for such purpose by the Board and shall not be allowed to remain outside except when in actual use.

9.10 **Antennae, Satellite Dishes, Etc.** Antennae, satellite dishes, etc. shall be governed by the rules and regulations.

9.11 **No Hazardous Materials.** Units shall not be used for storing or using materials on the Property which are classified as hazardous or toxic under any local, state or federal law or regulation, or court decision, and from engaging in any activity on the Property or in the Unit which produces such materials. The Units shall not be used for the storage of illegal substances, perishable or food items, any form of friable or non-friable asbestos containing materials, explosives, paint, varnish, thinner, gasoline, petroleum products (include fractions of crude oil) and/or other highly flammable materials.

9.12 **Sign Restrictions.** Without the prior written consent of the Association, which may be withheld in the Association's sole discretion, no sign or advertising device of any nature shall be erected or maintained on any part of a Block, Lot or Unit. Notwithstanding the foregoing, Declarant expressly reserves the right to place and maintain for sale and for rent signs within the Project for so long as Declarant owns any Block, Unit or Lot.

9.13 **Nuisances and Negligence.** There shall be no noxious or offensive activities carried on, in or upon any Unit or Common Element, and no loud noises, or noxious odors shall be permitted in a Unit. No activity shall be conducted on any part of the Buildings and no improvements shall be made or constructed on any part of the Buildings which are or might be unsafe or hazardous to any person or property. No light shall be emitted from any part of the Buildings which is unreasonably bright or causes unreasonable glare.

9.14 **Prohibition of Damage and Certain Activities.** Nothing shall be done or kept in any Unit or on the Common Elements or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept in any Unit or in the Common

Elements or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Elements or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees. No noxious, destructive, or offensive activity shall be carried on in any Unit or on the Common Elements or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

9.15 **Compliance with Laws.** No Owner or occupant shall do any act or cause or permit anything to be done or kept in its Unit or any Common Elements which would be in violation of any federal, state, city or other law, ordinance, regulation or code of any governmental body having jurisdiction, or of any rule or regulation promulgated by the Association, or of any provision of this Declaration, or which would result in the increase of, or cancellation of, insurance maintained by the Association.

9.16 **Insurance Risks; Grills.** No Unit may be used for any use which would constitute an unusual fire hazard, would result in jeopardizing any insurance maintained on any part of the Project or would result in any increase in the premium for that insurance. Only electric grills are allowed. All other grills are prohibited.

9.17 **Trash.** No trash, ashes, building materials, firewood or other unsightly items should be thrown, dumped or stored on the Project, except in the area designated by the Association. There shall be no burning or other disposal of refuse out of doors.

9.18 **Prohibition on Marijuana.** It is prohibited to smoke, sell, grow, or manufacture marijuana, cannabis and/or products derived therefrom for the purposes of medicinal or recreational use in the Project.

9.19 **Prohibition on Smoking.** Smoking is prohibited in the Buildings and also prohibited at least ten (10) feet away from each entry to the Buildings or Unit. Smoking in violation of this covenant shall constitute a nuisance pursuant to the terms of this Declaration. Smoking shall include the inhaling, exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, other product containing any amount of tobacco, marijuana, or other similar heated or lit product.

9.20 **Health, Safety and Welfare, Rules and Regulations.** In the event any uses, occupancies, activities, and facilities within the Project are deemed by the Board of Directors to be an unreasonable annoyance or nuisance, or to adversely affect the health, safety or welfare of Owners or occupants, the Board of Directors may adopt reasonable Rules and Regulations of general application in order to appropriately restrict and regulate such uses, occupancies, activities or facilities within the Project. Such Rules and Regulations shall be consistent with the purposes and provisions of this Declaration.

- 9.21 **Failure to Comply.** Any failure of any Owner, their tenant, contractors, employees, and guests to comply with the terms of this Declaration shall result in the Owner being solely responsible for all damages resulting from such failure(s) to comply.
- 9.22 **No Mining or Drilling.** No property within the Project shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, geothermal resources, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, excepting any such activities as may be conducted by Declarant in connection with the construction and completion of the Project.
- 9.23 **Excavations.** No excavation or other earth disturbance shall be permitted or performed within the Project except with the prior written approval of the Board, excepting any such activities as may be conducted by Declarant in connection with the construction and completion of the Project.
- 9.24 **Association Landscaping.** All landscaping within the Project shall be the responsibility of the Association, and no Owner shall perform any landscaping activities within the Project (including without limitation the planting, grooming or removal of grass, trees, bushes, or other vegetation, or the planting or tending of gardens) without the express prior written approval of the Board.
- 9.25 **Outdoor Irrigation.** Landscaping on the Property, including on a Lot or Common Area, shall be irrigated only with raw ditch water through the Association managed raw water system, except that if the raw water irrigation system is malfunctioning, newly planted landscaping or newly planted vegetation required for soil stabilization may be watered by other water sources, including potable, and such irrigation system shall be repair expeditiously. All irrigation systems within the Property should be maintained and in good repair.
- 9.26 **Use of Open Space.** All Block, Lot and Unit Owners, their tenants and permittees are granted easement for use of the Open Space for recreational uses and no other uses. All use is at the sole risk and responsibility of such user. Each Block, Lot or Unit Owner utilizing, or authorizing or allowing the use of the Open Space by a guest, permittee or invitee of such Owner shall indemnify, defend and hold harmless the Association and the owner of Lot 1, Lot 2, and Lot 3 for any and all claims, liabilities, losses, damages, fees, costs, or expenses of any kind, including without limitation attorneys' fees and disbursements, arising out of or related to such Block, Lot or Unit Owner or such Block, Lot or Unit Owner's guest, permittee or invitee's use of the Open Space. No use of the Open Space shall be allowed other than by Block, Lot or Unit Owners, their guests, permittees and invitees as set forth herein; provided, however, that public use of the trail easements dedicated on the Plat is permitted. Any other use of the Open Space by any other person shall constitute unlawful trespass. The Association shall maintain appropriate insurance covering the authorized use of the Open Space described in this section, with limits of not less than \$1M per occurrence of coverage or such higher amount as may be determined by the Board. Uses shall be suspended for residents who demonstrate unruly, careless, reckless, unsafe or injurious behavior in this area. Uses that endanger any user of the Open Space are not allowed. All

residents and guests using the Open Space must clean up after themselves and their pets. Any failure to leave the area in a clean and orderly fashion will result in suspension of use rights for such resident and/or guest. Recreation activities are not allowed in the common areas that lie outside of the Open Space.

9.27 Timeshare and Vacation Club Restriction. No Building or Unit may be used for the creation, operation of or participation in any “time share estate” as defined in C.R.S. §38-33-110 or any other time share, interval ownership, vacation club, destination club, non-equity membership program or similar program, estate or interest in the Building or Unit, no matter how described or classified, including, but not limited to, one by which a purchaser, investor, tenant, licensee or holder of any interest in an ownership entity owning such Building or Unit obtains the right to exclusive use of the Building or Unit on a recurring basis for a certain period of time or has the right, as a member of a destination club, non-equity membership program, vacation club or similar club or organization, to make reservations to use the Building or Unit, as a result of membership in such a destination club, non-equity membership program, vacation club or similar club or organization. Nothing in this this Section 9.27 may be construed as prohibiting a Building or Unit from being owned by a corporation, partnership, limited liability company or other entity or as a tenancy-in-common or other co-ownership arrangement where multiple parties hold an ownership interest in such entity or in the Building or Unit so long as the purpose of the creation or holding of such interests and the transfer of such interests to third party is not to market, sell or utilize those interests as a part of a commercial enterprise. This restriction is in no way intended to limit an Owner’s ability to place their Building or Unit in a rental management program, or to require an Owner to obtain written consent from the Association prior to placing their Building or Unit in a rental management program.

9.28 Renting or Leasing.

9.28.1 Buildings and Units and any portion thereof (including the rental of individual rooms within a Building or Unit) may be rented or leased **only** by written leases for a minimum of thirty days. A copy of any lease shall be provided to the Board by the Owners upon request.

9.28.2 Short term rental vacation sites such as Airbnb, VRBO, HomeAway, and similar type companies are prohibited from participating in rentals of the Buildings or Units.

9.28.3 All tenants shall be subject to the terms and conditions of the Governing Documents and the rules and regulations from time to time promulgated thereunder by the Board.

9.28.4 Each Owner agrees to cause his lessee, occupant or persons living with such owner or with his lessee to comply with the Governing Documents and the rules and regulations promulgated thereunder, and is responsible and liable for all violations and losses caused by such tenants or occupants, notwithstanding the fact that such occupants are, as well, fully liable for any violation of the documents and regulations; failure to comply shall be, at the Board’s option, considered a default in the lease.

9.28.5 In the event that a lessee, occupant or person living with the lessee violates a provision of the Governing Documents or rules and regulations adopted pursuant thereto, the Board shall have the power to bring an action or suit against the lessee to recover

sums due for damages or injunctive relief, or for any other remedy available at law or equity, including, but not limited to, all remedies available to a landlord upon the breach or default of the lease agreement by the lessee.

9.28.6 The Board shall also have the power to impose reasonable fines upon the lessee for any violation by the lessee, occupant or person living with the lessee of any duty imposed under the Governing Documents or rules and regulations adopted pursuant thereto, and to suspend the right of the lessee, occupant or person living with the lessee to use the Common Elements.

ARTICLE X **OPERATION, MAINTENANCE AND REPAIR**

10.1 **Association Maintenance Responsibility.** The Association shall maintain and keep the Property in good, clean, attractive and sanitary condition and repair, the costs and expenses of which shall be Common Expenses. Without limiting the foregoing, the Association shall be responsible for maintaining and operating the following in good condition consistent with the standards set forth in Section 10.4.

10.1.1 All internal roads, trails, sidewalks, and walkways within the Property, including the roadway surface, shoulder, footpaths and their asphalt, concrete or gravel driving surface or walking surface.

10.1.2 Landscaping, vegetation or grass within the Open Space Parcels, and within any other Common Element, including control of noxious weeds.

10.1.3 All stormwater and drainage infrastructure located on the Property.

10.1.4 All landscaping upon the Property.

10.1.5 Common utilities installations including associated trenches and pedestals, but not feeder lines that serve individual Lots, which are the individual Lot Owner's responsibility.

10.1.6 Fire hydrants.

10.1.7 Signs.

10.1.8 All other Common Elements.

10.1.9 The Association will also be responsible for keeping all roads, parking areas, sidewalks and access ways reasonably free of snow, ice, debris and other obstructions, maintaining clear access on the access drive for emergency vehicles and clear access to the fire hydrants, and maintaining the landscaping within the Common Elements.

10.1.10 The Association shall have the sole discretion to determine the time and way the above-described maintenance and improvements shall be performed, as well as the color or type of materials used.

10.2 **Party Wall Agreement.** This Section 10.2 applies only to the Townhome Units. The Townhome Units located on the Blocks share a common partition located and constructed on the common boundary line between the Townhome Units, which constitutes a party wall herein (the "**Party Wall**"). The rights and obligations of the Owners with regard to the Party Wall shall be governed by the Provisions of this Section 10.2.

10.2.1 **Easement for Encroachment.** Mutual reciprocal easements are hereby established, declared and granted for any encroachment of the Party Wall onto the real property of Townhome Unit to any other Townhome Unit, which reciprocal easements shall be governed

by this Declaration. Every deed to a Townhome Unit, whether or not expressly so stating, shall be deemed to convey and be subject to such reciprocal easements.

10.2.2 Townhome Units Owner's Maintenance Responsibility. No Owner shall do any act which would cause damage to or impair the structural integrity of the Party Wall. The cost of reasonable repair to maintain the structural integrity of the Party Wall shall be shared by the Owner's between each such wall equally. If an Owner fails to repair or maintain the structural integrity of its portion of the Party Wall, the other Owner shall provide such defaulting Owner written notice of the failure and provide such Owner a reasonable opportunity, but not exceeding ten (10) days in which to cure such default (or within such period, if any, as may reasonably be required to cure such default if it is non-monetary and of such nature that it cannot be cured within such ten (10) day period and proceeds with reasonable diligence thereafter to cure such default). If the defaulting Owner fails to cure the default within such time period, the non-defaulting Owner may undertake such repair and for such purpose may enter upon the Townhome Unit of the defaulting Owner without liability therefor except for damages resulting from the willful misconduct of such Owner or its authorized representatives. The non-defaulting Owner shall have a lien against the defaulting Owner's Townhome Unit for the cost and expense incurred in making or causing such repairs to be made.

10.2.3 Damage to Party Wall. If the Party Wall or any portion thereof is destroyed or damaged by fire or other casualty, the Owners shall restore it and they shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of each Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner hereunder shall run with and be appurtenant to the land and shall pass to such Owner's successors in title. An Owner who by its negligent or willful act causes the Party Wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

10.2.4 General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to the Party Wall and to the interpretation of this Declaration as it relates to party walls.

10.3 Owner's Maintenance Responsibility. Except as provided otherwise in this Declaration or by written agreement with the Association, all maintenance of individual Buildings or Units including, without limitation, all exterior and interior surfaces, structural and nonstructural members, utility systems, utility lines from the point of departure from a shared usage, glazing, doors, patios, decks, balconies and other fixtures designed to serve a single Building or Unit, shall be the sole responsibility of the respective Building/Unit Owners. Each Building/Unit, and the improvements thereon, shall be maintained in a good, clean, attractive and sanitary condition and repair. Additionally, an Owner shall be fully responsible for all damage and the cost of repair and restoration of service for utility lines or connections outside the boundaries of such Owner's Building or Unit if the Owner or his family members, tenants, guests, invitees, licensees or agents caused such damage or the necessity of repair.

10.3.1 An Owner's responsibility shall include, without limitation, maintenance of the walls, the interior surfaces of the walls, ceilings, doors and floors of the Unit or Building and any finished or additional surfaces, decoration or materials, such as carpets, wallpaper, countertops, painting or staining, plug-in appliances and personal property of any kind in a Unit or Building. The Owners of the Townhome Units are responsible for the maintenance, repair and replacement of both the exterior and interior of the Building in which their Townhome Unit is located.

10.3.2 No structural alterations within any Unit or with respect to any Unit (except minor repair work localized within the Unit not affecting these overall utility systems) shall be done without the prior written consent of the Association, which may withheld in the Association's sole subjective discretion.

10.3.3 Each Unit shall maintain, repair and replace any Limited Common Element identified and assigned to such Unit.

10.3.4 If any Unit Owner fails to undertake their obligations pursuant to this Article X, the Association may provide notice to the Owner to complete their obligations, and if Owner fails to undertake and complete such obligations within thirty (30) days, the Association may complete the work and bill the Owner for the same. Any such amount billed to the Owner shall be treated as a Specific Assessment.

10.4 Damage Caused by Owner. If, due to the act or neglect of a Unit Owner, guest or occupant, loss or damage shall be caused to any person or property, including any Unit or Building, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner as a Specific Assessment against such Owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the Unit or Building of such Owner.

10.5 Maintenance Standard. For the benefit of all Owners, each Owner and the Association will perform their respective maintenance and repair obligations under this Article X in a manner consistent with a first-class project of similar configuration located in Garfield County, Colorado.

ARTICLE XI ASSESSMENTS

11.1 Assessment Obligation. Declarant, for each Unit, shall be deemed to covenant and agree, and each subsequent Unit Owner, by acceptance of a deed therefor (including a public trustee's or sheriff's deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, to pay to the Association: (i) Regular Assessments or charges, (ii) Special Assessments, and (iii) Specific Assessments, such assessments to be established and collected as herein provided (collectively, the "Assessments"). The Assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Unit against which each such Assessment is charged. The obligation for such payments by each Unit to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without set-off or deduction of any kind or nature. Each Unit Owner is liable for the full amount of all Assessments made

against such Owner's Unit as a joint and several obligation with all other co-Owners of the Unit. Each Assessment, together with interest, late fees, costs and reasonable attorneys' fees, shall also be the joint, several and personal obligation of each person who was an Owner of such Unit at the time when the Assessment became due. Upon the transfer of title to a Unit, the transferor and transferee shall be jointly, severally and personally liable for all unpaid Assessments and other charges due to the Association prior to the date of transfer, and the transferee shall be personally liable for all such Assessments and charges becoming due thereafter.

11.2 Statutory Lien. The Association has a statutory lien pursuant to Section 38-33.3-316 of the Act on the Unit of an Owner for all Assessments levied against such Unit or fines imposed against such Unit's Owner from the time the Assessment or fine becomes due (the "**Assessment Lien**"). Fees, charges, late charges, attorneys' fees, fines and interest charged by the Association pursuant to the Act or this Declaration are enforceable as Assessments. The amount of the lien shall include all such items from the time such items become due. If an Assessment is payable in installments, the Association has an Assessment Lien for each installment from the time it becomes due, including any date set by the Board's acceleration of payment obligations. An Assessment Lien is extinguished unless proceedings to enforce the lien are instituted within 6 years after the full amount of the Assessments become due.

11.3 Lien Superior to Homestead and Other Exemptions. An Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

11.4 Regular Assessments.

11.4.1 A Regular Assessment shall be made annually against each Unit or Lot, based upon an annual Budget prepared by the Board in accordance with Section 11.4.4 below, for the purposes of paying (i) the annual costs of operating and administering the Association and all other Common Expenses, (ii) reasonable reserves for contingencies, maintenance, repairs, replacements, and other proper purposes, (iii) the costs of services rendered or expenditures incurred by the Association to or for less than all Units or Buildings, (iv) the costs of improving or maintaining any Limited Common Element to be maintained by the Association, which such costs shall be assessed only to the Units, Blocks or Lots designated for the use of said Limited Common Elements, (v) such other matters as may be reasonably determined by the Board to be the subject of a Regular Assessment;

11.4.2 Regular Assessments shall be allocated in accordance with the Allocated Interests of each Unit and/or Lot in the Project, except subject to the provisions below:

11.4.2.1 Lot 1 Common Expenses shall be assessed exclusively against the Townhome Units in proportion to the respective Allocated Interests thereof;

11.4.2.2 Lot 2 Common Expenses shall be assessed exclusively against the Buildings or Live Work Units located on Amended Lot 2 in proportion to the respective Allocated Interests thereof; and

11.4.2.3 Lot 3 Common Expenses shall be assessed exclusively against the Buildings or Empty Nestor Units located on Lot 3 in proportion to their respective Allocated Interests thereof.

11.4.3 Regular Assessments shall be levied on a calendar year basis and shall be due and payable annually on the first day of January of each calendar year. The Board may, in its discretion, change payments of Regular Assessments in installments on a quarterly or monthly basis, in which case such installments shall be due on the dates as determined by the Board from time to time. Any Owner acquiring a Unit or a Building between due dates shall pay a pro-rata share of the immediately preceding installment.

11.4.4 **Annual Budget.** The Board shall adopt a Budget which establishes the Regular Assessment for the Owners. Every year, the Board shall prepare an operating budget (the "**Budget**") for the next fiscal year. The Budget shall provide for the allocation of any surplus funds remaining from any previous Budget period. Within thirty (30) days after adoption of any proposed Budget for the Association, the Board shall mail, by ordinary first-class mail, email or otherwise deliver, a summary of the Budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the Budget not less than fourteen (14) nor more than sixty (60) days after the mailing or other delivery of the summary. Such meeting may, but need not be, concurrent with the annual meeting of the Members as provided in the Bylaws. Unless at that meeting sixty-seven percent (67%) of all Unit Owners reject the Budget, the Budget shall be ratified, whether or not a quorum of Owners is present. If the proposed Budget is rejected, the Budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent Budget proposed by the Board. Meetings may be held in person and/or by phone and/or video call.

11.4.5 In accordance with Section 38-33.3-314 of the Act, any surplus funds remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves shall be carried forward as a credit against the next year's budget, unless any such amount is reclassified as determined by the Board on an annual basis.

11.5 **Special Assessments.** In addition to the Regular Assessments and Specific Assessments authorized in this Article XI, the Board may from time to time levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, maintenance, or replacement of capital improvements to or upon or serving the Project, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association.

11.5.1 Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the Allocated Interest of each Unit and/or Building and/or Lot in the Project and as more specifically set forth in Section 11.4 above, provided that the Special Assessments that benefit all of the Unit, Buildings or Lots shall be allocated exclusively to the Units, Buildings or Lots benefited. Special Assessments shall be due and payable to the Association on the due date(s) fixed by the Board in the notice given to the Owners of such Special Assessments. In the discretion of the Board, Special Assessments may be for costs or expenses to be incurred in a particular year or may be "multi-year" Special Assessments for costs or expenses to be incurred over a period of two or more years.

11.6 **Specific Assessments.** In addition to the Regular and Special Assessments authorized hereunder, the Board may levy against any Owner or Owners, at any time and from time to time, a Specific Assessment for purposes of reimbursing the Association for all costs and expenses incurred by it in enforcing any provision of or in remedying any violation of the Governing

Documents by such Owner or Owners, their Occupant(s), or their agents, employees, or contractors. Specific Assessments may also be made by the Board for any other purposes for which this Declaration provides for the levying of a Specific Assessment. Finally, and in addition to the foregoing, a Specific Assessment may also be levied in the form of a reasonable fine against an Owner for a violation of the Governing Documents. In certain circumstances, including emergencies and other situations where the violation(s) in question have or may have a material adverse effect on the security, safety or quiet enjoyment of the Project by other Owners or Occupants, such fines may be levied by Board (via the manager) without notice. In those situations where immediate action by the manager to remedy the violation(s) is not indicated, the Board shall not levy a fine until the affective Owner has been provided with the opportunity for a hearing in accordance with the Association's policies and procedures.

11.7 Declarant's Obligation to Pay Assessments. Declarant shall be obligated to pay the Regular, Special and Specific Assessments levied on each Unit or Lot owned by the Declarant.

11.8 Working Capital. Each new owner of a Unit or Building shall pay the Association a mandatory, non-refundable, fee in the amount equal to three (3) months' worth of the current annual Association assessments (the "**Working Capital Fee**"). The Board is authorized to use the Working Capital Fee to replenish the Association's operating reserves and infrastructure funds and/or for day-to-day expenses and unexpected costs.

11.9 Commencement of Assessments. The obligation to pay Common Assessments shall commence as to each Unit on the day on which the Association first levies Common Assessments. Prior to the commencement of Common Assessments, the Declarant shall pay the Common Expenses. The obligations to pay Special Assessments and Specific Assessments shall commence as to each Unit on the day this Declaration is recorded.

11.10 Payment of Assessments; Notice and Acceleration. Each Owner shall pay all Assessments assessed against such Owner's Unit or Building by the Board in accordance with the terms of this Declaration. Each Assessment is a separate, distinct and personal debt and obligation of the Owner against whose Unit the Assessment is assessed. All Assessments are payable in full without offset for any reason whatsoever. Each Owner's obligation to pay Assessments is entirely independent of any obligation of the Association to the Owner or of Declarant or any other Owner to that Owner. Any Assessment or installment of an Assessment not paid within fifteen (15) days after it becomes due is delinquent. If an Assessment or installment of an Assessment is delinquent, the Association may recover all of the following (collectively, the "**Delinquency Costs**"): (i) interest from the date due at the rate of 8% per annum; (ii) late charges and other monetary penalties imposed by the Association pursuant to this Declaration; and (iii) all collection and enforcement costs, including reasonable attorneys' fees, incurred by the Association. If an Assessment or installment of any Assessment is delinquent, the Association may notify the Owner of the delinquency and state in the notice (x) the amount of the delinquent Assessment or installment; (y) the Delinquency Costs accrued to date; and (z) the date by which the delinquent Assessments or installment and all Delinquency Costs must be paid. If the Association gives such a notice and the delinquent Assessment or installment of an Assessment and all associated Delinquency Costs are not paid in full by the due date specified in the notice, then the Board, at its option, may declare all unpaid installments of the subject

Assessment for the current fiscal year to be immediately due and payable in full without further demand or notice and may enforce the collection of the Assessment (including any installments whose due dates were accelerated).

11.11 Interest; Late Charges. Unpaid general and special Common Expense Assessments shall bear interest from and after the date the same are due until paid at eight percent (8%) per annum, compounded annually, or at such rate as is set from time to time by the Association.

11.12 Enforcement of Assessments. The amount of any delinquent Assessments (including any installments whose due dates are accelerated by the Board pursuant to this Declaration) and associated Delinquency Costs may be enforced against the Owner liable for them in either or both of the following ways (to the extent permitted by Law), at the option of the Board:

11.12.1 Suit. The Association may bring a suit or suits at law to enforce the Owner's obligation to pay a delinquent Assessment (including any installments whose due dates are accelerated by the Board) and associated Delinquency Costs. Each action shall be brought in the name of the Association. The judgment rendered in the action shall include, where permissible under applicable law, a sum for reasonable attorneys' fees in an amount adjudged by the court against the defaulting Owner. Upon full satisfaction of the judgment, the Association, by one of its officers, shall execute and deliver to the judgment debtor an appropriate satisfaction of the judgment.

11.12.2 Lien and Foreclosure. Assessments (including any installments whose due dates are accelerated by the Board) and associated Delinquency Costs constitute a continuing mortgage lien on the Units against which they are assessed from the date due. Such lien shall be perfected upon the recording of this Declaration and no further claim of lien shall be required. If an Assessment is delinquent, if the Association give a notice concerning the delinquency that complies with current law, and if the delinquent Assessment is not paid in full by the due date specified in the notice, then the Association may foreclose the lien securing the Assessment, any installments whose due dates are accelerated by the Board and any associated Delinquency Costs in accordance with the laws of the State of Colorado. The Association may undertake and conduct such foreclosure in the manner for foreclosure of mortgages under the laws of Colorado.

11.12.3 General. The remedies provided above are not exclusive of any other remedies provided for in favor of the Association under the other terms of the Declaration and at law or in equity. By electing to pursue one or more available remedies, the Association shall not be deemed to have waived its right to pursue any other remedies that may be available to it for failure by an Owner to pay any Assessment.

11.13 Owners not Exempt from Liability. No Owner is exempt from liability for payment of Assessments by waiver of the use or enjoyment of any portion of the Common Elements, by abandonment of the Unit, or otherwise.

11.14 **First Lienor Right to Pay.** Any First Lienor of a Unit may (but shall not be required to) pay any unpaid general or special Common Expense assessments, fines, accrued interest, charges, fees or costs with respect to such Unit, and upon such payment such First Lienor shall be subrogated to the Association's lien on such Unit for the amount so paid, and shall be subrogated to the rights and remedies of the Association to collect such amount.

11.15 **Reallocation.** If any Assessment remains unpaid for more than six (6) months after it is first due, the Association may treat the unpaid Assessment as a Common Expense to be assessed against all Units; provided, however, that if the Association subsequently collects all or any part of the unpaid Assessment, through foreclosure of its lien or otherwise, then any Owner who has paid a portion of the unpaid Assessment as a Common Expense is entitled to a credit (in an amount equal to its pro rata share of the amount of unpaid Assessment subsequently collected by the Association) against any Common Assessments subsequently due from that Owner.

ARTICLE XII **INSURANCE**

12.1 **Types of Insurance.** The Association shall always obtain and keep in full force and effect the following insurance coverage provided by companies duly authorized to do business in Colorado. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

12.1.1 **Hazard Insurance.** The Association shall keep the Common Elements and the exterior portions of all Buildings as defined herein (**not including personal property of Owners or occupants, or additions and betterments, to the Units or Buildings made by Owners or occupants, or at their request, that were not part of the original structure**) insured against loss or damage by fire, with extended coverage (including insurance loss or damage by vandalism or malicious mischief) in an amount not less than the insurable value (based on current replacement costs) as estimated by the Association. Exterior portions of all Buildings shall include every element described in the subparagraphs immediately below **but not including interior elements of the Units**. Any elements not identified as the obligation of the Association to insure shall be considered interior elements which are the obligation of the Owner to insure. Each Owner must (if the amount recoverable by the Association is not thereby reduced) secure coverage for the interior of such Owner's Unit or Building and his/her personal property, the coverage to be arranged and paid for by that Owner. Exterior elements of the Buildings include the following:

1. Outer walls of Unit to unfinished inner surface and load bearing walls
2. Roofs and their supporting structures to the unfinished ceiling below
3. Foundation
4. Plumbing sub-grade and above grade including fixtures
5. Electrical fixtures and wiring in outer wall and perimeter ceilings
6. Exterior stairs, including structure and unfinished surfaces

12.1.2 Public Liability and Property Damage, Insurance. The Association shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, if applicable, and activities in connection with the ownership, operation, maintenance and other use of the Project.

12.1.3 Workmen's Compensation and Employer's Liability Insurance. The Association shall purchase workmen's compensation and employer's liability insurance and all other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by Law.

12.1.4 Fidelity Insurance. The Association shall purchase, in such amounts and in such forms as it shall deem appropriate, coverage against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

12.1.5 Directors and Officers. The Association shall purchase, in such amounts and in such forms as it shall deem appropriate, coverage for the Directors and Officers of the Association.

12.1.6 Other. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including any personal property of the Association located thereon.

12.1.7 Form. Casualty Insurance shall be carried in a form or forms naming the Association the insured, as trustee for the Owners, which policy or policies shall specify the interest of each Unit Owner (Owner's name, Unit number, Building symbol and the appurtenant Allocated Interest in the Common Elements), and which policy or policies shall provide a standard mortgagee clause in favor of each first Mortgagee which from time to time shall give notice to the Association of such first Mortgagee. Each policy also shall provide that it cannot be cancelled by either the insured or the insurance company until after ten days prior written notice is first given to each Owner, to the Association, and to each first Mortgagee. The Association shall furnish to each Owner a true copy of such policy together with a certificate identifying the interest of the Owner. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence, or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall provide further that the insurance under any such policy as to the interest of all other insured Owners not guilty of any such act or omission shall not be invalidated or suspended and shall remain in full force and effect.

12.1.8 Public liability and property damage insurance shall name the Association the insured, as trustee for the Owners, and shall protect each Owner against liability for acts of the Association in connection with the ownership, operation, maintenance, or other use of the Project.

12.2 **Owner's Responsibility.** Insurance coverage against loss from theft on all personal property, and insurance coverage on items of personal property placed in the Unit by Owner, in specific amounts, and casualty and public liability insurance coverage within each individual Unit and for activities of the Owner, not acting by the Association, with respect to the Common Elements shall be the responsibility of the respective Owners.

12.3 **Insurance Proceeds.** The Association shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this Article. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Project shall not be rebuilt, the proceeds shall be distributed in the same manner herein provided herein below.

12.4 **Nonliability of Association or Board.** Notwithstanding the duty of the Association to obtain insurance coverage, as stated herein, the Association, a Board member, an officer, or Declarant shall not be liable to any Owner, mortgagee or other person, if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.

12.5 **Owner's Own Insurance.** **OWNERS ARE ADVISED THAT THE FOREGOING INSURANCE MAINTAINED BY THE ASSOCIATION WILL NOT COVER THE UNIT INTERIOR, INCLUDING BUT NOT LIMITED TO PERSONAL PROPERTY AND/OR FURNISHINGS OF OWNERS, OR UPGRADES INSTALLED BY OWNERS.** Each Owner is responsible for purchasing insurance covering the Unit interior, personal property, business assets, household goods, furnishings and upgrades. The interior portions of the Units, for the purposes of insurance, is the air space contained within the unfinished surfaces of the perimeter walls, floors, and ceilings of the Unit and any betterments to the Units made by Owners or occupants (or at their request) that were not part of the original structure; and covering liability, injury, death or damage occurring within the Unit. Such insurance shall contain waivers of subrogation and shall be so written that insurance obtained by the Association shall not be affected or diminished. Owners are advised to review the policies of the Association and its exclusions from coverage. Interior portions shall mean and include:

1. Personal property
2. Furniture
3. Paint or finish for ceiling and structure and drywall for interior of surfaces at boundary of Unit
4. Floor, ceiling and partition walls finishes including, but not limited to, carpet, ceramic tile, sheet vinyl, hardwood and wallpaper

5. Plumbing above grade including fixtures
6. Electrical fixtures and inside wiring
7. Appliances including refrigerator, stove hood, microwave, dishwasher, washer and dryer
8. Kitchen and bathroom cabinets and counters
9. Stairs surfaces
10. Hallways, foyers, closets, storage areas
11. Heating, air conditioning and cooling systems – portable or window units

ARTICLE XIII
CASUALTY DAMAGE OR DESTRUCTION

- 13.1 Any portion of the Project for which insurance is required pursuant to this Declaration that is damaged or destroyed must be repaired or replaced promptly by the Association unless: (i) the Project is terminated; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) sixty-seven percent (67%) of the Unit Owners vote not to rebuild.
- 13.2 The cost of repair or replacement is in excess of insurance proceeds and reserves is a Common Expense. If the entire Project is not repaired or replaced, the insurance proceeds attributable to the damaged building or Common Elements must be used to restore the damaged property to a condition compatible with the remainder of the Project, and, except to the extent that other Persons will be distributees, the insurance proceeds attributable to Units and Common Elements that are not rebuilt must be distributed to the Owners of those properties, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all Unit Owners or lienholders as their interests may appear in proportion to the Common Expense liabilities of all Units.
- 13.3 In the event of damage to or destruction of all or a portion of the Building or Common Elements due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. The Association is the attorney in fact for the insured Owners and as Owner of the Common Elements, shall hold any insurance proceeds in trust for the Association, the Owners and their first mortgagees as their interests may appear. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Association may levy a Special Assessment in the aggregate amount of such deficiency, or if any Owner or group of Owners is liable for such damage, may levy a Specific Assessment against the Owner or group of Owners responsible therefor, and shall proceed to make such repairs or reconstruction. Such Assessment shall be due and payable as provided by resolution of the Board, but not sooner than sixty (60) days after written notice thereof. The Assessment provided for herein shall be a debt of each Unit Owner assessed and a lien on his Unit and may be enforced and collected in the same manner as any Assessment Lien provided for in this Declaration. If the entire damaged property is not repaired or replaced,

the insurance proceeds attributable to the damaged property must be used to restore the damaged property to a condition compatible with the remainder of the Project. No distributions of insurance proceeds shall be made unless made jointly payable to the Unit Owners and first mortgagees of their respective Units, if any. For the sake of clarity, a “first mortgagee” means the holder from time to time of the any first mortgage (together with the notes secured thereby and security instruments collateral thereto) of record placed against the Unit.

ARTICLE XIV **OBSOLESCENCE**

14.1 Adoption of a Plan for Renewal and Reconstruction. Owners representing an aggregate ownership interest of eighty percent, or more, of the Common Elements may agree that the Units are obsolete and that the same should be renewed or reconstructed. Such agreement must have the unanimous approval of every first Mortgagee. In such instance, then the expense thereof shall be payable by all the Owners as Common Expenses; provided, however, that any Owner not agreeing to such renewal or construction may give written notice to the Association that such unit shall be purchased by the Association for the fair market value thereof. If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the “commencing date” from which all periods of time mentioned herein shall be measured. Within ten days following the commencing date, each party shall nominate in writing and give notice of such nomination to the other party, an appraiser who shall be a realtor and be qualified to make appraisals of condominium and similar property in Garfield County, Colorado. If either party fails to make such a nomination, the appraiser nominated shall, within five days after default by the other party, appoint and associate with him another similarly qualified appraiser. If the two appraisers designated by the parties or selected pursuant hereto in the event of the default of one party, are unable to agree, they shall appoint another similarly qualified appraiser to be arbitrator between them, if they can agree on such person. If they are unable to agree upon such arbitrator, then he shall be selected from the panel of arbitrators of the American Arbitration Association. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the arbitrator, shall be final and binding. The expenses and fees of such appraisers and arbitrator or both shall be borne equally the Association and the Owner. The sale shall be consummated within fifteen days thereafter, and the Association, as Attorney-in-Fact, shall disburse such proceeds as is provided in Article 15.

14.1.1 Sale of Obsolete Units. Owners representing an aggregate ownership interest of eighty percent, or more, of the General Common Elements may agree that Units are obsolete and that the same should be sold. Such agreement must have the unanimous approval of every first mortgagee. In such instance, the Association shall forthwith record a notice setting forth such fact or facts and upon the recording of such notice by the Association’s president and secretary, the entire premises shall be sold by the Association, as Attorney-in-Fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map and the Bylaws. The sales proceeds shall be apportioned among the

Owners on the basis of each Owner's percentage interest in the General Common Elements, and such apportioned proceeds shall be paid into separate accounts representing each Unit. Each such account shall be in the name of the Association and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as Attorney-in-Fact, shall use and disburse the total amount of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in Article 15.

ARTICLE XV **CONDEMNATION**

15.1 **Consequences of Condemnation.** If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

15.2 **Proceeds.** All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "**Condemnation Award,**" shall be payable to the Association.

15.3 **Complete Taking.** If the entire Project is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant thereto shall terminate. The Condemnation Award shall be apportioned among the Owners on the basis of each Owner's Allocated Interest in the Common Elements, provided that if a standard different from the value of the property as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled.

15.4 **Partial Taking.** If less than the entire Project is taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners, as follows: (i) The total amount allocated to taking of or injury to the Common Elements shall be apportioned among the Owners on the basis of each Owner's Allocated Interest in the Common Elements, (ii) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned, (iii) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved, and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as shown as practicable.

15.5 **Reorganization.** In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association. Thereafter the Association shall reallocate the ownership, voting rights, and assessment ratio determined in accordance with the Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Units for amendment of this Declaration.

15.6 **Reconstruction and Repair.** Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified herein in cases of Casualty Damage or Destruction.

ARTICLE XVI **MECHANICS' LIENS**

16.1 If any Owner shall cause or permit any material to be furnished to such Owner's Unit or any labor or services to be performed thereon, no Owner of any other Unit shall be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done and such Owner shall be solely responsible to contractors, laborers, materialmen, and other Persons furnishing labor, services or materials to such Owner's Unit. Nothing herein contained shall authorize any Owner or any Person dealing through, with or under any Owner to charge the Common Elements or any Unit other than that of such Owner with any mechanic's or materialmen's lien or other lien or encumbrance whatsoever. Notice is hereby given that the right and power to charge any lien or encumbrance of any kind against the Common Elements or against any Owner or any Owner's Unit for work done or materials furnished to any other Owner's Unit is hereby expressly denied.

16.2 If, because of any act or omission of any Owner, any mechanic's or materialmen's lien or other lien or order for the payment of money shall be filed against any of the Common Elements or against any other Owner's Unit or against any other Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose or which act or omission forms the basis for such lien or order shall, at such Owner's own cost and expense, cause such lien or order to be canceled or bonded over in an amount and by a surety company reasonably acceptable to the party or parties affected by such lien or order within twenty (20) days after the filing thereof, and further such Owner shall indemnify and save harmless all such parties affected from and against any costs, expenses, claims, losses or damages, including reasonable attorneys' fees resulting therefrom.

ARTICLE XVII **LIMITED WARRANTY**

17.1.1 Declarant warrants to the Owners and the Association that the Project, including all Common Elements therein, has been constructed in a good and workmanlike manner and will be free from defects in workmanship and materials of a nature for a period of one (1) years after the issuance of a temporary or regular Certificate of Occupancy, whichever

occurs first, for the Project (“**Limited Warranty**”). If an Owner or the Association notifies Declarant in writing of any such defects within said one (1) year period, Declarant agrees that it will cause such defects to be remedied promptly by repair or replacement at Declarant's expense, and the Owner's or the Association's sole remedy against Declarant in connection with any such defect (in lieu of all remedies implied by law or otherwise) shall be to require Declarant to correct the defects. This Limited Warranty is personal to the original Owner of each Unit, and may not be assigned by such Owner upon a sale thereof. TO THE FULLEST EXTENT PERMITTED BY ALLICABLE LAW, SAID LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY, EITHER EXPRESS OR IMPLIED, BEING MADE BY DECLARANT (INCLUDING DECLARANT'S CONTRACTORS, SUBCONTRACTORS AND AGENTS) IN CONNECTION WITH THE DESIGN AND CONSTRUCTION OF THE PROJECT, AND SAID LIMITED WARRANTY REPRESENTS THE EXCLUSIVE RIGHT TO RECOVERY BY THE OWNERS AND THE ASSOCIATION FOR ANY DEFECTS IN THE DESIGN AND CONSTRUCTION OF THE PROJECT. THE UNITS, THE COMMON ELEMENTS, AND THE COMMON FURNISHINGS ARE BEING DELIVERED TO AN ACCEPTED BY THE OWNERS AND THE ASSOCIATION IN AN “AS IS” STATE OF REPAIR AND PHYSICAL CONDITION EXISTING AT THE TIME OF ISSUANCE OF THE CERTIFICATE OF OCCUPANCY FOR THE UNITS OR THE PROJECT, AND ANY AND ALL WARRANTIES CREATED BY STATE OR FEDERAL LAW ARE HEREBY SPECIFICALLY DISCLAIMED BY DECLARANT WITH RESPECT TO THE REAL PROPERTY UNDERLYING THE PROJECT, THE UNITS, THE COMMON ELEMENTS AND THE COMMON FURNISHINGS, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF HABITABILITY, WORKMANLIKE CONSTRUCTION, DESIGN, CONDITION, QUALITY OR THE LIKE.

17.1.2 WITH REGARD TO THE APPLIANCES AND OTHER ITEMS OF TANGIBLE PERSONAL PROPERTY LOCATED WITHIN OR UPON THE UNITS OR THE COMMON ELEMENTS, DECLARANT DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

17.1.3 TO THE FULLEST EXTENT PERMITTED BY COLORADO LAW, NEITHER DECLARANT OR ITS CONTRACTORS, SUBCONTRACTORS OR AGENTS SHALL BE LIABLE FOR ANY CLAIMS RELATING TO THE PROJECT OR THE COMMON ELEMENTS ARISING MORE THAN ONE (1) YEAR AFTER THE ISSUANCE OF THE CERTIFICATE OF OCCUPANCY FOR ANY UNIT INVOLVING DEFECTS IN WORKMANSHIP OR MATERIALS UNLESS OTHERWISE PROVIDED IN THE LIMITED WARRANTY. IN ADDITION, NEITHER THE ASSOCIATION NOR THE OWNERS SHALL HAVE ANY RIGHT TO BRING ANY CLAIMS FOR A DEFECT IN DESIGN OR CONSTRUCTION IF SUCH DEFECT DOES NOT RESULT IN ANY ACTUAL DAMAGE TO THE UNITS, THE COMMON ELEMENTS OR THE COMMON FURNISHINGS. The foregoing disclaims shall also apply to all items of

tangible personal property installed in or servicing the Units and Common Elements, including without limitation any range, oven, range hood and fan, microwave, garbage disposal, dishwasher, refrigerator, washer, dryer, water heater, components of the heating or air conditioning systems and any fire, alarm or other life-safety system or any other appliance, fixture, piece of equipment or item which is a “consumer product”, as defined in the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, et seq. which consumer products are not covered by the above described Limited Warranty and shall not otherwise be warranted by Declarant, provided, however, that Declarant shall make a non-exclusive assignment to the Association of any manufacturer’s or supplier’s warranties with respect to such consumer projects to the extent such warranties are assignable, and Declarant shall not be responsible for the performance of any such assigned warranties.

17.1.4 DECLARANT SPECIFICALLY DISCLAIMS ANY LIABILITY FOR CONSEQUENTIAL DAMAGES (OTHER THAN THE REASONABLE COST OF REPAIR OR REPLACEMENT DURING THE PERIOD OF LIMITED WARRANTY) TO ANY PERSON OR UNIT OR THE COMMON ELEMENTS OR ANY OTHER REAL OR PERSONAL PROPERTY RESULTING FROM AN ALLEGED CONSTRUCTION DEFECT. ADDITIONALLY, DECLARANT SPECIFICALLY DISCLAIMS ANY LIABILITY FOR TREBLE DAMAGES (OR OTHER MULTIPLIER) OR PUNITIVE DAMAGES ARISING IN CONNECTION WITH OR RELATED IN ANY MANNER TO ANY ALLEGED CONSTRUCTION DEFECT.

ARTICLE XVIII **DEVELOPMENT RIGHTS**

18.1 **Expansion Rights.** Declarant reserves the right to develop subsequent filings for the Property consisting of additional Units and additional Common Elements located in the Project. Declarant reserves the right to add any adjacent real property which shares any part of a boundary with the real property covered by this Declaration.

18.2 **Relocation of Boundaries of Units Owned by Declarant.** Declarant expressly reserves the right to relocate the boundaries between adjoining Units owned by Declarant, each Unit so created by boundary relocation shall be deemed a separate Unit under this Declaration.

18.3 **No Consent Required, No Assurances.** The consent of the Association, any existing Unit Owner, any First Lienor, any other Mortgagee of any Unit or property subject to this Declaration, or any other Person, shall not be required for any exercise by Declarant of any reserved Development Right described herein. Declarant may exercise any or all such reserved Development Rights at different times and from time to time, without limitation at Declarant’s sole option, and in whatever order of development or action Declarant determines, in its sole discretion.

18.4 **Amendment of Declaration.** To exercise any reserved Development Right, Declarant shall make, execute, acknowledge and record an amendment to the Declaration (including an amendment to the Map), containing such provisions as required by this Declaration and the Act.

18.5 **Amendment of Map.** Declarant shall, contemporaneously with an amendment of the Declaration, file an amendment of the Map showing the subsequent filings of the Property within the Project, which shall conform to the requirements contained in this Declaration and the Map.

18.6 **Interpretation.** Recording of amendments to the Declaration and/or the Map in Garfield County shall automatically vest in the Owner or Owners of each existing Unit, the reallocated interest appurtenant to the Unit and automatically vest in each Mortgagee of each existing Unit, if any, a perfected security interest or lien in the reallocated interest appurtenant to the Unit, of the same character and priority as such Mortgagee had prior to such amendment. All conveyances of Units after such expansion shall be effective to transfer rights in all Common Elements in the Property as expanded, whether such reference is made to any amendment to the Declaration and/or Map. Reference to the Declaration and/or Map in any instrument shall be deemed to include all amendments to the Declaration and/or Map without specific reference thereto.

18.7 **Termination of Development Rights.** The Development Rights reserved to Declarant in this Article XVII, for Declarant and the successors and assigns of Declarant, shall lapse and expire at the end of the Declarant Development Period. Upon recording of an amendment to the Declaration adding additional property to the Property, the definitions used in this Declaration shall automatically be extended to encompass and refer to the Property, as expanded.

18.8 **Special Declarant Rights.** Declarant hereby reserves the right, from time to time, to perform each and all the acts and to exercise each and all the special Declarant rights specified below (the “**Special Declarant Rights**”) during the Declarant Development Period. The Special Declarant Rights reserved by Declarant are as follows:

18.8.1 **Completion of Improvements.** The right to make improvements within the Property.

18.8.2 **Exercise of Development Rights.** The right to exercise any Development Right reserved in Article XVIII of this Declaration.

18.8.3 **Sales, Marketing and Management.** The right to maintain sales offices and management offices of any size in any of the Units in the Property, and to locate and relocate any such offices and models anywhere within the Property. This reserved Special Declarant Right extends to any Unit of any size, and there is no limit with respect to the number of such sales offices or management offices.

18.8.4 **Signs.** Notwithstanding any prohibition in this Declaration to the contrary, the right to place and maintain signs within the Property advertising the Property, and to relocate and remove such signs.

18.8.5 **Amendment of Declaration.** The right to amend the Declaration (including the right to amend the Map) as necessary to exercise any Development Rights during the Declarant Development Period.

18.8.6 **Warranty Work.** The right to perform warranty work, associated repairs and construction work and to store materials and equipment in secure areas, in the Units and on Common Elements, and the future right to control such warranty work and repairs, and the right of access thereon, until its completion. All warranty work may be performed by Declarant without the consent or approval of any Owner or Mortgagee.

18.9 **Additional Reserved Rights.** In addition to the Special Declarant Rights set forth above, Declarant also reserves the following additional rights (the “**Additional Reserved Rights**”).

18.9.1 **Dedications.** Subject to the language 19 above, the right to establish, from time to time, by dedication or otherwise, utility and other easements for the benefit of the Property, including but not limited to paths, walkways, drainage areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exception and exclusions for the benefit of and to serve the Units within the Property.

18.9.2 **Other Rights.** The right to exercise any other reserved right created by any other provision of this Declaration.

18.10 **Rights Transferable and Terminable.** Any Special Declarant Right and any Additional Reserved Right created or reserved under this Declaration for the benefit of Declarant, created or reserved in any amendment to this Declaration may be transferred to any Person without the consent of any Owner of the Association by an instrument describing the right transferred and recorded in the real property records of Garfield County. Each such instrument of transfer shall be executed by the transferor Declarant and the transferee. After transfer, the transferee shall be deemed to be the “Declarant” for purposes of exercising the transferred Special Declarant Right or Additional Reserved Right. Unless otherwise relinquished or terminated as provided herein, the status of Declarant hereunder shall continue for as long as Declarant owns any Units in the Property. The Articles of Incorporation, Bylaws and any Rules and Regulations of the Association, including all Special Declarant Rights and Additional Reserved Rights, may be transferred without the consent of any Owner or the Association, in the manner described above, effective upon recording in Garfield County, Colorado, of written notice of such transfer. In addition, the status of Declarant and all Special Declarant Rights may be relinquished, waived and terminated, in whole or in part, without the consent of any Owners or the Association effective upon recording of a notice to that effect in the real property records of Garfield County, executed by the Declarant or its successor.

ARTICLE XIX **AMENDMENT AND TERMINATION**

19.1 **Term of Declaration.** Except as provided below in this Article 18, all provisions of this Declaration shall continue in effect in perpetuity unless this Declaration is terminated by the unanimous vote, by written ballot, of 67% of the Owners. Any termination of this Declaration during the Declarant Control Period shall not be effective unless also approved by the Declarant. The termination of this Declaration shall be effective upon the recording of a certificate, executed by the president of the Association, stating that this Declaration has

been terminated by the Owners as provided herein, and if applicable, approved by Declarant as provided herein.

19.2 Amendment. This Declaration shall not be amended unless the Owners representing an aggregate ownership interest in the General Common Elements of sixty-seven percent (67%), or more. No consent of any mortgage or trust deed holder shall be required to accomplish any such amendments. No amendment shall be effective to change, limit, impair, reduce or eliminate any right of Declarant as reserved or otherwise provided in this Declaration unless such amendment is approved in writing by Declarant.

19.3 Limits on Certain Amendments. Section 38-33.3-217(4) of the Act provides that except to the extent expressly permitted or otherwise required by other provisions of the Act (e.g. permitted Declarant or Association amendments), no amendment may (i) create or increase special Declarant rights, (ii) increase the number of permitted Units, or (iii) change the boundaries of a Unit in the absence of a vote or agreement of Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including sixty-seven percent (67%) of the votes allocated to Units not owned by Declarant.

19.4 Period of Live Work Ownership. The condominium ownership created by this Declaration and the Map shall continue until this Declaration is revoked or terminated in the manner provided in Articles herein dealing with obsolescence, condemnation, or revocation.

ARTICLE XX GENERAL

20.1 Limited Liability. Neither the Association nor its past, present or future Members, officers or directors, nor any employee, agent or committee member of the Association shall be liable to any Owner or Occupant or any other person for actions taken or omissions made except for wanton and willful acts or omissions. Without limiting the generality of the foregoing, the Association and the Board members shall not be liable to any Owner or Occupant or any other person for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, or surveyors shall conclusively be deemed to be in good faith and without malice.

20.2 Compliance; Enforcement by Declarant or Association. Every Owner and Occupant in the Project and every other person who may be an authorized user of any part of the Project shall fully and faithfully observe, abide by, comply with and perform all of the covenants, conditions and restrictions set forth in the governing Documents, and all approvals granted by the Board as the same or any of them may be amended from time to time. In addition to any other rights or remedies that may be provided for under the terms and provisions of this Declaration, Declarant (for so long as it holds any reserved rights under this Declaration), and the Association through the Board and subject to the procedures set forth herein shall have the right to enforce, by any proceeding at law or in equity, any or all of the covenants, conditions, restrictions, assessments, charges, liens, servitudes, easements and other

provisions now or hereafter contained in or imposed by the governing Documents and approvals granted by the Board.

20.2.1 Such enforcement rights shall include without limitation the right to bring an injunctive action for any form of injunctive relief available under Colorado law (including specific performance), or an action for damages, or both. Injunctive relief may include, without limitation, order to stop work, orders to remove improvements constructed in violation hereof, orders to compel performance, and any other appropriate under the circumstances.

20.2.2 The Board shall have the further right to (i) levy and collect reasonable fines for the violation of any of the foregoing matters, (ii) to levy and collect a Specific Assessment against any Owner, and/or (iii) to enter upon any Unit within the Project, after giving the Owner or Occupant notice in accordance with Colorado law, to enforce or cause compliance with such matters, at the cost and expense of the Owner or Occupant in violation. The Board shall also have the right to suspend the Owner's voting rights and other rights and privileges for delinquencies in the payment of Assessments as provided herein.

20.3 **No Dedication to Public Use.** Nothing contained in this Declaration shall be deemed to be or constitute a dedication of all or any part of the Project to the public or to any public use.

20.4 **Gender and Number.** Whenever used in this Declaration, unless the context shall otherwise provide, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all other genders and the neuter.

20.5 **Headings.** The headings of sections and paragraphs in this Declaration are for convenience only and shall not be deemed to expand, limit or define any of the provisions of this Declaration.

20.6 **Exhibits.** All exhibits attached to this Declaration are incorporated herein by reference.

20.7 **Conflicts Between Documents.** In case of a conflict between the Declaration, as may be amended, the Articles of Incorporation, the Bylaws, or any rules and regulations the Declaration shall control. In case of a conflict between the Articles of Incorporation, the Bylaws, or any rules and regulations, the Articles of Incorporation shall control. In case of conflict between the Bylaws and any rules and regulations, the Bylaws shall control.

20.8 **Interpretation.** The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration. With respect to matters addressed by more than one restriction, the more restrictive shall be interpreted to override the less restrictive. The term "including," unless otherwise specified, shall be interpreted in its broadest sense to mean "including without limitation."

20.9 **Compliance with Provisions of Declaration and Bylaws.** Each Owner shall comply strictly with the provisions of this Declaration, the provisions of the Certificate of Incorporation and Bylaws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to

time. Failure to comply shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Managing Agent or Board of Directors in the name of the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner.

- 20.10 **Mailing of Notices.** Each Owner shall register his mailing address with the Association and all notices or demands intended to be served upon any Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices or demands intended to be served upon the Association shall be given by registered or certified mail, postage prepaid, to the address of the Association as designated in the Bylaws of the Association. All notices or demands to be served on Mortgagees pursuant hereto shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association in writing. Unless the Mortgagee furnishes the Association such address, the Mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this Section shall be deemed given when deposited in the United States mail in the form provided for in this Section.
- 20.11 **Arbitration Required For Any Claim Hereunder.** Except as otherwise herein provided, any controversy or claim arising out of or relating to this Declaration, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator (s) may be entered in any Court having jurisdiction thereof.
- 20.12 **Attorneys' Fees.** In any action, the prevailing party shall be entitled to an award for its reasonable attorneys' fees and costs incurred in connection therewith. Failure by any party entitled to do so to exercise in a particular instance any of the rights available to it shall in no event be deemed a waiver of the right to do so in any other instance.
- 20.13 **Captions.** Captions given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof and shall not be considered in interpreting any of the provisions hereof.
- 20.14 **Singular Includes Plural.** Unless the context requires a contrary construction, as employed in this Declaration the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- 20.15 **Remedies Cumulative.** Each remedy provided under this Declaration is cumulative and not exclusive.
- 20.16 **Governing Law; Jurisdiction.** The laws of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Declaration. Any legal action brought in connection with this Declaration shall be commenced in the District Court for Garfield County, Colorado, and by acceptance of a deed to a Unit each Unit Owner voluntarily submits to the jurisdiction of such court.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, Manager of Wildhorse Apartments, LLC.
WITNESS my hand and official seal.
My commission expires: _____

Notary Public

EXHIBIT A
PROPERTY DESCRIPTION

[to be completed]

EXHIBIT B
ALLOCATED INTERESTS

Project Allocation for Lots:

Lot	Size	Percentage Interest in General Common Elements*	Votes
Lot 1	2.635 acres	19.47%	19.47
Lot 2	6.990 acres	51.65%	51.65
Lot 3	3.908 acres	28.88%	28.88
Total:	13.533 acres	100%	100

Allocations for Townhome Units:

Townhome Unit	Square Footage	Percentage Interest*	Votes
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			

Allocations for Live Work Units:

Until Lot 2 is subdivided into separate Live Work Units, the Lot 2 Owner shall pay 100% of the Lot 2 Expenses.

Allocations for Empty Nestor Units:

Until Lot 3 is subdivided into separate Empty Nestor Units, the Lot 3 Owner shall pay 100% pf the Lot 3 Expenses.

*Allocations are based on the size of acreage or square footages.

**

EXHIBIT C
PERMITTED EXCEPTIONS

[to be completed]