



DECLARATION FOR TIMBER TOWNHOMES

This Declaration for Timber Townhomes ("Declaration") is made by Harley and Company, LLC, a Colorado limited liability company (the "Declarant") and is effective upon recording.

RECITALS

A. Declarant is the owner of certain real property located in the County of Gunnison, State of Colorado, described as follows (the "Property"):

Units 6, 7, 8, 9, 10, 11 and 12, Block 30, City of Gunnison, according to the AMENDED PLAT OF WEST GUNNISON, recorded at Reception No. 17078, together with a tract of land lying immediately north of said Unit 6 consisting of the south one-half of the alley lying between said Unit 6 on the south and Units 1 through 5 on the north, which was vacated by an Ordinance of the City of Gunnison recorded in Book 391 at Page 265,

**County of Gunnison,
State of Colorado.**

B. Declarant desires to create a small planned residential Community on the Property in which portions of the Property are designated for residential use (as provided for in this Declaration) and in which portions are designated as Common Elements.

C. The Declarant has caused "Timber Townhomes Association, Inc.," a Colorado nonprofit corporation ("Association") to be incorporated under the laws of the State of Colorado for the purpose of exercising the functions as set forth in this Declaration and as to which each Owner is a member.

ARTICLE 1. NAMES, TYPE, PURPOSES, SUBMISSION AND DEFINITIONS

1.1 Names and Type. The type of common interest community is a small planned community, as defined by § 38-33.3-116(2), Colorado Revised Statutes. As such, the Community is only subject to §§ 38-33.3-105 to 38-33.3-107 of the Colorado Common Interest Ownership Act. The small planned Community's name is the Timber Townhomes. The Association's name is Timber Townhomes Association, Inc.

1.2 Purposes. One of the Declarant's and the Association's goals, as well as a goal of this Declaration, is to preserve the value and desirability of the Community, the Townhomes and the Units. Additional goals are set forth in this Declaration and/or in other Governing Documents of the Community, including the goal of furthering the interests of the Community's Owners and residents.

1.3 Submission of Real Estate.

(a) Declarant submits the Property, together with all easements, rights, and appurtenances and the buildings and improvements erected or to be erected thereon to the provisions of the terms and conditions of this Declaration.

(b) Declarant declares that all of the Property shall be and is held or sold, and conveyed subject to the easements, restrictions, covenants and conditions of this Declaration.

(c) Declarant further declares that this Declaration is made for the purposes set forth in this Declaration, that this Declaration runs with the Property and shall be and is binding on all Persons and parties having any right, title or interest in the Property, or any part thereof, including but not limited to, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner and the Association.



1.4 Definitions.

- (a) *Assessment(s)* includes all Common Expense Assessments and any other expense levied to a Unit pursuant to this Declaration.
- (b) *Association* means Timber Townhomes Association, Inc., a Colorado nonprofit corporation and its successors.
- (c) *Board* or *Board of Directors* or *Executive Board* means the body responsible for management and operation of the Association.
- (d) *Bylaws* mean the Bylaws of the Association.
- (e) *Common Area* or *Common Element* or *General Common Element* means all real property controlled by the Association for the common use and enjoyment of the Owners, together with all improvements on that real property, excluding the Units and any Limited Common Elements.
- (f) *Common Expense Assessment(s)* means an Assessment levied for Common Expenses.
- (g) *Common Expenses* mean the expenses and liabilities incurred or anticipated to be incurred by the Association, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Areas, the lawns that are appurtenant to each Unit, and for fulfilling any of the Association's powers and duties.
- (h) *Community* means the Timber Townhomes common interest community located on the Property.
- (i) *Declaration* means this Declaration, as may be amended and supplemented from time to time.
- (j) *Declarant* means Harley and Company, LLC, a Colorado limited liability company.
- (k) *Declarant Control* means the period of time commencing on the date of recordation of this Declaration and expiring on the earlier of: 60 days after conveyance of 75% of the Units created as provided for in this Declaration; or 2 years after the last conveyance of a Unit by Declarant in the ordinary course of business.
- (l) *Director* means any person serving as a member of the Board of Directors.
- (m) *Excluded Claim(s)* means to the full extent of state statutes, any claim in a civil action, lawsuit or arbitration related to construction on a Unit, of the Townhomes or the Common Elements, drainage within the Community or any improvements constructed or designed by Declarant on the Common Elements or the following persons: a contractor, subcontractor, developer, builder, architect, engineer or inspector, or any of the affiliates of their persons or persons responsible for any part of the construction or design of the Community, including officers, directors, shareholders, members, managers, employers or servants of these persons.
- (n) *Excluded Dispute* means a dispute about an Excluded Claim.
- (o) *First Lien Holder* means a holder, insurer or guarantor of a first Mortgage, subject to the Association's priority lien as allowed by state law and this Declaration.
- (p) *Governance Policies* means any governing and operating policies adopted by the Association.
- (q) *Governing Documents* mean this Declaration, the Association's Articles of Incorporation, Bylaws, Plat, and any Rules and Regulations and Governance Policies adopted by the Association, all as may be supplemented or amended from time to time.



(r) *Improvement* means every structure of every type and kind including, but not limited to, the Townhomes, fixtures, utilities, garages, mailboxes, driveways, parking areas, fences, decks, landscaping, plantings, planted trees and shrubs, pipes, lines, meters, and other facilities used in connection with water sewer, gas, electricity, solar energy, telephone, regular or cable television or other utilities.

(s) *Limited Common Area or Limited Common Element* means the parking area and lawn areas appurtenant to each Unit, and any other portion of the Common Elements allocated for the exclusive use of one or more Units, but fewer than all of the Units, and which are specifically identified as a Limited Common Area or Limited Common Element on the Plat.

(t) *Managing Agent* means the management company, manager and/or bookkeeper engaged by the Association to assist in the operations, administration and governance of the Community, if any.

(u) *Mortgage* means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation including, but not limited to, a transfer or conveyance of fee title for such purpose.

(v) *Mortgage Holder or Mortgagee* means the holder of any Mortgage.

(w) *Owner or Member* means the record titleholder of a Unit within the Community, but does not include a Mortgage Holder.

(x) *Party Wall* means the wall built as part of the original construction of the Townhome that serves and separates any two adjoining Townhomes from one another.

(y) *Person* means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

(z) *Plat* means the plat for the Community as recorded, which plat is a part of this Declaration.

(aa) *Officer* means any person serving as an officer of the Association in accordance with the Bylaws.

(bb) *Property* means the property described on page 1 hereof, together with all easements, rights, and appurtenances and improvements erected or to be erected. All easements and licenses that the Community is subject to as of the date of this Declaration are recited on the Plat.

(cc) *Rules and Regulations* means any instrument adopted by the Association, as allowed for under this Declaration, for the regulation and management of the Community, including but not limited to, the Common Areas and/or the Units, including any amendments or revisions thereto.

(dd) *Townhome or Residence* means the Improvement serving as the residence on each Unit and that is part of a duplex divided by a Party Wall.

(ee) *Unit* means and refers to any of the separately numbered units shown upon the recorded Plat of the Community, but not including the Common Areas and any public streets or rights-of-way.

ARTICLE 2. NUMBER OF UNITS, BOUNDARIES, COMMON AND LIMITED COMMON ELEMENTS

2.1 Number of Units

(a) The number of Unit included in the Community is eight (8).



(b) Additional Units may not be added, and as such, Declarant does not have any future development rights under this Declaration.

2.2 Units and Boundaries. The Community consists of eight (8) Units, including but not limited to, the Townhomes, garages and other Improvements thereon, any Common Elements, any Limited Common Elements, and each Unit's allocated interest in the Common Elements. Each Unit is conveyed as a separately designated and legally described Unit subject to this Declaration, the Bylaws and any Rules and Regulations adopted by the Association.

(a) Residential Unit Boundaries. Each Unit's boundaries are as shown on the Plat.

(b) Physical Boundaries. In interpreting deeds and the Plat, the existing physical boundaries of a Unit, including the Townhomes as originally constructed, are conclusively presumed to be its boundaries, rather than the metes and bounds expressed in any deed or the Plat, regardless of settling or lateral movement of the Townhome(s), and regardless of minor variances between the boundaries shown on the Plat or in a deed and those of the Unit.

(c) Inclusions. Each Unit includes the spaces and Improvements lying within the boundaries described above, as depicted on the Plat. Each Unit also includes the spaces and improvements containing utility meters, water heating facilities, all electrical switches, wiring, pipes, ducts, conduits, fire protection, smoke detector and security systems and communications, televisions, telephone and other telecommunications and electrical receptacles and boxes serving that Unit exclusively.

(d) Exclusions. Except when specifically included by other provisions of this Declaration or by the Plat, the following are excluded from each Unit: the spaces and improvements lying outside the boundaries described above, exterior street or common lighting, and any chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within the Common Areas for the purposes of furnishing utility and other services to other Units and/or any Common Elements.

2.3 Common Elements. The Common Elements include the common driveway, any common utilities and associated utility lines, and snow storage areas, as identified on the Plat. The Common Elements are to remain undivided, and no Owner or any other Person may bring any action for partition or division of the whole or any part.

2.4 Limited Common Elements. The Limited Common Elements include:

(a) The parking areas and lawn areas appurtenant to each Unit, as identified on the Plat.

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

2.5 Easements for Use and Enjoyment.

(a) Owners and their family members, guests, tenants, and invitees have a right and non-exclusive easement of ingress and egress, and use and enjoyment in and to the Common Elements, which are appurtenant to and pass with title to a Unit, subject to the following provisions:

(i) The Owners' rights to the exclusive use of the Limited Common Elements assigned to their respective Units;

(ii) The Association's right to have access to the Units and Limited Common Elements to discharge its rights and obligations, under the Governing Documents, including without limitation, the Association's



maintenance responsibilities.

(iii) The Association's right to grant easements, leases and licenses across the Common Elements, including the right to license Common Areas for parking;

(iv) The Association's right to dedicate or transfer all or any portion of the Common Elements is subject to approval of Owners holding 67% of the total Association vote; and

(v) The Association's right to change the use of portions of the Common Elements or to close portions of the Common Elements.

(b) Any Owner may delegate their rights of use and enjoyment in and to the Common Elements and facilities located thereon to members of their family, guests, invitees and tenants.

2.6 Easement for Entry.

(a) Each Unit is subject to an easement in favor of the Association (including its agents, employees and contractors) to allow for their performance of obligations in this Declaration.

(b) Except in an emergency situation, entry is to be only during reasonable hours and after reasonable notice to the Owner or resident of the Unit. Notice shall not be required for Unit entry to conduct regular lawn maintenance work. For the purposes of this Section, an emergency justifying immediate entry into a Unit includes, but is not limited to, the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a Person or animal might be injured or sick and require immediate medical attention.

(c) The failure to exercise the easement rights in the event of emergency, security, or safety purposes does not create liability to the Association, it being agreed that no duty to enter a Unit for such purposes exists.

2.7 Support. Every portion of a Unit contributing to the support of an abutting Townhome is burdened with a non-exclusive easement of support for the benefit of the abutting Townhome.

2.8 Encroachments. To the extent that any Unit, Townhome or Common Element encroaches on any other Unit, Townhome or Common Element, a valid easement for the encroachment exists. This easement does not relieve an Owner of liability in case of intentional misconduct.

2.9 Utilities. To the extent that any utility line, pipe, wire, or conduit serving any Unit or the Common Elements lies wholly or partially within the boundaries of another Unit or the Common Elements, the other Unit(s) or the Common Elements are burdened with a non-exclusive easement for the use, maintenance, repair and replacement of the utility line, pipe, wire or conduit, the non-exclusive easement to be in favor of the Unit(s) or Common Elements served by the same and of the Association.

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

2.11 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

2.12 Utility Reservations. Declarant creates and reserves to itself, until Declarant has sold the last Unit that may be created to an Owner other than Declarant, and, thereafter, to the Association, a blanket easement upon, across, over and under the Property, including but not limited to the Units, for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment and effluent irrigation systems, sprinkler systems, gas, telephone and other telecommunications systems, electricity, heat



and cooling systems, and master television and satellite antenna or cable systems, and any other utility systems as may be desired or provided (collectively, "Utility Systems"). By virtue of this blanket easement, it shall be expressly permissible for Declarant or the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Property and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, sprinkler systems, gas, electric, heat and cooling facilities, telephone and other telecommunications facilities, telephone and television wires, circuits, conduits and meters, and any other improvements or facilities appurtenant or relating to the Utility Systems. If any utility or quasi-utility company furnishing a service covered by the general easement created in this Declaration requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Property is reserved, provided the easement granted does not conflict with the terms of this Declaration. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property. Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section is to be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

2.13 Warranty, Repair and Construction Easement. The Declarant and its assignees has the right to perform warranty work, repairs and complete construction on a Unit or a Townhome, the Common Elements or any part of the Community, even after conveyance of a Unit to an Owner, after notice and with reasonable coordination with the Owner. This includes the right to control such work and repairs, along with a right of access, until completion. These rights of Declarant are not to be construed as development rights or special declarant rights or other rights allowed for under the Colorado Common Interest Ownership Act ("CCIOA"), but rather, as rights independent of CCIOA, based on common law.

ARTICLE 3. THE ASSOCIATION, MEMBERSHIP, & ALLOCATION OF INTERESTS

3.1 Membership.

- (a) Every Person who is a record Owner of a fee interest in any Unit subject to this Declaration is a Member of the Association.
- (b) Membership is appurtenant to and may not be separated from ownership of any Unit.
- (c) Ownership of a Unit is the sole qualification for membership.
- (d) No Owner, whether one or more Persons, has more than one membership per Unit owned.
- (e) Membership does not include Persons who hold an interest as security for the performance of an obligation, and granting a security interest does not terminate the Owner's membership.

3.2 Allocated Interests.

- (a) Voting. The Owner, or collective Owners, of a Unit is entitled to one vote on Association matters. When more than one Person holds an ownership interest in any Unit, the vote for the Unit is to be exercised as those Owners determine among themselves, otherwise the Unit's vote is suspended if more than one Person seeks to exercise it.
- (b) Common Expenses. Except as provided below or elsewhere in the Governing Documents, the amount of all Common Expenses is to be assessed equally against all the Units.

3.3 General Purposes, Powers, Authority and Restrictions on and of the Association.

- (a) The Association, acting solely through its Board of Directors, is to perform the functions and manage the Community, including its business affairs, as provided in the Governing Documents, so as to serve the purposes



of the Community as set forth in the Governing Documents.

(b) Any purchaser of a Unit is deemed to have assented to, ratified and approved this Declaration and any other Governing Documents of the Association.

(c) The Association has all power necessary or desirable to effectuate the purposes of the Community and the purposes of the Association.

(d) The business affairs of the Community shall be managed by the Association, acting through the Board. Unless a particular power is expressly reserved to the Owners, all powers of the Association and the business and affairs of the Association are to be conducted and managed by the Board of Directors.

(e) The Association is governed by the Governing Documents and other applicable laws.

(f) The Board may delegate authority to a Managing Agent or bookkeeper for the Association, provided no such delegation relieves the Board of final responsibility.

3.4 Open Meetings of the Association and Board.

(a) All meetings of the Association and the Board are open to every Owner, or to any person designated by an Owner in writing as the Owner's representative.

(b) All Owners or designated representatives so desiring are permitted to attend, listen and speak at an appropriate time during the Association's deliberations and proceedings.

(c) The Board may place reasonable time restrictions on those persons speaking during Association meetings, but must permit an Owner or a designated representative to speak before the Board takes formal action on an item under discussion.

(d) The Board may provide for a reasonable number of persons to speak on each side of an issue.

(e) Upon the final resolution of any matter for which the Board receives legal advice or that concerns pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate.

3.5 Declarant Control. During Declarant Control, Declarant has the reserved power to appoint and remove Officers and members of the Board of Directors.

3.6 Initial Owner Elections of Board Members. Owners are to initially elect an Owner controlled Board as provided for under the Colorado Common Interest Ownership Act. Subsequently, Board positions are to be filled by vote of the Owners and as allowed for in the Bylaws.

3.7 Indemnification. To the full extent permitted by law, each Officer and member of the Board of Directors of the Association is indemnified by the Owners and the Association.

ARTICLE 4. ASSESSMENTS

4.1 Power and Purposes of Assessments. The Association has the power to levy Assessments as provided for in this Declaration.

4.2 Common Expense Assessments. The Common Expense Assessments shall be used to fulfill the Association's obligations pursuant to this Declaration and to promote the common benefit and enjoyment of the Owners in the Community as may be more specifically defined and authorized from time to time by the Association.



4.3 Specific Unit Assessments. The Association has the power to levy specific Assessments against a Unit pursuant to this Section as it deems appropriate.

- (a) Any expense or liability incurred by the Association as a result of the intentional, negligent or wrongful act of an Owner, their family, guests, invitees or tenants, or any breach by any of these parties of any of the provisions of the Governing Documents, may be an Assessment against the Unit.
- (b) Any expense associated with the maintenance, repair, or replacement of a Limited Common Element may be assessed against the Unit(s) to which that Limited Common Element is assigned, equally or in any other equitable proportion as determined by the Association.
- (c) Any expense benefiting fewer than all of the Units may be assessed equitably against those Units benefited according to the benefit received. Except as provided in subsection 4.3(a) above, expenses incurred for the maintenance, repair or replacement of the Common Elements (but not the Limited Common Elements) may not be assessed as a specific Unit Assessment.

4.4 Personal Obligation for Assessments.

- (a) Each Owner covenants and agrees to pay to the Association:
 - (i) Common Expense Assessments;
 - (ii) Special Assessments;
 - (iii) Specific Unit Assessments established pursuant to the terms of this Declaration; and
 - (iv) Any other Assessment authorized under this Declaration.
- (b) Assessments are the personal obligation of the Person who owned the Unit when the Assessment fell due. The personal obligation to pay any past due sums due the Association does not pass to a successor in title unless expressly assumed.

4.5 Commencement of Assessments. Assessments on the initial Units included in the Community shall begin on the first conveyance of a Unit to an Owner. Prior to conveyance of the first Unit by Declarant, the Declarant is responsible for the payment of expenses of the Association, if any.

4.6 Lien. All Assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees, costs and expenses), up to the maximum amount permitted by law, are charges and a continuing lien upon the Unit against which such Assessment is made. The Association has authority to record a notice of lien in the Gunnison County real property records evidencing the Association's lien. The Association's lien under this article is not subject to the provision of any homestead exemption as allowed under law. Association liens shall have the priority set forth in § 38-33.3-316, Colorado Revised Statutes.

4.7 Payment of Assessments. Assessments are to be paid in the manner and on the dates the Association determines. No Owner is exempt from liability for or may withhold payment of Assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Areas, the Association's failure to provide services or perform its obligations, or inconvenience or discomfort arising from the Association's performance of its duties or lack thereof.

4.8 Delinquent Assessments. All Assessments and related charges not paid on or before the due date are delinquent, and the Owner is in default.

- (a) If any Assessment, fine, or charge is not paid in full within ten (10) days of the due date:



- (i) A late charge in the amount of \$25 may be imposed without further notice or warning; and
- (ii) Interest at the rate of eighteen percent (18%) per annum may be imposed without further notice or warning.
- (b) If any Assessments, fines or other charges remain unpaid more than ten (10) days after the due date, the Owner's right to vote on Association matters is automatically suspended until all amounts owed are paid in full.
- (c) If any Assessments, fines or other charges remain unpaid more than ten (10) days after the due date, the Association may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, and Colorado law, including its reasonable attorney's fees and legal costs. Enforcement under this Section is not dependent upon or related to other restrictions and/or other actions.
- (d) If partial payment of Assessments or other charges are made, the amount received is to be applied as follows:
 - (i) The Association's attorney's fees and legal costs;
 - (ii) Fines, late fees and interest;
 - (iii) Returned check charges and other costs owing or incurred with respect to such Owner; and
 - (iv) Assessments due or to become due with application of the payment to the most long-standing delinquent Assessment first.
- (e) The Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay the delinquent Assessments or related charges and may foreclose its lien against the Owner's Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for delinquent Assessments or related charges may be commenced and pursued without foreclosing, or in any way waiving, the Association's lien.
- (f) The Association's lien foreclosure or attempted foreclosure does not preclude the Association from foreclosing its lien again for any subsequent delinquent Assessment or related charges. The Association may bid on or purchase any Unit at foreclosure or other legal sale, and acquire and hold, lease, mortgage, convey or otherwise deal with the Unit. If a lien foreclosure action is filed, and an Owner abandons or vacates their Unit, the Association may apply for the appointment of a receiver for the Unit without prior notice to the Owner. The Association's rights to a receiver are expressly subordinate to the rights of a receiver of any First Lien Holder as set forth in its deed of trust or Mortgage (including any assignment of rents).

4.9 Budget and Common Expense Assessments.

- (a) Prior to the beginning of each fiscal year, the Association is to prepare a proposed budget covering the estimated costs of operating the Community during the coming year and establish the Common Expense Assessments and installments thereof for the coming year.
- (b) The Association is to deliver a summary of the proposed budget to each Owner within 90 days after adopting the proposed budget and set a date for an Association meeting to consider the proposed budget, which meeting is to occur within a reasonable time after delivery of the proposed budget summary.
- (c) The proposed budget and the Assessments from it become effective unless disapproved at a duly called Association meeting by a majority of the total Association vote; provided, however, if a quorum of Owners is not obtained at the meeting called to ratify the budget, the budget is to become effective even though a vote to veto the budget could not be called at the meeting.



(d) If the membership disapproves a proposed budget or the Association fails for any reason to determine the budget for the succeeding year, then until a new budget is determined, the budget in effect for the current year is to continue. In such a case, the Association may propose a new budget at any time during the year. The approval procedure set forth in this Section for budgets also applies to a new budget proposed by the Association.

(e) A ratified or approved budget does not operate as a limitation on expenditures by the Association, but, rather, the budget is merely an estimate of Common Expenses.

4.10 Special Assessments. In addition to the Common Expense Assessments provided for above, the Association may, at any time, and in addition to any other rights it may have, propose a special Assessment against all Owners in accordance with the meeting and notice procedures set forth in Section 4.9 above. Any special Assessment (except as provided in this Declaration regarding repair or reconstruction of casualty damage to or destruction of all or part of the Community) is to become effective unless disapproved at a duly called Association meeting by a vote of a majority of the total Association membership; provided, however, if a quorum is not obtained at the meeting, the special Assessment is to become effective even though a vote to veto the special Assessment could not be called at this meeting. The special Assessment may be payable in installments, as determined by the Association, and/or may provide for a discount for a lump sum payment.

4.11 Statement of Account. The Association is to furnish to an Owner or the Owner's designee or to a holder of a security interest or its designee a statement setting forth the amount of unpaid Assessments currently levied against the Owner's Unit. The Association may establish a reasonable fee relating to providing the statement, which may incorporate any fees imposed by a Managing Agent.

4.12 Surplus Funds. Surplus funds from whatever source are to be applied to the payment of Common Expenses. Any funds remaining after application, at the option of the Association, are to be: (a) added to the Association's capital reserve account, if any; (b) distributed to the Owners; or (c) credited to the next Assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit.

4.13 Borrowing. The Association has the power to borrow money and assign future income, including the right to assign its right to receive Common Expense Assessments.

4.14 Declarant Assessment Exemption. Provided Declarant or its affiliate is constructing the Townhomes on the Units, then, for those Units, until a certificate of occupancy is issued for the Townhome, the Unit is exempt from Assessments of the Association based on benefits provided through Assessments. The Declarant is obligated during any period of time of exemption to fund any operating deficit of the Association. The Declarant is to fund those deficits upon invoice from the Association. Such invoice is deemed as an Assessment of the Association, against all Units then owned by the Declarant, collectable and enforceable under the terms of this Declaration.

ARTICLE 5. MAINTENANCE RESPONSIBILITIES

5.1 Owner Maintenance Responsibilities.

(a) Each Owner is obligated to maintain, repair, replace, improve and keep in good repair all portions of their Unit, including the Townhome, landscaping, garage, parking area and other Limited Common Element associated with the Unit, except the Limited Common Element front lawns that border on S. 10th Street and which are the maintenance responsibility of the Association pursuant to Section 5.3 below. This Owner maintenance responsibility includes all pipes, lines, ducts, conduits, or other apparatus which serve the Unit whether located within or outside the boundaries of the Unit, unless such maintenance is the responsibility of the Association pursuant to Section 5.3 below. The Owner's maintenance responsibility also includes all communications, television, telephone, cable and electrical lines, receptacles and boxes serving only the Unit, whether located within or outside the boundaries of the Unit, but subject to the Association's maintenance responsibilities addressed in Section 5.3 below.

(b) In addition, each Owner has the responsibility:



(i) To keep the Units in a neat, clean and sanitary condition, including keeping the Improvements on the Unit free and clear of snow, ice, and any accumulation of water or other debris;

(ii) To perform their maintenance responsibility in a manner so as not to unreasonably disturb other persons in other Units;

(iii) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible;

(iv) To pay for the cost of repairing, replacing, or cleaning up any component of the Community which is necessitated by reason of the Owner's, including their family, tenants or guests, intentional or negligent act(s) with the cost to be added to the Owner's next Assessment;

(v) To repair incidental damage to another Unit or the Common Area(s), resulting from performance of work that is the Owner's responsibility. Such repair and subsequent cleaning is to be performed based upon a reasonableness standard.

(c) If any Owner does not comply with any requirement made by the Association pursuant to this Section, the Association, upon 15 days written notice (during which period the Owner may perform the required act or work without further liability), may perform the required act or work at the Owner's sole cost. The cost of this work by the Association is to be added to and become a part of the Assessment to which the Owner is subject and is the personal obligation of the Owner and a lien against the Owner's Unit, and may be collected as provided in this Declaration for the collection of Assessments.

(d) The Association has all rights necessary to implement the requirements mandated by the Association pursuant to this Section, including but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner of the Townhome, except that access may be had at any time without notice in an emergency situation.

(e) Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner, which is the Association's responsibility, is performed at the Owner's sole expense, and the Owner is not entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

5.2 Party Walls.

(a) Each wall built as part of the original construction of a Townhome that serves and separates any two adjoining Units and Townhomes is the Party Wall. Subject to subsection 5.2(b) immediately below, the cost of maintenance, repair, alteration, improvement and replacement of each Party Wall is to be shared equally by the Owners of the Units/Townhomes adjoining such Party Wall.

(b) The cost of maintenance, repair, alteration, improvement and replacement of the interior finished surface of the Party Wall (i.e. the portion lying inside of each Townhome) shall be the sole responsibility of the Owner of the Townhome in which the interior finished surface of the Party Wall is located.

(c) If a Party Wall is destroyed or damaged by fire or other casualty, either Owner whose Unit/Townhome adjoins the Party Wall may repair or restore it, and the other Owner is to immediately upon receipt of written demand, pay their portion of such costs to the Owner making the restoration or repair.

(d) Regardless of the above terms and provisions, an Owner who by their negligent or intentional act causes the Party Wall to be exposed to the elements, or damaged in any manner, bears the whole cost of furnishing the necessary protection against such elements or of making the necessary repairs or restoration.



- (c) Party Walls may not be penetrated in a manner larger than appropriate to hang a normal or reasonably sized picture, painting, etc.
- (f) Penetrations for loud speakers or other improvements are prohibited.
- (g) In the event of a dispute, the aggrieved Owner may seek redress personally and the Association is not obligated to enforce this section on any Owner's behalf.
- (h) An Owner shall have the right to maintain and repair any utility installations located within their shared Party Wall, and in so doing, shall restore the Party Wall to its original condition. Notice shall be given to the adjoining Owner prior to undertaking any such action, and all such undertakings shall avoid or minimize damage to the adjoining Owner's Townhome and Unit.

5.3 Maintenance by the Association.

(a) Except as provided above, the Association is to maintain, replace and improve as a Common Expense all Common Elements, but excluding any Limited Common Elements that are not the Association's maintenance responsibility as provided in this Declaration. The Association's responsibility includes:

(i) Maintain, repair, and cause the removal and storage of snow from the Common Area driveway that serves all the Units;

(ii) Maintain existing drainage systems installed as part of the original construction or by the Association; provided, however, the Association has no obligation to install new or additional drainage systems on the Units. The Association is not responsible for drainage on the Units unless the Association alters drainage patterns on the Units;

(iii) Maintain existing pipes, lines, ducts, conduits, or other apparatus that are common to the Community and that do not solely serve a particular Unit or Townhome; and

(iv) Maintain the front lawns that border on South 10th Street and which are a portion of each Unit as a Limited Common Element.

(b) The foregoing maintenance is to be performed consistent with the standards and specifications as the Board may determine.

(c) If, during the course of performing its maintenance responsibilities, the Association discovers that maintenance, repair or replacement is required of an item which is an Owner's responsibility, and the maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform the work on the Owner's behalf and at the Owner's sole expense, without prior notice to the Owner, the maintenance repair or replacement being deemed an emergency situation.

(d) The Association has the right, with the approval of 67% of those Members voting in person or by proxy at a meeting called for such purpose, to assume additional maintenance, repair or replacement responsibilities on any limited basis it determines, as a Common Expense. By way of example, with the requisite approval, the Association may undertake a Community-wide window replacement without assuming the future responsibility for window maintenance, repair and replacement.

(e) If the Association determines that the need for maintenance, repair or replacement of the Common Area(s) is caused through the intentional or negligent act of any Owner or their family, guests, lessees, or invitees, the Association may assess the cost of the maintenance, repair, or replacement against the Owner's Unit, which cost becomes the Owner's personal obligation, a lien against the Unit, and collected as provided in this Declaration.

5.4 Maintenance Standards and Interpretation. The maintenance standards and enforcement and interpretation



of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards hereunder. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

5.5 Liability for Damage.

(a) The Association is to repair incidental damage to any Unit resulting from performance of work that is the Association's responsibility. The repair and subsequent cleaning is to be performed based on a reasonableness standard. In performing its responsibilities, the Association has the authority to delegate any of its duties.

(b) The Association is not liable for injury or damage to person or property caused by any other person, or resulting from any utility, rain, snow or ice that may leak or flow from any portion of the Common Areas.

5.6 Failure to Maintain.

(a) If the Association determines that any Owner has failed or refused to discharge properly their obligation with regard to the maintenance, repair, replacement or improvement of items for which the Owner is responsible, then it may give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide the necessary work at the Owner's sole cost and expense. The notice is to set forth with reasonable particularity the maintenance, repair, or replacement the Association deems necessary.

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

ARTICLE 6. ARCHITECTURAL CONTROLS

6.1 Architectural Covenants. An Owner, or any other person may not, without first obtaining the Association's written approval:

(a) Make any improvement, exterior change, alteration, or construction, but excepting therefrom painting and landscaping, to the Townhome or Unit; or

(b) Make any encroachment onto the Common Areas.

6.2 Alteration of Unit Boundaries. Subject to the other provisions of this Declaration, combining Units, relocation of the boundaries between adjoining Units, and subdivision of Units are all prohibited.

6.3 Architectural Standards. Interpretation, application and enforcement of the architectural standards herein are by and through the Board of Directors. The standard for approval of Improvements includes, but is not limited to: (a) aesthetic considerations; (b) materials to be used; (c) compliance with standards of the Community, this Declaration, or other design guidelines which may be adopted by the Association; (d) harmony with the external design of the existing Townhomes, Units and structures, and the location in relation to surrounding structures and topography; (e) visibility and location of the proposed modification in the Community; and (f) any other matters the Board deems to be relevant or appropriate.

6.4 Authority of Association to Engage Consultants. The Board has the authority to select and engage professional consultants to assist in reviewing applications and/or to inspect any of the work performed hereunder. The cost of any consultants is to be paid by the submitting Owner, whether or not the application is approved. Prior



to incurring consultant costs, the Association is to notify the Owner of its belief that review and/or inspections by consultants are necessary. The Owner is to then have the right to withdraw the submission. The Association may require payment of costs prior to review.

6.5 Encroachments onto Common Areas. The Board may provide written consent to allow an Owner to make encroachments onto the Common Areas as it deems acceptable. Any unauthorized exterior change, alteration or construction (including landscaping) upon the Common Areas is at the Owner's sole cost and expense. The Association may require that any unapproved change, alteration or construction be removed from the Common Areas by the Owner that conducted the work or that it remain on the Common Areas without reimbursement to the Owner for any expense incurred in making the change, alteration or construction.

6.6 Conditions of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of the Owner and their successors-in-interest, assumes all responsibilities for maintenance, repair, replacement and insurance of the change, modification, addition, or alteration, unless the Association otherwise agrees in writing. As a further condition of approval, an Owner may be required to execute an agreement setting forth the conditions of approval to be recorded in the Gunnison County real property records.

6.7 Required Action by the Board. The Association is the sole arbiter of an application under this Article 6 and may withhold approval for any reason, including purely aesthetic considerations, provided the Association's decision may not be arbitrary or capricious. Applications for approval of architectural modifications must be in writing and provide any information the Association reasonably requires. If the Association fails to approve or to disapprove the application within 45 days after the application and all required supplemental information has been submitted, then the submitting Owner may send written notice to the Association's president and the Association's Managing Agent, if any, regarding the Owner's intent to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within ten (10) days of receipt of the Owner's notice, this Section's requirements are satisfied and the approval is not required as to the items specifically identified in the application. No Owner may construct or maintain any structure or Improvement that otherwise violates the Declaration, the design guidelines (if any), the Rules and Regulations (if any), or any applicable governmental requirements or laws.

6.8 Commencement and Completion of Construction. All changes, modifications and improvements approved by the Association must be commenced within six (6) months from the date of approval unless the Association otherwise agrees. If not commenced within this time, the approval is revoked, unless the Association gives a written extension for commencing the work. All work approved by the Association must be completed in its entirety within 90 days from the date of commencement, unless the Association otherwise agrees in writing. All approved changes, modifications, and improvements must be completed in their entirety.

6.9 Limitation of Liability. Neither the Association, nor its directors, officers, committee members, attorneys, or agents is to bear any responsibility for the design, quality, structural integrity or soundness of approved construction or modifications, nor for compliance with building codes, zoning regulations, and other governmental requirements. The Association, including its directors, officers, committee members, attorneys and agents are not liable for any injury, damages or loss arising out of the manner, design, or quality of approved construction on or to modifications to any Unit. No lawsuit, action or claim may be brought against any of the foregoing for any injury, damage or loss.

6.10 No Waiver of Future Approvals. The Association's approval of any proposals and applications for any work done or proposed, or in connection with any other matter requiring the Association's approval, is not a waiver of any right to withhold approval as to any similar proposals and applications.

6.11 Enforcement. The Association is entitled to stop any construction that does not conform to the approved plans. The Association is further entitled to stop any construction if the Owner fails to submit plans and specifications and/or obtain written approval prior to commencing construction. The Association may require any Owner to remove any improvement or modification, whether partial or completed, and restore the property to its



prior condition, if the Owner fails to obtain prior written approval or constructs in a manner that does not conform to the approved plans. These remedies are in addition to all other remedies available, including the authority to levy a fine.

ARTICLE 7. COVENANTS AND USE RESTRICTIONS

7.1 General terms on Covenants and Restrictions of this Declaration. All Property within the Community is held, used and enjoyed subject to the covenants, limitations and restrictions of this Declaration. The strict application of the covenants, limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board or by an appropriate committee (subject to review by the Board) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or in Rules and Regulations, if any.

7.2 Owner Responsibility for Compliance. Each Owner is responsible for ensuring that the Owner's family, guests, invitees and lessees comply with all provisions of the Governing Documents. Each Owner is to endeavor to observe and promote the purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, invitees or lessees as a result of the person's violation of the Governing Documents, the Association may take action under this Declaration against the Owner.

7.3 Use of Units and Townhomes.

(a) Residential and Business Use Covenants and Restrictions.

(i) Except as provided below, each Townhome and Unit is to be used primarily for residential purposes. No trade or business of any kind may be conducted in or from a Unit or Townhome or any part of the Community, except that the Owner residing in the Townhome, or the Owner's lessee, may conduct ancillary business activities within the Unit or Townhome so long as the business activity:

(A) Is not apparent or detectable by sight, sound, or smell from outside of the Unit;

(B) Does not involve visitation of the Unit by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a Townhome without business activity;

(C) Is legal and conforms to all zoning requirements;

(D) Does not increase traffic in the Community in excess of what would normally be expected for Townhomes in the Community without business activity (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other similar delivery services);

(E) Does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

(F) Is consistent with the Community's residential character, and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other Owners and residents, as determined by the Association; and

(G) Does not result in a materially greater use of Common Areas or Association services.

(ii) The terms "business" and "trade," as used in this Section 7.3, have their ordinary, generally accepted meanings, and include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (A) the activity is engaged in full or part-time; (B) the activity is intended to or does generate a profit; or (C) a license is required for



the activity.

(b) Occupancy. If an Owner is a corporation, partnership, trust or other legal entity, the entity is to designate in writing to the Association the name(s) of the natural person(s) who is to occupy the Unit.

7.4 Leasing. The Community is intended to be an owner-occupied community. However, any Owner has the right to lease or allow occupancy of a Unit upon terms and conditions the Owner deems advisable, subject to restrictions of this Declaration, any other restrictions of record, any Rules and Regulations, and the following:

(a) "Leasing" for the purposes of this Declaration is defined as regular, exclusive occupancy of a Unit by any Person other than the Owner, with or without consideration. For the purposes of this Declaration, occupancy by not more than one roommate of an Owner who occupies the Unit as their primary residence does not constitute leasing under this Declaration.

(b) Leases are to be for or of the entire Unit.

(c) All leases are to be in writing and are to provide that the lease is subject to the Governing Documents. Owners are required to provide lessees with copies of the current Declaration and Rules and Regulations, if any.

(d) Each Owner who leases their Unit is to provide the Association, upon request, a copy of the current lease (lease amount may be redacted) and tenant information, including the names of all residents, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.

(e) All leases are to state that the failure of the resident or guests to comply with the Governing Documents is a default of the lease and this Declaration.

7.5 Use of Common Areas. There is to be no obstruction of the Common Areas, nor is anything to be kept, parked, or stored on or removed from any part of the Common Areas without the Association's prior written consent, except as specifically provided for in the Governing Documents. The Association may remove unattended personal property from the Common Areas. The Association is to not be liable to the Owner or their residents, guests, family members, lessees or invitees, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Areas. Use of the Common Areas is subject to the Rules and Regulations, if any.

7.6 Use of Garages and Assigned Parking Spaces. Garages and Limited Common Element parking spaces are to be used primarily to park or store vehicles. As a secondary use, a garage space may also be used to store any other personal property belonging to the Owner. Garages may not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code. If hazardous substances are stored, used, generated or disposed of in the garage, or if the garage becomes contaminated in any manner for which the Owner thereof is legally liable, the Owner is to indemnify and hold harmless the Association and its Board of Directors from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses and any and all sums paid from settlement of claims, attorney's fees, consultant and expert fees, arising as a result of that contamination by the Owner or the Owner's family, residents, invitees, lessees or guests.

7.7 Compliance with Laws and Insurance Requirements. Nothing may be done or kept in the Community, or any part thereof, that would increase the rate of insurance on the Community or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

7.8 Prohibition of Nuisance.

(a) The Townhomes share common Party Walls. As a result, noise and vibration may be detectable between Units. An Owner, including the Owner's family, guests, residents, tenants and invitees, may not conduct activities in a manner that unreasonably interferes with or causes unreasonable disruption to another Owner's use and quiet



enjoyment of their Townhome or Unit.

(b) Noxious, destructive, offensive or unsanitary activities may not be carried on within the Community. No Owner, including the Owner's family, guests, residents, tenants and invitees, may use or allow the use of the Unit or any portion of the Community at any time, in any way, that may endanger persons or property, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners, or constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment. Nothing in this Section is to be construed to affect the rights of an aggrieved Owner to proceed individually against a violator hereof for relief from interference with their property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise is to exist by an aggrieved Owner against the Association for failure to enforce the provisions hereof.

7.9 No Damage or Waste. No Owner may do any work that would jeopardize the soundness or safety of any structure within the Community, or would impair any easement or other interest in the Community. Damage to or waste of any portion of the Common Areas is prohibited. Each Owner is to indemnify and hold the Association, its Board of Directors and the other Owners harmless against all loss to the Association or other Owners resulting from any damage or waste caused by the Owner, or the Owner's residents, tenants, guests, family members or invitees.

7.10 Vehicles and Parking.

(a) General. Parking and vehicles are subject to the Rules and Regulations adopted by the Board, if any. Each Unit shall have one garage or parking area.

(b) Prohibited Vehicles. No unlicensed vehicles may be parked on the Common Areas. No stored or abandoned or inoperable vehicles of any kind may be stored or parked on the Common Areas. An "abandoned or inoperable vehicle" is defined as any passenger car, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which for a period of two (2) days or longer, does not have an operable propulsion system installed therein, has one or more flat tires or has another condition preventing the regular and normal operation and movement of the vehicle. A vehicle is to be considered "stored" if it remains in the same location in the Common Areas for 14 consecutive days or longer without prior written Board permission.

(c) Enforcement.

(i) If any vehicle is parked on any portion of the Common Areas in violation of this Section or in violation of the Rules and Regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after 24 hours the vehicle may be towed. The notice is to include the name and telephone number of the Person that is to do the towing. If 24 hours after such notice is placed on the vehicle the violation continues, or occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the vehicle owner or user.

(ii) If a vehicle located in the Community is blocking another vehicle or access to another Owner's parking space or garage, is obstructing the flow of traffic, is parked on any grassy area, blocks access to the trash enclosure or snow storage areas, is parked in a designated handicapped space without the proper state-issued identification, or otherwise creates a hazardous condition, no notice is to be required and the vehicle may be towed immediately.

(iii) If a vehicle is towed in accordance with this Section 7.10, neither the Association nor its directors, officers or agents is to be liable to any person for any claim of damage resulting from the towing. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.



7.11 Heating of Residences in Colder Months. To prevent water pipes from breaking during colder months of the year and the damage associated therewith, the thermostats within the Townhomes must be maintained with the heat in an "on" position and at a minimum temperature setting of 55° Fahrenheit (except during power failures or periods when heating equipment is being repaired) whenever the temperature is forecasted to or does reach 32° Fahrenheit or below. Owners must take all reasonable steps on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the colder months when the heating equipment is not working properly, the Owner must immediately inform the Unit Owner in which the Owner shares a Party Wall and the Association of the equipment's failure and of the time needed to repair the equipment. The Association may fine any Owner up to three (3) times the Unit's monthly Assessment for violating this Section, in addition to any other remedies of the Association.

7.12 Signs. Except as provided for in this Declaration or as required by state law or legal proceedings, no signs, advertising posters, or billboards of any kind may be erected, placed, or permitted to remain in the Community without the Association's prior written consent. The following signs are permitted:

- (a) One professional security sign not to exceed six inches by six inches in size may be displayed within five feet of the Townhome's foundation;
- (b) One professionally lettered "For Rent" or "For Sale" sign not to exceed two feet by two feet in size may be displayed within five feet of the Townhome's foundation, actively being offered for sale or for lease;
- (c) Political signs as allowed by Colorado law; and
- (d) The Association has the right to erect reasonable and appropriate signs on its behalf.

7.13 Trash and Garbage. All trash and garbage must be regularly removed from the Townhomes and is to not be allowed to accumulate on the Unit. Trash or garbage must not be placed on the Common Areas, except in trash cans or dumpsters designated for that purpose.

7.14 Unsightly or Unkempt Conditions. Activities that cause disorderly, unsightly, or unkempt conditions must not be pursued or undertaken on any part of the Common Areas.

7.15 Personal Property on Common Areas. Personal property (other than vehicles as otherwise permitted in this Declaration) may not be stored, kept, or allowed to remain for more than 24 hours upon any portion of the Common Elements, other than on a Limited Common Element, without prior written Association permission. If the Association determines that a violation exists, then, after two (2) days written notice is placed on the personal property and/or on the front door of the property owner's Unit, if known, the Association may remove and either discard or store the personal property in a location which the Association or its agent may determine. Neither the Association nor its agent has any obligation to return, replace or reimburse the owner of the property. The notice is to include the name and telephone number of the Person who is to remove the property and the name and telephone number of a person to contact regarding the alleged violation.

The Association, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner. In this case, the Board is to give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed.

Neither the Association nor its directors, officers or agents is to be liable to an Owner or the Owner's residents, tenants, guests, invitees or family members for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements or for any claim of damage resulting from the removal activity in accordance with this Section. The Association may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.



7.16 Rules and Regulations. The Association may adopt, amend and repeal Rules and Regulations concerning and governing the Units, Townhomes, Common Elements and Limited Common Elements in furtherance of the provisions of this Declaration, subject to the following:

- (a) Uniformity/Equal Treatment. The Rules and Regulations, Policies and Procedures and Governance Policies, if any, are to be reasonable and uniformly applied. Similarly situated Owners must be treated similarly.
- (b) Copies. Copies of the Rules and Regulations, if any, must be made available to each Owner upon request.
- (c) Required Compliance. Each Owner, and each Owner's residents, tenants, guests, invitees and family members must comply with the Rules and Regulations, Policies and Procedures and Governance Policies, if any.
- (d) Authority of the Rules and Regulations. The Rules and Regulations, Policies and Procedures and Governance Policies, if any, have the same authority, force and effect as if they were stated in full in this Declaration. In the event of conflict this Declaration prevails.
- (e) Speech/Political Signs. The rights of Owners to display political signs and symbols in or on their Units or Townhomes of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods must not be abridged. The Association may adopt (as allowed by statute and law) reasonable size, time, place, and manner restrictions for the purpose of minimizing damage, disturbance, clutter, and unpleasant aesthetics.
- (f) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations normally displayed in residences located in single-family residential neighborhoods must not be abridged. The Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage, disturbance, clutter, and unpleasant aesthetics.
- (g) Activities within Townhomes. No rule may interfere with the activities carried on within the confines of a Townhome, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Townhomes, that generate excessive noise, odor or traffic, that create unsightly conditions or conditions otherwise disallowed by this Declaration which are visible outside the Townhome, that block the views from other Townhomes, or that create an unreasonable source of annoyance.

ARTICLE 8. INSURANCE

8.1 Association's Property Insurance. The Association is to obtain and maintain at all times, as a Common Expense, property insurance as required in this Declaration. The Association's insurance is to cover the Common Elements.

8.2 Other Association Insurance. In addition to the insurance required above, the Association is to obtain as a Common Expense:

- (a) Workers' compensation insurance if and to the extent necessary to meet the requirements of law;
- (b) General liability insurance in amounts no less than \$1,000,000;
- (c) Directors' and officers' liability insurance in such amounts as the Board may determine; and
- (d) Other insurance as the Board of Directors may determine necessary or desirable.

8.3 Standards for Association Policies.



(a) The Association is to use reasonable efforts to obtain policies that provide the following:

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

(ii) No act or omission by any Owner not under the Association's control is to void the policy or be a condition to recovery under the policy;

(iii) All insurance policies are to be written with a company licensed to do business in Colorado. The company is to provide insurance certificates to each Owner and Mortgage Holder upon request. The Association's Board of Directors has the exclusive authority to adjust losses under the Association's policies. No Mortgage Holder having an interest in any losses may be prohibited from participating in the settlement negotiations, if any.

(b) The Association's insurance is not required to include liability or property insurance for individual Owners for liability arising from a Unit.

8.4 Insurance Deductibles. Unless otherwise specified in this Declaration, written guidelines adopted by the Board, or a written Board resolution, any required deductible on the Association's policy is to be a Common Expense.

8.5 Owners' Insurance.

(a) Every Owner is obligated to obtain and maintain at all times insurance covering their Unit, their Townhome, any Limited Common Elements associated with a Unit, and any other improvements on a Unit.

(b) Each Owner is also responsible for obtaining insurance covering their personal property and coverage for liability arising within their Townhome and on their Unit or within their Limited Common Element(s).

(c) The Association has no liability for an Owner's failure to maintain the insurance required by this Section 8.5.

(d) Upon request, the Owner is to furnish a copy of such insurance policies to the Association.

8.6 Owner's Right to Review Association Insurance Policies. The Association is to make a copy of its insurance policies available for review by Owners.

8.7 Source and Allocation of Proceeds. If the insurance proceeds are not sufficient to defray the costs of reconstruction and repair of the Common Areas (due to failure of the Association to maintain coverage as provided in this Declaration, or due to the insurance policy's deductible), the additional cost is to be a Common Expense. If there are surplus funds after repair and reconstruction is completed, those funds are to be common funds of the Association to be used as directed by the Association.

8.8 Claims and Adjustments by the Association. Any loss covered by an Association insurance policy is to be adjusted by the Association. The insurance proceeds for a loss is payable to the Association and not to any First Lien Holder. The Association holds any insurance proceeds for the repair or restoration of the damaged property. The Association is not entitled to use insurance proceeds for other purposes unless there is a surplus after the damaged property has been completely repaired or restored.

8.9 Casualty/Fire Damage. In the event of casualty or fire damage, the Units, Townhomes and/or Common Areas, as is applicable, shall be rebuilt to the condition as the same were in when originally constructed. If insurance proceeds are not adequate to cover said reconstruction costs, the additional amounts shall be paid by the Owner(s) of the Unit(s) and/or Townhomes in which such reconstruction is required, or in the case of the Common Areas, a Common Expense of the Association.



ARTICLE 9. AUTHORITY AND ENFORCEMENT

9.1 Compliance With and Enforcement of Governing Documents.

(a) Compliance Required. Every Owner, including the Owner's family, guests, tenants and invitees are to comply with applicable provisions of the Governing Documents. Any aggrieved Owner has the right to take action to enforce the terms of the Governing Documents against another Owner.

(b) Association Remedies. The Association may enforce all applicable provisions of the Governing Documents and may impose sanctions for their violation. Sanctions may include, without limitation:

(i) Imposing reasonable monetary fines, after notice and opportunity for a hearing, which are to be a lien upon the violator's Unit;

(ii) Suspending of voting rights;

(iii) Exercising self-help or action to abate any violation of the Governing Documents in a non-emergency situation, subject to any requirements set forth in this Declaration, including those related to maintenance, repair or replacement;

(iv) Requiring an Owner, at the Owner's expense, to cease any construction of any modification that has not been approved, or to remove any structure or improvement on the Unit or the Common Areas in violation of the Governing Documents and to restore the Unit or Common Areas to its previous condition and, upon the Owner's failure to do so, the Association has the right to enter the Unit or Common Areas, remove the violation and restore the Unit or Common Areas to substantially the same condition as previously existed and any action is not deemed a trespass;

(v) Recording in the real property records a notice of violation identifying any uncured violation of the Governing Documents; and

(vi) Other remedies provided for in this Declaration, the Rules and Regulations (if any) or by applicable law.

(c) Emergencies and Legal Action. In addition, the Association may take the following enforcement procedures to seek compliance with the Governing Documents:

(i) Exercising self-help in any emergency situation (specifically including, but not limited to, towing vehicles that are in violation of any parking Rules and Regulations); and/or

(ii) Instituting any civil action to enjoin any violation or to recover monetary damages or both.

(d) Remedies Are Cumulative. All remedies set forth in the Governing Documents are cumulative of any remedies available at law or in equity.

(e) Costs Incurred By Association. If the Association exercises any of its rights pursuant to this Section, all costs are to be assessed against the violating Owner and are to be a lien against the Owner's Unit. Additionally, the Association is entitled to its reasonable attorney fees actually incurred, which are to be collected as an Assessment.

9.2 Failure to Enforce. The Association has the discretion to pursue an enforcement action in any particular case, except that the Association may not be arbitrary and capricious. The Association's failure to enforce any provision of the Governing Documents is not deemed a waiver of its right to do so thereafter. No claim or right of action exists against the Association for failure of enforcement where: (a) the Association determines that its position is not strong enough to justify taking enforcement action; (b) a particular violation is not of such a material



nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (c) the Owner or party requesting enforcement possesses an independent right to bring an enforcement action at law or in equity and has failed to do so.

ARTICLE 10. AMENDMENTS & TERMINATION

10.1 Amendment by Owners.

(a) This Declaration and/or the Plat may be amended by the affirmative vote, written agreement, or any combination of affirmative vote and written agreement of the Owners holding at least 67% of the total Association vote.

(b) If a proposed amendment is to be considered at a Member/Owner meeting, notice of the meeting is to state the general subject matter of the proposed amendment. No amendment is to be effective until certified by the Association's president and secretary and recorded in the real property records.

10.2 Validity. Any action to challenge an amendment's validity must be brought within one year of the effective date of the amendment.

10.3 Termination. This Declaration and the Community may be terminated in the manner as provided for and allowed for in the Colorado Common Interest Ownership Act, even though this is an exempt small planned community under that Act.

ARTICLE 11. GENERAL PROVISIONS

11.1 Security. The Association may, but is not required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community. However, each Owner, for himself and his family members, residents, guests, lessees, and invitees, acknowledges and agrees that the Association is not a provider of security and the Association does not have a duty to provide security in the Community. Each Owner is responsible to protect his person and property and all responsibility to provide security lies solely with each Owner. The Association is not liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

11.2 Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, the Rules and Regulations, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate any of its rights or privileges.

11.3 Interpretation. The provisions of this Declaration are to be liberally construed to effectuate their purposes of providing a uniform plan for the Community and of promoting and effectuating the fundamental concepts set forth in the recitals of this Declaration. This Declaration is to be construed and governed under the laws of the State of Colorado.

11.4 Electronic Records, Notices and Signatures. Notwithstanding any other portion of this Declaration, records, signatures and notices are to not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws are to govern the giving of all notices required by this Declaration.

11.5 Duration. The covenants and restrictions of this Declaration run with and bind the Community perpetually unless otherwise terminated as provided in C.R.S. § 38-33.3-218.

11.6 Severability. Invalidation of any one of the covenants or restrictions in this Declaration by judgment or court order or otherwise is to in no way affect the application of the provision to other circumstances or affect any other provisions in the Declaration, which are to remain in full force and effect.



11.7 Public in General. The rights and burdens created in this Declaration do not, are not intended to, and are not to be construed to create any rights and burdens in or for the benefit of the general public.

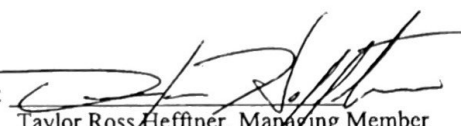
11.8 Conflicts. In the event of a conflict between this Declaration and the Articles of Incorporation or Bylaws, this Declaration is to control. In the event of a conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation is to control.

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

11.10 Singular Includes the Plural. Unless the context otherwise requires, the singular includes the plural, and the plural includes the singular, and each gender referral is deemed to include the masculine, feminine and neuter.

Dated this 5th day of March, 2019.

Harley and Company, LLC,
a Colorado limited liability company.

By: 
Taylor Ross Hefftner, Managing Member

By: 
Emily Anne Hefftner, Managing Member

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Declaration was acknowledged before me by Taylor Ross Hefftner and Emily Anne Hefftner, as managing members of Harley and Company, LLC, a Colorado limited liability company on this 5th day of March 2019.

Witness my hand and official seal:


Notary Public

