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DECLARATION
FOR
JAY STREET TOWNHOMES

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DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND LIES FOR

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JAY STREET TOWNHOMES

THIS DECLARATION is made as of the 29 day of July, 1998,
by KOCH DEVELOPMENT, LLC., a Colorado limited liability
company ("Declarant").

Declarant does hereby submit the real property in the
County of Jefferson, Colorado, described in Exhibit A
attached hereto and incorporated herein by this reference
as though fully set forth, to the provisions of this
Declaration, for the purpose of creating and maintaining
the community in a higher standard than usual, and does
hereby DECLARE that the property described on Exhibit A
shall be held and conveyed subject to the following terms,
covenants, restrictions and conditions:

ARTICLE I

Exemption From Common Interest Ownership Act

The Subdivision consists of twelve (12) lots, and is
subject to the Colorado Common Interest Ownership Act,
Colorado Revised Statutes Sections 38-33.3-101, et seq., as
it may be amended from time to time. In the event the Act
is repealed, the provisions of the Act in effect on the
date of this Declaration shall remain applicable.

ARTICLE II

Definitions

- 2.1 Allocated Interests. The Allocated Interests are
the Common Expense liability and votes in the
Association allocated to Lots in the Subdivision.
The Allocated Interests are described in Article
VI of this Declaration.
- 2.2 ARC or Architectural Review Committee refers to
the committee of the Association created pursuant
to Article VII of this Declaration.
- 2.3 Association. The Association is a Colorado non-
profit corporation.

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2.4 Bylaws. The Bylaws are the Bylaws of the Association, as they may be amended from time to time.

2.5 Common Elements. The Common Elements are all the real estate of the Subdivision other than a Lot, including but not limited to private streets, perimeter fences, common sewer lines outside buildings, drainage facilities and appurtenant easements, all of which shall be owned by the Association. 7

2.6 Common Expenses. The Common Expenses are the expenses or financial liabilities for the operation of the Subdivision. Common Expense Assessments are the funds required to be paid by each Lot Owner in payment of such Owner's Common Expense liability. These expenses include:

- a. expenses of administration, maintenance, construction, improvement, repair or replacement of the Common Elements;
- b. expenses of utilities and water not separately metered and billed directly to the Lot Owners;
- c. expenses declared to be Common Expenses by the Documents;
- d. expenses agreed upon as Common Expenses by the Association; and
- e. such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

In addition, some costs and expenses imposed on the Association, benefiting fewer than all the Lots, shall be a Common Expense, but assessed exclusively against those Lots benefited.

2.7 Declarant. The Declarant is Koch Development, LLC.

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- 2.8 Declaration. The Declaration is this document, including any amendments.
- 2.9 Director. A Director is a member of the Executive Board of the Association.
- 2.10 Documents. The Documents are this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association and any Rules that may be adopted by the Directors, as they be amended from time to time. Any exhibit, schedule or certification accompanying a Document is a part of that Document. 8
- 2.11 Eligible Insurer. An Eligible Insurer is an insurer or guarantor of a first Security Interest in a Lot. An Eligible Insurer must notify the Association in writing of its name and address and inform the Association that it has insured or guaranteed a first Security Interest in a Lot. It must provide the Association with the Lot number and address of the Lot on which it is the insurer or guarantor of a Security Interest. Such notice shall be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Article XIII.
- 2.12 Eligible Mortgagee. The Eligible Mortgagee is the holder of a first Security Interest in a Lot, when the holder has notified the Association, in writing, of its name and address and that it holds a first Security Interest in a Lot. The notice must include the Lot number and address of the Lot on which it has a security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article XIII.
- 2.13 Executive Board. The Executive Board is the board of directors of the Association.
- 2.14 Improvements. Improvements are any construction, structures, equipment, fixtures or facilities existing or to be constructed on the Property which is included in the Subdivision, including but not limited to residences, buildings, trees and shrubbery planted by the Owner, the Declarant

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or the Association, paving, utility wires, pipes and light poles, sewer lines, water lines, fire hydrant.

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- 2.15 Lot. A Lot is a physical portion of the Subdivision designated for separate ownership or occupancy, the boundaries of which are defined on the Plat.
- 2.16 Lot Owner or Owner. The Lot Owner or Owner is the Declarant or any other Person who owns a Lot. Lot Owner does not include a Person having only a Security Interest or any other interest in a Lot solely as security for an obligation. The Declarant is the initial owner of each and every Lot. 9
- 2.17 Majority or Majority of Lot Owners. The Majority of Lot Owners means the owners of more than 50 percent of the votes in the Association.
- 2.18 Manager. A Manager is a person, firm or corporation employed or engaged to perform management services for the Subdivision and the Association.
- 2.19 Member. As used herein, the term "Member" is synonymous with the term "Director".
- 2.20 Notice and Comment. Notice and Comment is the right of a Lot Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Hearing are set forth in Section 18.1 of this Declaration.
- 2.21 Notice and Hearing. Notice and Hearing is the right of a Lot Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 18.2 of this Declaration.
- 2.22 Person. A Person is an individual, corporation, trust, partnership, limited liability company,

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association, joint venture, government, government subdivision or agency or other legal or commercial entity, or a combination thereof.

2.23 Plat. The Plat is that certain document entitled Final Plat of KOCH Subdivision.

2.24 Property. Property is the land and all improvements, easements, rights and appurtenances presently owned by Declarant which have been submitted to this Declaration, as described in Exhibit A hereto. 10

2.25 Records. The Records are the real estate records in the office of the Clerk and Recorder of Jefferson County, Colorado.

2.26 Residence. A residence shall be the building for single-family living, constructed on a lot, including an enclosed garage attached thereto.

2.27 Rules. The Rules are the regulations for the use of the Common Elements and for the conduct of Persons in connection therewith within the Subdivision, as may be adopted from time to time by the Executive Board pursuant to this Declaration.

2.28 Security Interest. A Security Interest is an interest in and encumbrance upon real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, installment land contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien intended as security for an obligation. A nonconsensual lien does not create a Security Interest.

2.29 Trustee. The Trustee is the entity which may be designated by the Executive Board as the Trustee for the receipt, administration and disbursement of funds derived from insured losses, condemnation awards, special assessments for

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uninsured losses and other sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Executive Board acting by majority vote.

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ARTICLE III

Lot and Boundary Descriptions

- 3.1 Maximum Number of Lots. The Subdivision contains twelve (12) private Lots. Nothing contained in this Section shall prohibit the Owner of two or more adjacent Lots from combining them or portions thereof, so that the resulting number of lots is equal to or less than twelve (12).
- 3.2 Boundaries. Vertical boundaries of each Lot burdened by the Declaration are shown on the plat and each Lot is identified with its identifying number. The Lots are not defined by horizontal boundaries.

ARTICLE IV

Party Walls

- 4.1 Definition. For purposes of this Article, "Party Wall" shall mean and refer to any wall which is part of the original construction of the Residence as such wall(s) may be repaired or reconstructed from time to time, is placed on or immediately adjacent to a Lot line, and separates two (2) or more residences as a common wall, if and to the extent that any such Party Walls may hereafter be located within the Subdivision.
- 4.2 General Rules of Law Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and Liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- 4.3 Sharing of Repair and Maintenance. The Cost of reasonable repair and maintenance of a Party Wall shall be a Common Expense. Provided, however, that costs incurred due to extraordinary

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circumstances caused by one or both adjoining Lot Owners shall be Common Expenses assessed to and shared equally by only such Lot Owner(s).

- 4.4 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by circumstances which relieve the Association of the obligation to pay for repair or replacement, then any Lot Owner whose Residence is bounded thereby may restore it, and the other Lot Owner whose Residence is bounded thereby shall contribute fifty percent (50%) of the cost of such restoration, without prejudice to the right of any such Lot Owner to demand a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. 12
- 4.5 Weatherproofing. Notwithstanding any other provision of this Article, a Lot Owner who, by negligence or willful act, causes a Party Wall to be exposed to the elements, shall bear the entire cost of repairing the damage therefrom and furnishing the necessary protection against future damage from such elements.
- 4.6 Right to Contribution Runs with Land. The right of any Lot Owner under this Article shall be appurtenant to and run with the land and shall pass to such unit Owner's successors in title.

ARTICLE V
Maintenance of the Property

- 5.1 Duties of Association. The association shall:
- (i) maintain, repair, replace and keep neat, attractive, sightly, free from snow and in good order, to the extent that such functions are not expected to be performed by Jefferson County or any other political subdivision thereof or for the State of Colorado, all of the Common Elements including but not limited to the sidewalks along the interior streets, although they may be located within Lots;
 - (ii) maintain the party walls in the Subdivision; and
- maintain the exterior of each residence, including painting

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(exterior paint color shall be consistent with an existing color scheme within the Jay Street Commons Subdivision; accordingly, no unattractive or unsightly paint color will be allowed which might decrease property values or create unrest within the surrounding neighborhoods), repairing, replacing and caring for roofs, gutters, down-spouts, all front decks and porches, and all exterior surfaces, but not including doors or windows, and not decks and porches in back yards. The Association may, from time to time, hire and/or contract with third parties to achieve the objectives of the Section 5.1.

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5.2 Individual Lots. It shall be the duty and obligation of each Lot Owner, at such Lot Owner's expense, to keep neat, attractive, sightly and in good order such Owner's Residence and the exterior portions of the Lot, and to maintain, repair and replace the same to the extent such duties are not the responsibility of the Association. If the Owner does not discharge this obligation then, following Notice and Hearing, the Association may arrange to have the work done and assess the Owner for the cost of such work plus twenty-five percent (25%) of such cost for inspection, administrative costs and overhead of the Association and other incidental expenses.

5.3 Right of Access. Any person authorized by the Executive Board shall have the right of access to all portions of the Property outside of the Residence constructed on a Lot for the purpose of performing emergency repairs or to do other work reasonably convenient to the affected Lot Owner. In case of an emergency, no request or notice is required to access all portions of the Property and/or Residence for the purpose of performing emergency repairs or to do other work reasonably necessary. This is provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Lot Owner. In case of an emergency, no request or notice is required and the right of entry shall be immediate, whether or not the Lot Owner is present at the time.

ARTICLE VI
Allocated Interests

The interest allocated to each Lot has been calculated by the following formula:

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6.1 Liability for the Common Expenses. The percentage of liability for Common Expenses allocated to each Lot is to be shared equally amongst all the residences in the Subdivision.

6.2 Votes. Each Lot in the Subdivision shall have the number of votes allocated to such Lot in the Bylaws. Any specific percentage, portion or fraction of Lot Owners, unless otherwise stated in the Documents, means the specified percentage, portion or fraction of all of the votes as allocated in the Bylaws.

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ARTICLE VII
Architectural Review Committee

7.1 Creation of Committee. There is hereby created a standing committee of the Association to be known as the Architectural Review Committee or ARC, to be composed of not more than three (3) individuals. Members of the ARC shall be appointed by the Executive Board, to hold office at the will of the Executive Board.

7.2 Purpose of ARC. The purpose of the ARC is to maintain the superior beauty and quality of the improvements constructed on the Property, and the harmony thereof with the surroundings, and to evaluate the use and suitability of the proposed improvements and the effect of the same on any adjacent or neighboring properties.

7.3 Approval of Improvements. Except for initial improvements constructed by Declarant and improvements made at any time by the Association, all plans and specifications in connection with: (i) exterior remodeling, rebuilding, refurbishing or alteration of a Residence, including without limitation the exterior appearance, color or texture, patio covers or awnings; (ii) any improvements or alterations to the Lot other than to the Residence, including but not limited to landscaping not initially provided by Declarant, sculpture or art work, driveway, sidewalk, outside deck, grading, excavation, filling or similar disturbance of the surface of the land, shall require the prior written approval of the ARC.

7.4 Owner to Submit Plans. Before any construction work begins, the Owner of the Lot shall be responsible for

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submitting to the ARC complete plans, specifications and color/material/texture samples for the scheduled work and the qualifications of the parties to be performing the scheduled work.

7.5 Action by ARC. The ARC's approval or disapproval as required by this Declaration shall be in writing. In the event the ARC fails to give its written approval or disapproval within thirty (30) days after complete submission of the required plans and specifications shall be deemed approved by the ARC.

7.6 Construction of Improvements After Approval by ARC. Following approval of proposed improvements by the ARC, the Lot Owner shall cause the approved improvements to be made to the Lot in a timely fashion.

7.7 Guidelines, Standards, and Procedures. The ARC shall adopt guidelines, standards, and procedures for its day to day operations and the performance of its duties under this Declaration, which guidelines, standards and procedures shall be consistently applied for all matters coming before the ARC.

7.8 Compensation of Members of ARC. The members of the ARC may receive reasonable compensation for services performed, together with reimbursement for actual and reasonable expenses incurred by them in the performance of their duties.

7.9 Non-Liability of ARC Members. None of the ARC, any member thereof or the Executive Board shall be liable to any Owner or to any other person for any loss, damage or injury arising out of or in any way connected with the performance of the ARC's duties under this Declaration. By granting its approval of proposed improvements, the ARC will not be deemed to have approved or to have made any representation as to the safety, structural soundness or compliance with local building codes or other governmental laws or regulations concerning the proposed improvements.

ARTICLE VIII

Restrictions On Use, Alienation And Occupancy

8.1 Improvements to Lots. The following restrictions on construction of improvements shall apply to all Lots:

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- a. Zoning. Zoning laws, ordinances, resolutions, rules and regulations are considered to be a part hereof, and no provision of this Declaration shall be valid or be interpreted to violate any present or future zoning laws, ordinances, resolutions, rules or regulations.
- b. Garage and Private Drive. A garage shall be required and shall be of a size at least large enough to enclose one (1) passenger automobiles. No attached or detached unenclosed carport will be permitted. 16
- c. Fences. For normal wear and tear, all fences shall be maintained by the Homeowners Association, and must be a uniform stain (redwood). Any repair other than normal and tear, such as damage and neglect, is the responsibility of the individual homeowner. The fences may be repaired by the individual responsible, but the ARC must approve repair. If said improvement is not approved by the ARC, homeowner association may make repair and bill the individual homeowner.
- d. Maintaining of Drainage. There shall be no interference with the established drainage pattern as planned by Declarant for the entire Property.

8.2 Use Restrictions. The following Use Restrictions apply to all lots and to the Common Elements:

- a. Single-Family Residence. Each unit is restricted to use as a single family Residence and accessory uses as permitted herein. A single-family Residence is defined as a single housekeeping unit, operating on a nonprofit, noncommercial basis.

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- b. No Commercial Purmits. Except for those activities conducted as a part of the sale or resale of a particular Lot, no industry, business, trade, commercial activities or home professional pursuits shall be conducted, maintained or permitted in any part of a Lot, nor shall any Lot be used or rented for transient, hotel or motel purposes.
- c. Compliance with Laws. No immoral, improper, offensive or unlawful use may be made of the Property and Lot Owners shall comply with and conform to all applicable laws, ordinances, rules and regulations of the United States, the State of Colorado and the County of Jefferson. The violating Lot Owner shall hold harmless the Association and prosecutions for any violation or noncompliance.
- d. Offensive Activities. No noxious, offensive dangerous or unsafe activity shall be carried upon any portion of the Property, nor shall anything be done, either willfully or negligently or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance or annoyance to other Lot Owners or occupants.
- e. Annoying Sounds or Odors. No sound or odor, including those caused by house pets, shall be emitted from any portion of the Property which is noxious or reasonably offensive to or would interfere with the rights, conforms or convenience of other Lot Owners or occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any Lot except with the prior written approval of the ARC.
- f. No Hazardous Activities. There shall be no activity or improvement on any portion of the Property which is or might be unsafe or

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hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property, and no open fires shall be lighted or permitted, except in a contained barbeque unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

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- g. No Unsightliness. All unsightly structures, facilities, equipment, objects and conditions shall be enclosed within a structure, including snow removal equipment and garden or maintenance equipment except when in actual use. No unsightly items shall be left on porches, decks, backyards, limited common areas, and common areas, as determined by the homeowners association.

Garages: Garages shall be kept in an orderly and neat fashion, and garage door shall not be kept open for an excessive period of time as determined by homeowner association.

- h. Storage of Vehicles. Other than short-term guests or agents of an Owner, no vehicles may be parked for no more than seventy-two (72) hours, and no vehicles shall be regularly kept in any area other than in the garage. Garages are restricted to storage and for parking spaces for vehicles. No boat, camper, trailer, tractor, truck, towed trailer unit, motorcycle, disabled, junked, or abandoned vehicle, motor home, mobile home, recreational vehicle or any other vehicle, the primary purpose of which is for recreational, sporting, or commercial use, shall be parked or stored in, on or about any lot or street within or around the property, except within the attached garage. Declarant, the Association and the ARC shall have the right to enter portions of the Lot to remove and store, at the Owner's expense,

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vehicles in violation of this Section. The Owner shall be entitled to Notice and Hearing prior to such action.

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1. Vehicle Repairs. No maintenance, service, repair, dismantling or repainting of any type of vehicle, boat, machine or device may be carried on, except within a enclosed structure which screens the sight and sound of the activity from the street and from other Lots. 19
- j. Pets. No animals shall be kept in any residence, except for dogs or cats or other indoor household pets, approved in writing by the Executive Board or the Manager as compatible with the Subdivision. Pets may not be kept for any commercial purposes. Every household pet shall be controlled inside it's owner's Lot except when properly leashed and accompanied by the pet's Owner or his representative. Each pet shall be permanently removed from the Property following Notice and Hearing. Owners shall hold the Association harmless from any claim resulting from any action of their pets.
- k. Access to Common Elements. No Owner shall place any structure whatsoever upon or permit any structure to intrude upon or overhang the Common Elements, and no Owner shall engage in any activity which would temporarily or permanently deny free access to any part of the Common Elements by all Owners. No use shall ever be made of the Common Elements which would deny ingress or egress by any Owner to such Owner's Lot.
- l. Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub or tree clippings, compost, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure or area appropriately screened from view, except that any container containing such materials may be

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placed outside at such times as may be necessary to permit garbage or trash pick-up.

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- m. No Temporary Structures or Building Materials. Except during construction, as set forth above, no tent, shack, temporary structure or temporary building or building materials shall be placed, stored, or maintained upon the Lot. 20
- n. Compliance with Insurance Requirements. Nothing shall be done or kept on the Property which may result in a material increase in the rates of insurance or would result in the cancellation of insurance maintained by the Association, without the prior approval of the Association.
- o. Further Subdivision of Lots. The Owner of a Lot shall not further subdivide that Lot.
- p. Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any improvement on a Lot, the Owner thereof shall cause the damaged or destroyed improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the ARC, or the Owner shall cause the damaged or destroyed improvement to be demolished and the Lot to be suitably landscaped, subject to the approval of the ARC, so as to present a pleasing and attractive appearance.
- q. Restrictions on Signs and Advertising. No sign, poster, billboard advertising device or display of any kind shall be erected or maintained anywhere within the Property so as to be evident to public view, unless approved in writing by the Association or

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the ARC. A sign advertising a Lot for sale or lease may be placed in windows; provided, however, that standards relating to dimensions, color, style and location of such signs shall be determined from time to time by the ARC.

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- 8.3 Restrictions on Alienation. A Lot may not be conveyed pursuant to a time-sharing plan.

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ARTICLE II
Easements and Licenses

- 9.1 Existing Easements. All easements or licenses to which the Subdivision is presently subject are shown on the Plat.
- 9.2 Owner's Easement Across Common Elements. Every Owner shall have a right and easement for ingress to and egress from such Owner's Lot over and across the Common Elements, which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to dedicate or transfer all or part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer by the Association shall be effective unless an instrument signed by all of the Lot Owners agreeing to such dedication or transfer has been recorded in the Records.
- 9.3 Association's Easement Across Common Elements and Exterior Portions of Lots. The Association and its authorized agents shall have a perpetual easement and right-of-way on, over and under the Common Elements and the exterior portions of the Lots insofar as the same should be necessary for the Association to fulfill its duties and obligations recited herein, subject to an ongoing duty to restore any surfaces damaged in the process.

ARTICLE III
Amendment to Declaration

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- 10.1 In General. This declaration may be amended only by vote or agreement of Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.
- 10.2 Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one (1) year after the amendment is recorded. 22
- 10.3 Recordation of Amendments. Each amendment to the Declaration must be recorded in the Records, and the amendment is effective only upon recording.
- 10.4 Unanimous Consent. An amendment to this Declaration may not increase the number of Lots, change the boundaries of a Lot, the Allocated Interests of a Lot or the uses to which a Lot is restricted, except by unanimous consent of the Lot Owners.
- 10.5 Consent of Holders of Security Interests. Amendments to the Declaration are subject to the consent requirements of Article XIII.

ARTICLE XI
Amendments to Bylaws

The Bylaws may be amended only by a vote of sixty-seven percent (67%) of the Members of the Executive Board, following Notice and Comment to all Lot Owners, at any meeting duly called for such purpose.

ARTICLE XII
Termination

Termination of the Subdivision may be accomplished in the same manner as a common interest community under with C.R.S. §38-33.3-218, or by any other means which is the unanimous written consent of all Lot Owners.

ARTICLE XIII
Mortgages Protection

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13.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests. This Article is supplemental to, not a substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

13.2 Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean that the approval or consent of Eligible Mortgagees holding Security Interests in Lots which in the aggregate have collected to them that specified percentage of votes as compared to the total votes allocated to all lots in the Association then subject to Security Interests held by all Eligible Mortgagees.

13.3 Notice of Actions. The Association shall give prompt written notice to known Eligible Mortgagees and Eligible Insurer of:

- a. any condemnation loss or any casualty loss which affects a material portion of the Subdivision or any Lot in which there is a first Security Interest held, insured or guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable;
- b. any delinquency in the payment of Common Expense assessments owed by a Lot Owner which remains uncured for a period of sixty (60) days and whose Lot is subject to a first Security Interest held, insured or guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable;
- c. any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- d. any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as stated in Section 13.4 of the Declaration; and
- e. any judgment rendered against the Association.

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13.4 Consent and Notice Required.

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- a. Notwithstanding any requirement permitted by this Declaration, no amendment of any material provision of the Documents of the Association or Lot Owners described in this Section may be effective without notice to all Eligible Mortgagees and Eligible Insurers, as required by Section 13.3 above without the vote of at least sixty-seven percent (67%) of the Lot Owners (or any greater Lot Owner vote required in this Declaration) and without approval by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagees approval required by this Declaration). A change, declarations, Articles of Incorporation, and By-Laws of the Association which govern or regulate any of the following would be considered material:

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- i. voting rights;
 - ii. assessments, assessment liens or priority of assessment liens;
 - iii. reserves for maintenance, repair/replacement of Common Elements;
 - iv. responsibility for maintenance and repairs;
 - v. expansion or contraction of the Subdivision, or the addition, annexation or withdrawal of property to or from the Subdivision;
 - vi. insurance or fidelity bonds;
 - vii. leasing of Lots;
 - viii. a decision by the Association to establish self-management when professional management had been required previously by the Documents or any Eligible Mortgages;
 - ix. restoration or repair of the project after hazard damage or partial condemnation in a manner other than that specified in the Documents;

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- x. termination of the subdivision after occurrence of substantial destruction or condemnation; and
 - xi. any provision benefiting mortgage holders, insurers or guarantors.
- b. Notwithstanding any lower requirement permitted by this Declaration, the Association may not take any of the following actions, without notice to all Eligible Mortgagees and Eligible Insurers, as required by Section 13.3 above, and approval of at least fifty-one percent (51%) (or the indicated percentage, if higher) of the Eligible Mortgagees:
- i. convey or encumber the Common Elements or any portion of the Common Elements, for which an eighty percent (80%) Eligible Mortgagee approval is required (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Subdivision will not be deemed a transfer within the meaning of this clause);
 - ii. the termination of the Subdivision for reasons other than substantial destruction or condemnation, for which sixty-seven percent (67%) of the Votes of Eligible Mortgagees is required;
 - iii. the granting of any easements, leases, licenses or concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Subdivision and also excluding any leases, licenses or concessions lasting for no more than one (1) year);
 - iv. the restoration or repair of the Property after hazard damage or a partial condemnation in a manner other than specified in the Instruments;
 - v. the assignment of the future income of the Association, including its right to receive Common Expense Assessments; and

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vi. any action taken not to repair or replace the Property in the event of substantial destruction of any part of a Lot or the Common Elements.

c. The Association may not change the period for collection of regularly budgeted Common Expense Assessments to other than monthly collection without the consent of all Eligible Mortgagees.

d. The failure of an Eligible Mortgagee or Insurer to respond within thirty (30) days to an written request for approval of an addition or amendment to the Document wherever Eligible Mortgagees or Eligible Insurer approval is required, when such request is delivered by certified or registered mail, return receipt requested, shall constitute an implied approval of the addition or amendment.

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13.5 Inspection of Books. The Association must maintain current copies of the Declaration, Bylaws, Rules, books, records and financial statements. The Association shall permit any Eligible Mortgagee or Eligible Insurer, or other first mortgagee of Lots, to inspect the books and records of the Association during normal business hours.

13.6 Financial Statements. The Association will provide any Eligible Mortgagee or Eligible Insurer who submits a written request with a copy of an annual financial statement. It shall be provided within ninety (90) days following the end of each fiscal year of the Association. This financial statement need not be audited by an independent certified public accountant unless any Eligible Mortgagee or Eligible Insurer requests it, and the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

13.7 Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors and may be

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enforced by any of them by any available means,
at law or in equity.

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13.8 Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting which a lot Owner may attend.

13.9 Appointment of Trustees. In the event of damage or destruction under Article XVII or condemnation of all or a portion of the Subdivision, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Section 2.29 of this Declaration. Proceeds will then be distributed according to law. Unless otherwise required, the Members of the Executive Board, acting by majority vote, may act as Trustee.

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ARTICLE XIV

Assessment and Collection of Common Expenses

14.1 Apportionment of Common Expenses. Except as provided in Section 2.6, 6.1 and Section 14.2, all Common Expenses shall be assessed against all Lots equally.

These Expenses for reasonable maintenance shall include but are not limited to Common replacement of the landscaped exterior portions of Lots and reasonable maintenance, upkeep, repair and replacement of the exterior roofs and walls of the Residences constructed on the Lots, front porches and decks, and fences notwithstanding the fact that such maintenance, upkeep, repair and replacement could be viewed as benefiting one particular Lot over another.

14.2 Common Expenses Attribute to Fewer than all Lots.

- a. Any Common Expense for services provided by the Association to an individual Lot at the request of the Lot Owner shall be assessed against that Lot.
- b. An assessment to pay a judgement against the Association may be made only against the Lots in the Subdivision at the time the

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- judgement was entered, in proportion to their Common Expense liabilities.
- c. If a Common Expense is caused by the misconduct of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner's Lot.
 - d. Fees, charges, taxes, impositions, late charges, fines, collection costs and interest charged against a Lot Owner pursuant to the Documents are enforceable as Common Expense Assessments.

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14.3 Lien.

- a. The Association is hereby granted and shall have a lien on a Lot for a Common Expense Assessment levied against the Lot or fines imposed against its Lot Owner. Fees, charges, late charges attorney fees, fines and interest charged pursuant to the Documents are enforceable as assessments under this Section. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If a Common Expense Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.
- b. A lien under this Section is prior to all other liens and encumbrances recorded before the recordation of the Declaration; (ii) a Lot except: (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a first Security Interest on the Lot recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Lot. A lien under this Section is also prior to all Security interests described in item (2) of this Subsection 14.3(b) to the extent that the Common Expense Assessments are based on the periodic budget adopted by the Association pursuant to Section 14.4 of this

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Article and would have become due in the absence of acceleration, during the six months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section of an action or a nonjudicial foreclosure either to enforce or extinguish either the Association's lien or a Security interest described in item (ii) of this Subsection 14.3(b). This Subsection does not affect the priority of mechanics' or materialmen's liens or the priority of a lien for other assessments made by the Association.

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- c. Recording of the Declaration in the Records constitutes record notice and perfection of the lien. Further recording of a claim of lien for a Common Expense Assessment under this Section is not required.
 - d. A lien for an unpaid Common Expense Assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Common Expense Assessment becomes due, except that if an Owner of a Lot subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled under thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.
 - e. This Section does not prohibit an action to recover sums for which Subsection (a) of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.
 - f. A judgement or decree in an action brought under this Section shall include costs and reasonable attorney fees for the prevailing party, which shall be additional Common Expense Assessments.
 - g. A judgement or decree in an action brought under this Section is enforceable by execution under Colorado law.

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- h. The Association's lien must be foreclosed by the same judicial procedure by which a mortgage on real estate is foreclosed under Colorado law.
 - i. In any action by the Association to collect Common Expense Assessments or to foreclose a lien for unpaid Common Expense Assessments, the court may appoint a receiver for the Lot who shall collect all sums due from that Lot Owner or a tenant of the Lot Owner prior to or during the pendency of the action to the extent of the Association Common Expense Assessments, based on a periodic budget adopted by the Association pursuant to Section 14.5 of this Declaration.
 - j. If a holder of a first or second Security interest in a Lot forecloses that Security interest, the purchaser at the foreclosure sale is not liable for any unpaid Common Expense Assessments against that Lot which became due before the sale, other than the assessments which are prior to that Security interest under subsection (b) of this Section of the Declaration. Any unpaid Common Expense assessments not satisfied from the proceeds of sale or not otherwise collected, become Common Expenses collectible from all the Lot Owners, including the purchaser.
 - k. Any payments received by the Association in the discharge of a Lot Owner's obligation may be applied to the oldest balance due.
- 14.4 Budget Adoption and Ratification. Within thirty (30) days after adoption of a proposed budget for the Subdivision, the Executive Board shall provide either a copy of the proposed budget or a summary of the budget to each Lot Owner and shall set a date for each meeting of the Lot Owners to consider ratification of the budget. The meeting shall be not less than fourteen (14) no more than sixty (60) days after mailing of the summary. Unless at that meeting a majority of all Lot Owners rejects the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is reflected, the periodic budget last ratified by the Lot Owners continues

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until the Lot Owners ratify a new budget proposed by the Executive Board.

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- 14.5 Ratification of Non-budgeted Common Expense Assessments. If the Executive Board votes to levy Common Expense Assessments not included in the current budget, other than one enumerated in Section 14.2 of this Declaration, in an amount greater than fifteen percent (15%) of the current annual operating budget, the Executive Board shall submit this Common Expense to the Lot Owners for ratification in the same manner as a budget under Section 14.4.
- 14.6 Certificate of Payment of common Expense Assessments. The Association, upon written request, shall furnish a Lot Owner with a written statement setting out the amount of unpaid Common Expense Assessments against the lot. The statement must be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Executive Board and each Lot Owner. A reasonable fee, established by the Executive Board, may be charged for such statement.
- 14.7 Monthly Payment of Common Expenses. All Common Expenses assessed under Sections 14.1 and 14.2 of this Declaration shall be due and payable monthly, unless otherwise determined by the Executive Board.
- 14.8 Acceleration of Common Expense Assessments. In the event of default in which any Lot Owner does not make the payment of any Common Expense Assessment levied against his Lot within ten (10) days of the date due, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid Common Expense Assessments for the pertinent fiscal year immediately due and payable.
- 14.9 Commencement of Common Expense Assessments. Common Expense Assessments shall begin on the first day of the month in which conveyance of the first Lot to a Lot Owner other than the Declarant occurs.

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- 14.10 No Waiver of Liability for Common Expenses. No Lot Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Common Expense Assessments are made.
- 14.11 Personal Liability of Lot Owners. The Lot Owner of a Lot, at the time a Common Expense Assessment or portion of the Assessment is due and payable, is personally liable for the Common Expense Assessment. Personal liability for the Common Expense Assessment shall not pass to a successor in title to the Lot unless the successor agrees to assume the obligation.
- 14.12 Waiver of Homestead and Other Exemptions. By taking title to a Lot, an Owner waives all federal and state homestead or other exemptions with respect to the lien for Common Expense Assessments.

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ARTICLE XV
Right to Assign Future Income

The Association may assign its future income, including the right to receive Common Expense Assessments, only by the affirmative vote of Lot Owners of Lots to which at least 51 percent of the votes in the Association are allocated, at a Mortgagee consent described in Article XIII.

ARTICLE XVI
Persons and Lots Subject to Documents

16.1 Compliance With Documents. All Lot Owners, tenants, mortgagees and occupants of Lots shall comply with the Documents. The acceptance of a deed or exercise of any incident of ownership or entering into a lease or occupancy of a Lot constitutes agreement that the provisions recorded in the Records are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Lot.

16.2 Adoption of Rules. The Executive Board may adopt rules regarding the use and occupancy of Lots as it affects

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the Common Elements and the activities of occupants,
subject to Notice and Comment.

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ARTICLE XVII
Insurance

17.1 Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Lot Owners and Eligible Mortgagees at their prospective last known addresses.

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17.2 Property Insurance Coverage. Property insurance will be maintained on the Common Elements and all personal property owned by the Association. The Association will use its best efforts to assure that each residence is insured at the expense of the Lot Owner for All-Risk coverage with deductibles not exceeding \$1000.00 per residence.

17.3 Liability Insurance. Liability insurance, including medical payments insurance, will be maintained in an amount determined by the Executive Board, but in no event shall it be less than \$1,000,000.00 This insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements and the activities of the Association. To the extent available, insurance policies carried pursuant to this Section shall provide that:

- a. each Lot Owner is an insured person under the policy with respect to liability arising out of the Lot Owner's membership in the Association;
- b. the insurer waives the right to subrogation under the policy against a Lot Owner or member of the household of a Lot Owner;
- c. an act or omission by a Lot Owner, unless acting within the scope of the Lot Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy;
- d. if, at the time of a loss under the policy, there is other insurance in the name of a Lot

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- Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance; and
- e. the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Lot Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

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- 17.4 Fidelity Bonds. A blanket fidelity bond or dishonesty insurance coverage may be provided at the option of the Executive Board for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The bond or insurance shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the manager at any time while the bond is in force. In no event shall the bond or coverage be for an amount less than the sum of three (3) months assessments plus reserve funds. The bond or coverage shall include a provision that calls for ten (10) days written notice to the Association, each holder of a Security Interest in a Lot, each servicer that services a FNMA-owned or FHLMX-owned mortgage on a Lot and the insurance trustee, if any, before the bond can be cancelled or substantially modified for any reason. When either (I) separate bank accounts for working funds and reserves are maintained and monthly checks are sent directly to the Association, (II) a management company maintains separate records and bank accounts for each association's reserve account, or (III) two (2) directors must sign any check written on the reserve account, then the fidelity bond or coverage may be in an amount equal to three (3) months Common Expense Assessments on all Lots.
- 17.5 Lot Owner Policies. An insurance policy issued to the Association does not preclude Lot Owners from obtaining insurance for their own benefit.
- 17.6 Workers Compensation Insurance. The Executive Board shall obtain and maintain Workers Compensation

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insurance to meet the requirements of the laws of the State of Colorado.

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- 17.7 Directors and Officers Liability Insurance. The Executive Board may obtain and maintain directors and officers liability insurance covering all of the Directors and Officers of the Association. This insurance will have limits determined by the Executive Board.
- 17.8 Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association.
- 17.9 Premiums. Insurance premiums for insurance carried or to be carried by the Association shall be a Common Expense.
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ARTICLE XVIII

Notice and Comment; Notice and Hearing

- 18.1 Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules, whenever the Documents require that an action be taken after "Notice and Comment," and at any other time the Executive Board determines, the Lot Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action either shall be given to each Lot Owner in writing, delivered personally or by mail to all Lot Owners at such address as appears in the records of the Association, or it shall be published in a newsletter or similar publication which is routinely circulated to all Lot Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Lot Owner to be heard at a formally constituted meeting.
- 18.2 Right to Notice and Hearing. Whenever the Documents require that an action be taken after "Notice and Hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the Manager, etc.) shall give written notice of the

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proposed action to all Lot Owners or occupants of Lots whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Any evidence shall be duly considered, but is not binding in making the decision. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

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- 18.3 Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

ARTICLE XIX
Executive Board

- 19.1 Association Records and Minutes of Executive Board Meetings. The Executive Board shall permit any Lot Owner, or holder, insurer or guarantor of first mortgages secured by Lots, to inspect the records of the Association and the minutes of Executive Board and committee meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.
- 19.2 Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration and the Bylaws. The Executive Board shall have, subject to the limitations contained in this Declaration, the powers necessary for the administration of the affairs of the Association and of the Subdivision, which shall include, but not be limited to, the following:

a. adopt and amend Bylaws, Rules and Regulations;

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- b. adopt and amend budgets for revenues, expenditures and reserves;
- c. collect Common Expense Assessments from Lot Owners;
- d. hire and discharge managing agents;
- e. hire and discharge independent contractors, employees and agents other than managing agents;
- f. institute, defend or intervene in litigation or administration proceedings or seek injunctive relief for violation of or otherwise enforce the Association's Declaration, Bylaws or Rules in the Association's name, on behalf of the Association or two (2) or more Lot Owners on matters affecting the Subdivision;
- g. make contracts and incur liabilities;
- h. regulate the use, maintenance, repair, replacement and modification of the Common Elements and the landscaped exterior portions of the Lots and the exterior roofs and walls of the Residences, including but not limited to enforcing parking restrictions along private streets within the property, such as those required and imposed by Jefferson County and/or the Plat;
- i. cause additional improvements to be made as a part of the Common Elements;
- j. acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to Section 13.4 above;
- k. grant easements for any period of time, including permanent easements, and leases, licenses and concessions through or over the Common Elements, for no more than one (1) year;
- l. impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements, and for services provided to Lot Owners;
- m. impose a reasonable charge for late payment of assessments, and after Notice and Hearing, levy reasonable fines for violations of this

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- Declaration, the Bylaws, Rules and Regulations of the Association;
- n. impose a reasonable charge for the preparation and recordation of amendments to this Declaration and for a statement of unpaid assessments;
 - o. provide, at option of Executive Board, for the indemnification of Association's Officers/Executive Board and/or maintain Directors and Officers liability insurance;
 - p. assign the Association's right to future income, including the right to receive Common Expense Assessments;
 - q. exercise any other powers conferred by this Declaration or the Bylaws;
 - r. exercise any other powers that may be exercised in this state by legal entities of the same type as the Association;
 - s. exercise any other power necessary and proper for the governance and operation of the Association; and
 - t. by resolution, establish permanent and standing committees of Directors to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Lot Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Lot Owner within forty-five (45) days of publication of the notice. If an appeal is made, the committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

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- 19.3 Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Subdivision or to elect Members of the Executive Board or determine the qualifications, powers and duties or terms of office of Executive Board Members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

ARTICLE XX
Open Meetings

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- 20.1 Access. All meetings of the Executive Board, at which action is to be taken by vote, will be open to the Lot Owners, except as hereafter provided.
- 20.2 Notice. Notice of every such meeting will be given not less than twenty four (24) hours prior to the time set for such meeting by posting such notice in a conspicuous location in the Subdivision, except that such notice will not be required if an emergency situation requires that the meeting be held without delay. 39
- 20.3 Executive Sessions. Meetings of the Executive Board may be held in executive session, without giving notice and without the requirement that they be open to Lot Owners, in either of the following situations only:
- a. if no action is taken at the executive session requiring the affirmative vote of Directors; or
 - b. if the action taken at the executive session involves personnel, pending litigation, contract negotiations, enforcement actions, matters involving the invasion of privacy of individual Lot Owners, matters which are to remain confidential by request of the affected parties and agreement of the Board or actions taken by unanimous consent of the Board.

ARTICLE XII
Condemnation

If part or all of the Subdivision is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with a plan adopted by the Association, which plan must be approved by at least seventy percent (70%) of the Lot Owners.

ARTICLE XIII
Miscellaneous Provisions

- 22.1 Captions. The captions contained in the Documents are inserted only as a matter of convenience and for

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reference, and no way define, limit or describe the scope of the Documents or the intent of any provision thereof.

- 22.2 Gender. The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.
- 22.3 Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur. 40
- 22.4 Validity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and if a provision is invalid, all of the provisions of the Documents shall continue in full force and effect.
- 22.5 Conflict. The Documents are intended to comply with the requirements of all applicable laws. If there is any conflict between the Documents and the provisions of any applicable statute, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

ARTICLE XIII
BURDENS AND BENEFITS OF DECLARATION

- 23.1 Covenants Running with Property. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Property.
- 23.2 Binding Upon and Inure to the Successors. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Association and all Owners, and upon and to their respective heirs, executors, administrators, personal representatives, successors and assigns. Any right or any interest reserved or contained in this Declaration to or for the benefit of the Declarant may be transferred or

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assigned by the Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association or other entity.

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ARTICLE XXIV
DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

24.1 Development Rights and Special Declarant Rights.
Declarant reserves, for itself and its successors in title, whether specifically recited in a deed or grant of a Unit from Declarant to its successor in title, for seven (7) years after the recording of the Declaration, the following Development Rights and Special Declarant Rights:

- a) The right to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements, subdivide Units or complete or make improvements, as the same may be indicated on maps or plats filed of record or filed with the Declaration;
- b) the right to create or construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements;
- c) the right to enlarge any existing Units, enlarging the Common Elements, reducing or diminishing the size of Units or the size of areas of the Common Elements;
- d) the right to exercise any development rights reserved in the Declaration or allowed in the Act;
- e) the right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary;
- f) the right to make the Common Interest Community subject to a master association and master declaration;

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- g) the right to merge or consolidate the Common Interest Community with another Common Interest Community;
- h) the right to appoint or remove any Officer of the Association or any Director during the Declarant Control period;
- i) the right to amend the Declaration in connection with the exercise of any development right;
- j) the right to amend the Maps or Plats in connection with the exercise of any development right;
- k) the right to complete improvements indicated on the Maps or Plats filed with the Declaration;
- l) the right to enter into a professional management contract before control of the project is passed to the Unit Owners if the contract gives the Association the right to terminate.

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Each of the foregoing reserved rights may only be exercised by Declarant in a manner consistent with the development plans.

24.2 Additional Reserved Rights. In addition to the rights set forth above, warrant, for itself and its successors in title, whether specifically recited in a deed or grant of a right from Declarant to its successor in title, also reserves the following additional rights;

- a) Sales. The right to maintain and the right to remove mobile and other sales offices, parking lots, management offices, and models in Units or on the Common Elements, including the use of a vacant Unit and to conduct general sales activities in a manner which shall not unreasonably disturb the rights of the Unit Owners;
- b) Signs. The right to maintain signs and advertising in the Units owned by Declarant and in the Common Elements to advertise the Common

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Interest Community or other communities developed or managed by or affiliated with Declarant;

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- c) **Dedications.** The right to establish, from time to time, by dedication or otherwise, public streets, utility and other easements for purposes, including but not limited to, streets, paths, public access, access, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Unit Owners within the Common Interest Community;
 - d) **Use Agreements.** The right to enter into, establish, execute, amend, and otherwise deal with contract and agreements for the use, lease, repair, maintenance, or regulations of parking and/or recreational facilities and/or Common Elements, which may or may not be a part of the Common Interest Community, for the benefit of the Unit Owners and the Association;
 - e) **Construction Easement.** Declarant and its assignees expressly reserve the right to perform warranty work and repairs and construction work and to store materials in secure areas, in Units and in Common Elements, and the future right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Unit Owner or holder of a Security Interest. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in the Declaration and for access and utilities to any properties which Declarant had the right to add to the Community, but which have not been added. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the real estate. Declarant has an easement through the Common elements as may be reasonably necessary for the purpose of discharging its obligation as or exercising special Declarant rights. Declarant reserves the right to retain all its

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property and equipment used in the sales, management, construction, and maintenance of the Property, whether or not they have become fixtures;

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- f) Other Rights. The right to exercise any additional reserved right created by any other provision of the Declaration.

24.3 Rights Transferable / Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of Jefferson County. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of the Act without the consent of the Association, any Unit Owners, or any holders of Security Interests.

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24.4 No Further Authorizations Needed. The consent of Unit Owners or holders of Security Interests shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at their sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the Property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Common Interest Community beyond the number of Units initially submitted.

24.5 Amendment of the Declaration or Map or Plat. If Declarant or its assignee elects to exercise any reserved rights, that party shall comply with the Act.

24.6 Interpretation. Recording of amendment to the Declaration and the Map or Plat pursuant to reserved rights in the Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically:

- a) vest in each existing Unit Owner the reallocated Allocated Interests appurtenant to their Unit; and,

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- b) vest in each existing Security Interest a perfected Security Interest in the reallocated Allocated Interests appurtenant to the encumbered Unit.

Further, upon the recording of an amendment to the Declaration, the definitions used in the Declaration shall automatically be extended to encompass and to refer to the Common Interest Community as expanded and to any additional improvements, and the same shall be added to and become a part of the Common Interest Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common elements, whether or not reference is made to any amendment of the Map or Plat. Reference to the Declaration and Map or Plat in any instrument shall be deemed to include all amendments to the Declaration and the Map or Plat without specific reference thereto.

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24.7 Protection of Existing Unit Owners and Lenders. Upon exercise of any reserved expansion rights, the existing Unit Owners and holders of a first lien Security Interests on existing Units shall not be liable for liens as may arise by virtue of Declarant's construction of new Units, new Common Elements, or any other improvements then constructed by Declarant or constructed at Declarant's direction. All taxes, mechanics liens, and other charges on property being added to the Community must first be paid by Declarant. In this regard, Declarant agrees to and shall indemnify the existing Unit Owners, holders of first lien Security Interests, and the Association from any liability for those expenses. Further, Declarant shall purchase, at Declarant's own expense, a general liability insurance policy in an amount of not less than One Million Dollars (\$1,000,000) to cover general liability to existing Unit Owners, existing holders of first lien Security Interests, and the Association as a result of any expansion of the Community.

24.8 Termination of Reserved Rights. The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (a) reinstated or extended by the Association, subject

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to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion rights by Declarant, (b) extended as allowed by law, or c) terminated by written instrument executed by Declarant, recorded in the records of the Office of the Clerk and Recorder of Jefferson County, Colorado.

24.8 Voting/Ownership by Declarant. Nothing in this Article shall affect Declarant's right, as a Unit Owner, to exercise the votes allocated to Units which Declarant owns and as further described in the Governing Documents. However, Declarant shall not retain an ownership interest in or have any rights to any of the facilities or Common Elements related to the Project. The amenities and facilities including parking and recreational facilities shall be owned by the Unit Owner and shall not be subject to a lease between the unit Owners and another party. 46

24.9 Transfer of Control of the Association. Declarant shall transfer control of the Association to the Unit Owners no later than either:

- a) sixty(60) days after conveyance of Seventy-Five Percent (75%) of the maximum build-out of Units provided in this Declaration to Unit owners other than Declarant;
- b) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business; or,

24.10 Technical, Clerical, Typographical, or Clarification Amendment by Declarant.

If Declarant shall determine that any amendments to the Declaration on the Map or Plat shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical, or typographical error or clarification of a statement or for any changes to Property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners. Each such amendment of the Declaration shall be made, if at all, by

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Declarant prior to the expiration of seven (7) years from the date the Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest in hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Unit Owner and holder of a Security Interest. Each deed, security interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent of the reservation of, the power of Declarant to make, execute and record and amendment under this Section.

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Declarant: *Karl Koch, Karl Development LLC*

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this day of July 27th, 1998.

STATE OF COLORADO }
COUNTY OF JEFFERSON } ss.

The foregoing instrument was acknowledged before me this
19th day of July, 1998, by Karl J Koch, Karl Development LLC

Witness my hand and official seal.

My commission expires _____ Term



JOAN FITZ-GERALD
JEFFERSON COUNTY CLERK

GOLDEN, COLO. 80419

Notary Public DEPUTY

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EXHIBIT A

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DESCRIPTION OF REAL ESTATE

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Koch Subdivision Lots 1-12.

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~~EXHIBIT A~~
TITLE EXCEPTION
BOUNDARY AGREEMENT

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