



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE
VILLAGE AT ROSE FARM



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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE VILLAGE AT ROSE FARM

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VILLAGE AT ROSE FARM is made as of _____, 2023, by Todd Gabriel and Ridgeview Investments, LLC (collectively hereinafter referred to as "Declarant").

ARTICLE I
GENERAL

1.1 Purposes. This "Declaration" (as defined below) is executed in order to impose upon certain real property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of such property, and to establish a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of such property. In furtherance thereof, this Declaration provides for the creation of The Village at Rose Farm Homeowners Association, Inc. to own, operate and maintain the Common Elements (as defined below), and to administer and enforce the provisions of this Declaration, the Bylaws and the Rules (as such terms are defined below).

1.2 Declaration. Declarant, for itself and its successors and assigns, hereby declares that all of the Property (as defined below) shall, from and after the date hereof, constitute a planned community and shall be owned, held, conveyed, encumbered, leased, in furtherance of, and the same shall constitute, a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Property and to enhance the value, desirability and attractiveness of the Property. This Declaration shall: (i) run with the Property at law and as an equitable servitude; (ii) bind any Person (as defined below) having or acquiring any right, title or interest in any portion of the Property; (iii) inure to the benefit of and be binding upon every part of the Property and every interest therein; and (iv) inure to the benefit of, be binding upon and be enforceable by Declarant and its successors in interest and assigns, each Owner (as defined below) and its heirs, successors in interest and assigns, and the Association (as defined below) and its successors in interest.

ARTICLE II
DEFINITIONS

The following terms shall have the meanings set forth below when used herein.

2.1 Act. The Colorado Common Interest Ownership Act, codified at C.R.S. § 38-33.3-101 et seq., as the same has been and may hereafter be amended from time to time, and any statute which from time to time may replace the same.

2.2 Additional Lands. The real property described on Exhibit C.

2.3 Architectural Review Committee. The committee formed pursuant to Section 12.2, which committee shall have exclusive jurisdiction over all construction, alteration and removal of Improvements on any portion of the Property.

2.4 Articles of Incorporation or Articles. The Articles of Incorporation of the Association which have been or will be filed with the Secretary of State of the State of Colorado, as amended from time to time.

2.5 Assessment. An assessment, which may be a Common Assessment, a Limited Assessment, a Special Assessment or a Specific Assessment, that is levied by the Association on one or more Lots pursuant to the terms of this Declaration.

2.5.1 Association. The Village at Rose Farm Homeowners Association, Inc.

2.6 Board of Directors or Board. The Board of Directors of the Association.

2.6.1 Bylaws. The Bylaws of the Association, as amended from time to time.

2.7 Common Allocation. With respect to each Lot, a percentage derived from a fraction, the numerator of which is the Voting Units attributable to such Lot and the denominator of which is the Total Voting Units. The Common Allocation and Voting Units for each initial Lot is detailed on Exhibit D. In the event that any Lot is subdivided into two or more Lots, or two or more Lots are combined into fewer Lots, pursuant to the provisions of Sections 5.1(f) and 5.2 of this Declaration, the Voting Units of such Lots shall be reallocated among the resulting Lots, with such resulting change in the Common Allocation for such Lots being deemed to occur automatically without any further action by the Association or Declarant; provided, however, that the Association and, during the Development Period, Declarant shall have the right to Record a Supplemental Declaration that causes Exhibit D to conform to and accurately detail the Actual Common Allocation for each Lot then applicable.

2.8 Common Assessment. An Assessment levied on all Lots. subject to assessment under Article X to fund the Common Expenses as more particularly described in Section 10.3.

2.9 Common Elements. All real property, easements, possessory interests in property and Improvements within The Village at Rose Farm owned or to be owned and maintained by the Association pursuant to this Declaration for the benefit, use or enjoyment of the Owners, which shall be designated either General Common Elements or Limited Common Elements, as appropriate. Subject to Sections 5.1(b) and 5.2, the Common Elements are described on Exhibit E. Common Elements described on Exhibit

E as Improvements located or to be located on or within public rights-of-way shall, for the purposes of this Declaration, be deemed to be owned by the Association, even if such Improvements are, by operation or requirement of law, actually owned by the Town or another public entity.

2.10 Common Expenses. Except for those costs and expenses expressly excluded below, all costs, expenses and financial liabilities incurred by the Association pursuant to this Declaration or the Bylaws, including, without limitation: all costs of operating, managing, maintaining, replacing or restoring the General Common Elements and the Association's personal property; taxes on the General Common Elements to the extent payable by the Association; and general administrative costs incurred by the Association. Common Expenses shall not include Limited Common Elements Expenses or costs or expenses to be funded by or payable through the levying of Specific Assessments.

2.11 County. The County of Larimer, State of Colorado.

2.12 Declarant. Todd Gabriel and Ridgeview Investments, LLC, or any successor in interest or assignee who takes title to any portion of the Property or the Additional Lands for the purpose of development and/or sale and who is designated as the Declarant in a Recorded instrument executed by the immediately preceding Declarant.

2.13 Declarant Control Period. The period beginning on the date the Association is formed and ending on the first to occur of (i) sixty (60) days after 75% of the maximum number of Lots that may be created pursuant to Section 3.3 have been conveyed to Owners other than Declarant; (ii) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business; (iii) (2) years after any right to add new Lots is last exercised by Declarant; or (iv) the date on which Declarant, in its sole discretion, voluntarily terminates the Declarant Control Period pursuant to a Recorded statement of termination; provided, however, that in this last event, Declarant may require that, for the balance of what would have been the Declarant Control Period had Declarant not terminated the same, certain actions of the Association or the Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective. During the Declarant Control Period, Declarant shall have the right to appoint and remove the Directors and the officers of the Association to the extent permitted by the Act.

2.14 Declaration. This Declaration of Covenants, Conditions and Restrictions for The Village at Rose Farm, as amended or supplemented from time to time by a Supplemental Declaration or otherwise.

2.15 Design Guidelines. The Rules promulgated by the Architectural Review Committee pursuant to Section 12.3 governing the construction, installation, modification or renovation of Improvements on any Lot.

2.16 Developer. Any Owner who purchases one or more Lots for the purpose of constructing Improvements for later sale to residential consumers, for further subdivision pursuant to Sections 5.1(f) and 5.2 of this Declaration into two or more Lots, and/or development, leasing or resale in the ordinary course of such Owner's business.

2.17 Development Period. The period of time during which Declarant is entitled to exercise Development Rights and Special Declarant Rights. The Development Period shall commence upon the Recording of this Declaration and shall terminate 30 years later unless reinstated or extended by agreement between Declarant and the Association; provided, however; that the exercise of any Special Declarant Rights pursuant to such agreement shall be subject to such terms as the Board may impose in such agreement.

2.18 Development Rights. The rights reserved by Declarant pursuant to Section 5.1.

2.19 Director. A member of the Board of Directors.

2.20 Dwelling Unit. One or more connected rooms constituting a separate, independent housekeeping for permanent residential occupancy by a familial group and containing at least one kitchen facility.

2.21 Eligible Holder. A Mortgagee who provides a request for notices to the Association, stating the name and address of such Mortgagee and the street address, or, if not available, other sufficient identification, of the Lot to which its Mortgage relates. The Fair Housing Administration and the Department of Veterans Affairs shall be considered Eligible Holders regarding any Lots for which they are insuring or guarantying Mortgages if they satisfy the written request requirements described above in this Section.

2.22 First Mortgage. A Mortgage that is Recorded and has priority of record over all other Recorded liens except those liens made superior by statute (e.g., general ad valorem tax liens and special assessments, mechanics' liens and, to the extent set forth in the Act, the Association's liens for Assessments).

2.23 General Common Elements. Common Elements that are for the benefit, use or enjoyment of all of the Owners, subject to the terms and conditions of this Declaration. Subject to Sections 5.1(b) and 5.2, the General Common Elements are described on Exhibit E. Additional General Common Elements may be created by Declarant pursuant to Article V.

2.24 Improvements. All structures, improvements and appurtenances on or to real property of every type and kind including, without limitation, buildings, outbuildings, storage sheds, fixtures, utilities, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, facilities associated with regular or cable or satellite television, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, grading, drainage facilities, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone or other utilities, as well as those construction activities necessary to build such items.

2.25 Reserved. [This section intentionally omitted].

2.26 Reserved. [This section intentionally omitted].

2.27 Reserved. [This section intentionally omitted].

2.28 Lot. A physical portion of the Property, whether improved or unimproved, that is designated for separate ownership pursuant to this Declaration and on which at least one Dwelling Unit may be constructed pursuant to this Declaration and the Plat or other applicable zoning. Subject to Sections 5.1(b) and 5.2, the Lots are legally described and identified on the Plat and are listed on Exhibit D.

2.29 Member. A Person who is a member of the Association pursuant to Section 9.1.

2.30 Mortgage. An unpaid or outstanding mortgage, deed of mortgage, deed to secure debt or any other form of security instrument encumbering the Property or a portion thereof.

2.31 Mortgagee. A beneficiary or holder of a Mortgage.

2.32 Owner. A Person or Persons, including Declarant or a Developer, owning fee simple title of record to any Lot from time to time. The term "Owner" shall include a seller under an executory contract for sale and exclude a buyer thereunder and shall include a landlord under a lease affecting a Lot and exclude a tenant thereunder.

2.33 Reserved. [This section intentionally omitted]

2.34 Reserved. [This section intentionally omitted]

2.35 Party Wall and Party Wall Lots. As used herein, "Party Wall" shall mean and refer to each wall which is constructed as a part of a Dwelling Unit and is contiguous to and located between two Dwelling Units.

2.36 Permittee. A Person, other than an Owner, who is a tenant or occupant of a Lot or a Person who is an agent, employee, customer, contractor, licensee, guest or invitee of an Owner or of such tenant or occupant.

2.37 Person. A natural person, corporation, partnership, limited liability company, trustee or other legal entity.

2.38 Plat. The Final Plat of The Village at Rose Farm, recorded in conjunction with this Declaration pursuant to the Act, as such plat is amended or supplemented from time to time pursuant to this Declaration and/or the Act. Without limiting any other provision of this Declaration, the Plat may be supplemented or amended by a subdivision or re-subdivision plat that is filed pursuant to the Town's subdivision regulations, references the Plat as originally recorded and otherwise satisfies the requirements of the Act. The term "Plat" shall also include any subdivision plat of all or any portion of the Additional Lands which is annexed into The Village at Rose Farm from time to time.

2.39 Property. All of the real property described on Exhibit A, the appurtenances thereto, and all Improvements now in place or hereafter constructed thereon, along with any portion of the Additional Lands annexed as part of the Property from time to time in accordance with Article V and all Improvements that are in place thereon as of such annexation or are thereafter constructed thereon. All easements and licenses and other matters of Record affecting the Property known by Declarant are listed on Exhibit B.

2.40 Quorum. With respect to a meeting of the Members or the Board of Directors, that percentage or number of the Members or Directors that constitutes a quorum pursuant to the applicable provisions of the Bylaws.

2.41 Records. The official real property records of the County; the phrases "to Record" and "Recording" mean, respectively, to file or filing for recording in the Records, and the phrases "of Record" and "Recorded" mean having been recorded in the Records.

2.42 Rules. The rules and regulations governing the use of the Property which are adopted from time to time by the Association, the Board or the Architectural Review Committee, including, without limitation, the Design Guidelines. The Rules shall be binding upon all Owners and their Permittees.

2.43 Special Assessment. An Assessment levied in accordance with Section 10.5.

2.44 Special Declarant Rights. The rights of Declarant set forth in Article VII.

2.45 Specific Assessment. An Assessment levied in accordance with Section 10.6.

2.46 Subsidiary Association. A "unit owners association" as defined in the Act created pursuant to a Subsidiary Declaration.

2.47 Subsidiary Declaration. A Recorded declaration of covenants, conditions and restrictions which provides a general scheme for the development of a specific person of the Property and is a "declaration" pursuant to the Act.

2.48 Supplemental Declaration. An amendment to this Declaration filed in the Records pursuant to this Declaration.

2.49 Taking. A taking by eminent domain or conveyance in lieu thereof.

2.50 Total Voting Units. The sum of all the Voting Units attributed to all of the Lots.

2.51 Town. The Town of Berthoud, Colorado.

2.52 Voting Units. The Voting Units allocated to each Lot. The Voting Units allocated to the initial Lots are set forth on Exhibit D.

ARTICLE III CREATION OF THE COMMUNITY

3.1 Creation. Upon the Recording of this Declaration and the Plat, the Property shall be a "planned community" pursuant to the Act, and the name of the planned community shall be "The Village at Rose Farm."

3.2. Division of Property. Pursuant to the Act and subject to Sections 5.1 (b) and 5.2, the Property is divided into the Lots identified and legally described on the Plat. The Lots are designated for separate ownership.

3.3 Number of Lots. The maximum number of Lots that may be created in The Village at Rose Farm is 66.

3.4 Allocations.

(a) Allocation of Votes. In all matters submitted to a vote of the Members of the Association, each Lot is allocated a number of votes equal to the Voting Units for such Lot; provided, however, that no vote shall be exercised for any Lot owned by the Association and no vote shall be exercised for any property which is exempt from assessment under Section 10.12.

(b) Allocation of Common Expenses. Each Lot is allocated, and the Owner of the Lot is liable for, a percentage of the Common Expenses equal to such Lot's Common Allocation. All other costs and expenses of the Association are allocated among the Lots as otherwise provided in this Declaration.

ARTICLE IV
USE RESTRICTIONS

4.1 Residential and Business Uses.

(a) Residential Use. Except as set forth in this Section 4.1, the Property shall be used only for residential, recreational and related purposes consistent with this Declaration.

(b) Conduct of Business Activities. No business or trade, may be conducted in or from any Lot, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activities is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all applicable zoning and other legal requirements; (c) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

(c) Business or Trade. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the 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) such activity is engaged in full- or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

(d) Exceptions. Notwithstanding the above, the leasing of a Lot and the management of such Lot as rental property shall not be considered a business or trade within the meaning of this Section 4.1. This Section 4.1 shall not apply to any activity conducted by Declarant or a Developer approved by Declarant with respect to the development or sale of the Property, or to any activity conducted by Declarant or the Association that relates to the performance of their respective rights or obligations under this Declaration or otherwise benefits the Owners.

4.2 Leasing of Lots. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the Owner, for which the Owner receives any consideration or benefit including, without limitation, a rent, fee, service, gratuity or emolument. Any lease must be in a term of no less than six months. The Owner must make available to the lessee copies of this Declaration, the Bylaws and the Rules.

4.3 Subdivision of Lot: Time-Sharing. No Lot shall be subdivided, or its boundary lines changed except pursuant to the terms and limitations of Article VIII or the exercise of Development Rights by Declarant. No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

4.4 Water and Mineral Operations. No oil or water drilling, oil or water development operations, oil refining, quarrying or mining operations, of any kind shall be permitted on the Property except by Declarant or by a party acting under written authorization of Declarant.

4.5 Unightly or Unkept Conditions. Except for the reasonable activities of Declarant, Developer, and persons in the course of carrying out construction in a timely and customary manner with due diligence, all portions of a Lot outside of enclosed structures shall be kept in a clean and tidy condition at all times. Nothing shall be done, maintained, stored or kept outside of enclosed structures on a Lot which, in the determination of the Board, causes an unclean, unhealthy or untidy condition to exist or is obnoxious to the senses. Any structures, equipment or other items which may be permitted to be erected or placed on the exterior portions of Lots shall be kept in a neat, clean and attractive condition and shall promptly be removed upon request of the Board if, in the judgment of the Board, they have become rusty or dilapidated or have otherwise fallen into disrepair. The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions is prohibited, unless either conducted entirely within an enclosed garage or, if conducted outside, begun and completed within 12 hours, and not done on a regular or frequent basis. No Owner or Permittee shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances in any drainage ditch, stream, pond or lake or elsewhere on the Property, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff and such application complies with applicable law.

4.6 Quiet Enjoyment. Except for the reasonable activities of Declarant, Developer, and persons in the course of carrying out construction in a timely and customary manner with due diligence, nothing shall be done or maintained on any part of a Lot that emits foul or noxious odors outside the Lot or creates noise or other conditions that tend to disturb the peace, quiet, safety, comfort or serenity of the occupants and invitees of other Lots. Illegal activities, and any activities which, in the reasonable determination of the Board, tend to cause embarrassment, discomfort, annoyance or nuisance to persons using the Common Elements or to the occupants and Permittees of other Lots, shall be prohibited on the Property.

4.7 Prohibited Conditions. The following conditions, structures and activities are prohibited on the Property unless prior approval in voting is obtained from the Architectural Review Committee:

(a) Antennas. To the fullest extent allowed by applicable law, no exterior antennas of any kind, including, without limitation, satellite dishes, shall be permitted except with the approval

of the Association, which approval may be granted in blanket form by the Rules with respect to particular types of antennas or satellite dishes;

(b) Tree Removal. No trees or shrubs shall be removed except in compliance with Article XII;

(c) Air-Conditioning Units. No window air-conditioning units or evaporative coolers shall be installed;

(d) Lighting. Exterior lighting visible from the street shall not be permitted except for: (i) lighting approved for installation on a Lot pursuant to Article XII; (ii) street lights in conformity with an established street lighting program approved by the Town; and (iii) seasonal decorative lights during the holiday season;

(e) Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation, exterior sculptures, or similar items shall be permitted outside of any structure on a Lot, including, without limitation, fountains or clotheslines unless allowed by the Rules or otherwise specifically approved by the Architecture Review Committee;

(f) Energy Conservation Equipment/Rain Barrels. No solar energy collector panels or attendant hardware or other energy conservation equipment, or rain barrels shall be constructed, installed or maintained unless they are an integral and harmonious part of the architectural design of a structure and approved by the Architectural Review Committee;

(g) Signs and Flags. The Board may adopt from time to time Rules governing the display of signs and flags upon Lots, subject to applicable law, and no sign or flag of any kind, including, without limitation, banners or similar items with commercial messages or advertising or providing directional information, shall be displayed on the Property unless in compliance therewith and having first received the written consent of the Board; provided that, notwithstanding the foregoing, entry and directional signs installed by Declarant and signs erected pursuant to Section 7.3 are permitted without regard to such rules and regulations and without the necessity of Board consent;

(h) Utility Lines. No overhead utility -lines, including lines for cable television, shall be permitted, except for temporary lines as required during construction and lines installed by or at the request of Declarant or Developer;

(i) Doors and Windows. No "burglar bars," steel or wrought iron bars or similar fixtures, whether designed for decorative, security or other purposes, shall be installed on the exterior of any windows or doors of any building.

4.8 Animals and Pets. No animals, livestock, bees or poultry of any kind shall be raised, bred, boarded or kept on any portion of the Property, except that a reasonable number of dogs, cats or other usual and common household pets, which are bona fide household pets, or any combination of the foregoing not exceeding a reasonable aggregate number, may be kept on a Lot, subject to the following provisions and in accordance with applicable law. Any pet which is permitted to roam free, or which, in the sole discretion of the Association, makes objectionable noise or endangers the health of or constitutes a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Property, shall be removed upon request of the Board. If the Owner responsible for such pet fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. All pets shall be kept under the control of their Owner at all times, whether on or off such Owner's Lot. Dogs shall be permitted off-leash on Lots only within portions of the Lot which are enclosed by traditional or buried electric pet coral fences. Any dog that is outside the Lot on which it resides or is in a portion of such Lot which is not enclosed by a traditional or buried electric pet control fence shall be confined on a leash held by a responsible person. Any Owner who walks his or her dog on portions of the Property other than the Lot occupied by such Person shall immediately remove any excrement deposited by the dog on such other portions of the Property. The Board shall have the authority, but shall not have any obligation, to restrict or prohibit the keeping of individual dogs or breeds of dogs with a known history of dangerous or vicious behavior. All such animals shall be licensed according to Town Ordinance requirements and shall be registered with the Association. Failure to register any such animal shall automatically subject the Owner to a monetary fine in an amount to be determined by the Board.

4.9 Parking and Prohibited Vehicles.

(a) Parking. Vehicles shall be parked only in the garages, in the driveways, if any, serving the Lots or in appropriate spaces or areas designated by the Board. Vehicles shall be subject to such reasonable rules and regulations as the Board may adopt. Declarant and/or the Association may designate certain parking areas for visitors or guests and may adopt reasonable rules governing the use of such areas. Nothing herein shall be construed to prohibit use of a public right of way allowed by applicable provisions of the ordinances or rules of the Town or applicable statutes of the State of Colorado, as a matter of public policy.

(b) Prohibited Vehicles. Except as otherwise set forth in the Rules, commercial vehicles, vehicles with commercial lettering on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or specific areas, if any, designated by the Board. Stored vehicles and vehicles which are inoperable or do not have current operating licenses shall not be permitted on the Property except within enclosed garages. For purposes of this Section 4.9, a vehicle shall be considered "stored" if it has not been moved for seven consecutive days without the prior approval of the Board, or is up on blocks or covered with a tarpaulin and remains on blocks or so covered

for seven consecutive days without the prior approval of the Board. Service, construction equipment and vehicles and trailers, and delivery vehicles may be parked on the Property for such periods of time as are reasonably necessary in connection with construction or to provide services or to make deliveries to the Property. Any vehicle parked in violation of this Section 4.9 or parking rules promulgated by the Board may be towed at the direction of the Association and at the expense of the Owner of the affected Lot or the owner of the vehicle. Nothing herein shall be construed to prohibit parking of vehicles that are by applicable statutes of the State of Colorado allowed to be parked on the Property as a matter of public policy in accordance with such statutes.

4.10 Fencing. Declarant may construct entryways, fences, fence pillars or walls on the Common Elements or those portions the Property owned by Declarant. Declarant may construct fencing on a Lot that meets the approved fencing design in the recorded landscaping plan approved by the Town for the Property and any other requirements of the Town. No other Owners shall construct, modify, replace, paint or obstruct any fence, fence pillars or walls except in accordance with Article XII. For purposes of this section, hedges shall be considered to be the same as fences and subject to the same restrictions. (The term "wall" as used in this section shall mean walls which are free-standing and intended to enclose the areas outside a structure.)

Material for containment of any pets permitted by this Declaration may be added to perimeter fencing in accordance with Article XII.

4.11 Reserved. [This section intentionally deleted].

4.12 Landscaping. All landscaping of Lots shall be in accordance with the requirements of the Architectural Review committee requirements and shall be installed, within such time period following issuance of a certificate of occupancy for a dwelling on the Lot as the Board may from time-to-time establish, in accordance with requirements, if any, of the development plan(s) for the Property approved by the Town, including, without limitation, any of the landscape notes therein. All landscaping shall be maintained in good condition by the Owner of the Lot.

4.13 Irrigation. Except as approved and provided by the Association, no sprinkler or irrigation system of any type which draws upon water from creeks, streams, rivers, ponds, wetlands, canals, ditches or other ground or surface waters on the Property shall be installed, constructed or operated on the Property. However, Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Common Elements and other purposes consistent with their respective rights and obligations under this Declaration. Except as approved and provided by the Association, all sprinkler and irrigation systems serving the Lots shall draw upon public water supplies only and shall be subject to approval in accordance with Article XII of this Declaration. Private irrigation wells are prohibited on the Lots.

4.14 Grading. Drainage. Except as may be necessary to meet the grading plan approved by the Town, no Person shall alter the grading of any Lot without prior approval pursuant to Article XII of this

Declaration. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers or storm drains..

4.15 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge of shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

4.16 Tents, Mobile Homes and Temporary Structures. Except as provided below, no tent, shack, mobile home or other structure of a temporary nature shall be placed upon a Lot or any part of the Property. This prohibition shall not apply to restrict the construction or installation of temporary construction sales trailers or similar temporary structures used in connection with construction, development and sale of the Property.

4.17 Firearms, Other Weapons. The discharge of firearms or other weapons on the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size. The term "weapons" includes, but is not limited to bows, cross bows and other devices which propel objects capable of injuring persons or property; it does not include nail guns when used in construction on the Property.

4.18 Roads. No motor vehicles may be driven or operated upon any portion of the Property except for roads which have been platted on a subdivision plan or plat which is of Record or on driveways approved by the Architectural Review' Committee; provided that Declarant, the Association and any Developer shall be permitted to operate motor vehicles on the Property in connection with their respective activities under this Declaration.

4.19 Laws and Ordinances. Every Owner and Permittee shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Property. Any violation may be considered a violation of this Declaration: However, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

4.20 Occupants Bound. All provisions of this Declaration, the Bylaws and the Rules shall also apply to all occupants of any Lot and to Permittees of any Owner or occupant. Every Owner. shall cause all occupants of its Lot and its Permittees to comply with this Declaration, the Bylaws and the Rules.

4.21 Trash Services. Heavy trash hauling vehicles cause excessive wear upon streets and disrupt the peace of residents. To minimize the frequency of trash hauling vehicles and preserve roadways and the peace of the residents on the Property, except for the reasonable activities of Declarant, Developer, and persons in the course of carrying out construction in a timely and customary manner with due diligence. The Board may require all Owners to use a trash service designated from time-to-time by the Board.

ARTICLE V

DEVELOPMENT OF THE PROPERTY

5.1 Development Rights. Declarant hereby reserves the following Development Rights for the duration of the Development Period:

(a) Withdrawal of Property. To the extent permitted by the Act, Declarant reserves the right to amend this Declaration to withdraw all or any portion of the Property from the coverage of this Declaration whether such Property was originally described on Exhibit A or added by a Supplemental Declaration. For this purpose each portion of or tract within the Property having its own discrete legal description at the time of its inclusion within the Property, whether as a separate subdivision lot or plot or by its own metes and bounds description, shall constitute a severable portion of the Property that may be withdrawn independently of all other portions of the Property, and upon withdrawal shall become part of the Additional Lands. Upon such a withdrawal, the Common Allocation for each remaining Lot shall be subject to recalculation pursuant to the formula in Section 2.10, and the amendment to this Declaration effecting the withdrawal shall reflect such recalculation. Any amendment shall not require the consent of any Person other than the owner of the portion of the Property to be withdrawn, if other than Declarant. If the portion of the Property to be withdrawn includes any of the Common Elements, the Association shall consent to such withdrawal upon the request of Declarant. Notwithstanding the foregoing, no withdrawal shall be made that impairs access of the remainder of the Property to the public and private roadways serving the Property.

(b) Annexation of the Additional Lands. Declarant reserves the unilateral right, but not the obligation, to annex from time to time all or any portion of the Additional Lands into the Property causing them to be made part of the Property and subject to the provisions of this Declaration; provided, however, that such right of annexation shall apply only to those portions of the Additional Lands owned in fee simple by Declarant at the time of annexation or for which the owner has consented to such annexation. With respect to any portion of the Additional Lands annexed into the Property pursuant to this Section 5.1 (b), Declarant reserves the unilateral right to create additional Lots, General Common Elements and Limited Common Elements within and from such annexed portion of the Additional Lands as deemed appropriate by Declarant in its complete discretion. Furthermore, to the extent any subsequent Owner is obligated by agreement with Declarant to establish any Common Elements, those Common Elements will be regarded as established by Declarant for purposes of the foregoing, and the Association shall accept the conveyance of those Common Elements from the Owner as if the conveyance were made by the Declarant (provided the conveyance conforms with the Owner's agreement with Declarant). If Declarant annexes any portion of the Additional Lands not owned by Declarant at the request and with the consent of the owner of such portion of the Additional Lands, then as a condition to such annexation Declarant shall have the right to require that any mortgage or deed of trust lien or other lien of any nature encumbering the Additional Lands being annexed, whether of a voluntary or involuntary nature (excluding the lien for real property taxes not due and payable), be subordinated

of record to the provisions of this Declaration (including, without limitation, the rights of Declarant and the Association hereunder), which subordination shall be in a form acceptable to Declarant.

(c) Annexation of Other Property. Declarant reserves the right, but not the obligation, to annex additional property other than the Additional Lands to the extent allowed by the Act.

(d) Designation for Public Purposes. Declarant reserves the right to designate or dedicate sites within the Property for public or quasi-public facilities as provided in Section 5.3.

(e) Creation and Conversion of Common Elements. Declarant reserves the right to establish, create and convert General Common Elements and Limited Common Elements as provided in Section 5.4.

(f) Subdivision and Replatting. Declarant reserves the unilateral right to subdivide into additional Lots, change the boundary line of or replat any Lots or other portions of the Property owned by Declarant.

5.2 Exercise of Development Rights. Declarant shall exercise any Development Right by preparing, executing and Recording a Supplemental Declaration amending the Declaration as necessary to effectuate the exercise of such Development Right, which Supplemental Declaration shall be accompanied by any amendment or supplement to the Plat required by the Act. If the exercise of any Development Right by Declarant results in the creation of additional Lots or a reduction in the number of Lots, then the Supplemental Declaration effectuating the exercise of such Development Right shall include a revised Exhibit D conforming to and accurately detailing the new Common Allocation for each Lot pursuant to the formula prescribed in Section 2.10. If Declarant, by exercising any Development Right, creates any new Common Elements, then the Supplemental Declaration shall describe such newly created Common Elements and, in the case of newly created Limited Common Elements, designate the Lot or Lots to which such Limited Common Elements are allocated. Except as expressly provided to the contrary in this Declaration, Declarant's exercise of any Development Right shall not require the consent of any other Owner.

5.3 Governmental Interests. For so long as Declarant owns any of the Property or the Additional Lands, Declarant may designate and dedicate sites within the Property for fire, police and utility facilities, public schools and parks, and other public or quasi-public facilities. Such a site may include Common Elements, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance or dedication of the site (subject to Section 15.3), if so directed by Declarant. Such a site may also include other property not owned by Declarant provided the owner of such property consents. Subject to Declarant's consent during the Development Period, but otherwise within the discretion of the Board, the Association may dedicate portions of the Common Elements to the Town or to any other local, state or federal governmental or quasi-governmental entity, subject to such approval as may be required by Section 15.3.

5.4 Reserved. [This section intentionally omitted].

5.5 Plat Amendments. Declarant reserves the right to amend the Plat as it applies specifically to any Lot or other portion of the Property or the Additional Lands owned by Declarant or owned by another Owner with such Owner's consent. By taking title, each Owner of any Lot covenants and agrees to furnish cooperation (including any consent or joinder as required by the Town) in connection with and not object to such proposed amendment so long as the amendment is sought in a manner that complies with the procedures prescribed in the Town's zoning ordinance. No Owner required to cooperate with a proposed amendment to the Plat pursuant to this Section shall be required to incur any costs or expenses in connection with such cooperation. Notwithstanding the foregoing, no plat amendment shall be made that impairs access of the remainder of the Property to the public and private roadways serving the Property.

5.6 Development Credits. In the event that the Property and Additional Lands are subject to a subdivision improvement, development or similar agreement (an "SIA"), and under the provisions of such SIA, the Property and Additional Lands are allocated certain credits for public dedications and infrastructure development related to the Property and Additional Lands or the ownership thereof, all such credits, and any similar economic benefits inuring in favor of the Property or Additional Lands or any portion thereof (or the Person owning the same), whether arising under the SIA or otherwise, shall, unless specifically transferred or assigned in writing by Declarant, remain vested in and are hereby reserved to and shall be retained by Declarant. Any assumption or undertaking obligations arising under the SIA by any transferee or other Owner of any portion of the Property or Additional Lands shall not be construed to confer any of such credits or benefits upon that transferee or Owner unless specifically transferred or assigned in writing by Declarant. Declarant further reserves and retains for itself all contractual and other allocations of and rights to water and sewer taps which are attributable to the Property or Additional Lands, whether now existing or hereafter arising unless specifically transferred or assigned in writing by Declarant.

5.7 Succession to Declarant's Interests. The rights and interests reserved to or otherwise allocated in favor of Declarant under this Declaration may be assigned or transferred by Declarant, at its election and in whole or in part, to another Owner or other transferee, but only by an instrument expressly effectuating such assignment or transfer. Each transferee of any portion of the Property, by such transferee's acceptance of the transfer or conveyance of Record, and any third party transferee or owner of any portion of the Additional Lands, by its joinder in a Supplemental Declaration (or any related consent or similar documentation) by which the pertinent Additional Lands are annexed within the Property, shall be bound by and subject to all such rights and interests in favor of the Declarant hereunder, and the foregoing provisions governing the transfer of those rights and interests. Each such transferee and each Owner, and their successors in interest, shall be bound to execute and deliver such documents as Declarant may require from time to time in order to verify and confirm the rights and interests of Declarant hereunder.

ARTICLE VI

EASEMENTS

6.1 Easement for Use, Access and Enjoyment in and to General Common Elements. Declarant hereby establishes and grants to each Owner a nonexclusive easement of use, access and enjoyment in and to the General Common Elements. Any Owner may extend its right of use and enjoyment to its Permittees (excluding, however, Permittees whose status as such derives from a commercial relationship) subject to reasonable regulation by the Board. Without limiting the generality of the foregoing, Declarant hereby grants to each Owner a nonexclusive easement over and across all walkways and other pedestrian accessways (including sidewalks along streets, but not including the portions of walkways on Lots that serve solely as access only to the dwelling from the street or sidewalk abutting the street) and all streets designated as General Common Elements for the purpose of gaining pedestrian or vehicular access between (a) the public streets and sidewalks adjoining the Property and (b) any other General Common Elements or such Owner's Lot. The easement granted by this Section shall be appurtenant to and pass with the title to the Lots and shall be subject to:

(a) This Declaration and any other applicable covenants, and any other easements, rights-of-way or other title matters Recorded against the Property;

(b) Any restrictions or limitations contained in any deed conveying the General Common Elements to the Association;

(c) The right of the Board to adopt Rules regulating the use and enjoyment of the General Common Elements in a manner consistent with their intended purpose, including rules limiting the number of guests who may use the General Common Elements.

(d) The right of the Board to impose membership requirements and charge admission or other use fees for the use of any recreational facility situated within or on the General Common Elements;

(e) The right of the Board to suspend any Owner's or such Owner's Permittees' right to use and enjoyment of any Common Elements other than streets and walkways (i) for any period during which any Assessment or charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed 30 days for a single violation (or, in the case of a continuing violation, for the duration of such violation, plus a period not to exceed 30 days) of this Declaration, the Bylaws or the Rules, after providing such notice and hearing as may be required by the Bylaws;

(f) The right of the Board to permit use of any recreational facility situated within or on the General Common Elements by persons other than Owners and their Permittees upon payment of use fees established by the Board, which fees the Board shall include as Association revenue in calculating the amount of Common Assessments necessary to satisfy the Common Expenses of the Association;

(g) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the General Common Elements other than streets and walkways, subject to Section 15.3 and such other approval requirements as may be set forth in this Declaration or the Act; and

(h) The right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of the General Common Elements other than streets and walkways as security for money borrowed or debts incurred, subject to the limitations of the Act and the approval requirements set forth in Section 15.3.

6.2 Certain Easements for the Association. Declarant hereby establishes and grants to the Association a non-exclusive easement over each Lot and other portions of the Property (but excluding in any case the interior of any building improvements that do not constitute Common Elements) for the purpose of: (a) permitting the Association reasonable and necessary access to any of the Common Elements for the purpose of maintaining, repairing, replacing and improving any such Common Elements and the Improvements thereon; and (b) installing, maintaining, repairing, replacing and improving landscaping, fencing, monumentation, signage, sidewalks, irrigation and water distribution systems, and utilities servicing any Common Elements; provided, however, that in using such easement, the Association shall not unreasonably interfere with any Owner's quiet use and enjoyment of such Owner's Lot.

6.3 Easements for Encroachments. In the event that, as a result of the construction, reconstruction, shifting, settlement, restoration, rehabilitation, alteration or improvement of any Improvement located on a Lot or the Common Elements or any portion thereof, any portion of any Lot or Common Elements now or hereafter encroaches upon any other Lot or Common Elements, Declarant hereby establishes and grants an easement for the continued existence and maintenance of such encroachment which will continue for so long as such encroachment exists and which will burden the Lot or Common Elements encroached upon and benefit the encroaching Lot or Common Elements. In no event, however, will an easement for any such encroachment be deemed established or granted if such encroachment is materially detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Lot(s) burdened by such encroachment or if such encroachment occurred due to willful and knowing misconduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

6.4 Easements Benefiting Declarant. Declarant hereby reserves such easements over and across the Common Elements, which easements will exist for the duration of the Development Period, as may be reasonably necessary for Declarant's exercise of any Special Declarant Right, performance of any of Declarant's obligations hereunder, and the showing of the Property to prospective purchasers. In addition, and without limiting the easements set forth in the preceding sentence or elsewhere in these covenants, Declarant reserves an easement over the Property for the purpose of Declarant's use and enjoyment of any water or water rights appurtenant to or associated with the Property (including, without limitation, all adjudicated, non-adjudicated, decreed, non-decreed, tributary, non-tributary and not non-tributary water rights, ditch rights and well permits) owned by Declarant.

6.5 Easements for Utilities. Declarant reserves for itself and its successors, assigns and designees, (including, without limitation and if so designated, the Association and its successors, assigns and designees), perpetual non-exclusive easements upon, across, over and under all of the Property (but not through any structures) to the extent reasonably necessary for the purposes of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals, and all utilities, including, without limitation, water, sewer, telephone, gas and electricity, and for installing any of the foregoing on property which Declarant or the Association owns or within' easements designated for such purposes on the Plat. This reserved right must be exercised, and any specific easements established pursuant thereto, no later than the expiration of the Development Period. The designees of Declarant and the Association may include, without limitation, any governmental or quasi-governmental entity and utility company. Declarant specifically grants to the local water supplier, cable television provider, telephone company, sanitary and/or storm sewer district or company, electric company, natural gas supplier and other utility providers easements across the Property for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. 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 a Lot resulting from the exercise of the easements described in this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of such easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot.

6.6 Right of Entry. Declarant reserves for the Association and other Persons described below an easement for the right, but not the obligation, to enter upon any Lot: (i) for emergency, security and safety reasons; (ii) to inspect any Lot for the purpose of ensuring compliance with this Declaration, the Bylaws and the Rules; and (iii) to remove nonconforming Improvements as provided in Section 12.7. Such right may be exercised by any member of the Board and the Association's officers, agents, employees and managers, the members of the Architectural Review Committee pursuant to Article XII, and, for emergency, security and safety purposes, all police, fire and ambulance personnel and other similar emergency personnel in the performance of their duties. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard the event an Owner fails or refuses to cure such condition within a reasonable time after requested by the Board, but shall not authorize entry into any Dwelling Unit without permission of the occupant, except by emergency personnel acting in their official capacities.

6.7 Reserved. [This section intentionally omitted].

6.8 Additional Easements.

(a) Declarant's Right to Grant Easements: Additional Lands. Declarant hereby reserves the non-exclusive right and power to grant, during the Development Period, such additional specific easements as may be necessary, in the sole discretion of Declarant, upon Common Elements, and land owned by Declarant, in connection with the orderly development of any of the Property or the Additional Lands. In addition, during the Development Period,

Declarant may unilaterally subject any portion of the Additional Lands that is made subject to this Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating the Owners to pay the costs incurred by the Association through Common Assessments. Such covenants and easements pertaining to the Additional Lands shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of such property and shall require the written consent of the owner(s) of such property, if other than Declarant.

(b) Association's Right to Grant Easements. Notwithstanding anything to the contrary in Sections 13.3, 15.3 or other Sections of this Declaration, the Association, acting through the Board and without the approval of the members of the Association, may grant easements over the Common Elements for installation and maintenance of utilities, drainage facilities and roads and for other purposes not inconsistent with the intended use of the Common Elements.

6.9 Easements Run with Land. Except as otherwise provided in this Article VI, all easements established and granted pursuant to this Article VI are appurtenant to and run with the Property and will be perpetually in full force and effect so long as this Declaration is in force and will inure to the benefit of and be binding upon Declarant, the Association, Owners, Permittees and any other Persons having any interest in the Property or any part thereof. The Lots and the Common Elements will be conveyed and encumbered subject to all easements set forth in this Article VI, whether or not specifically mentioned in such conveyance or encumbrance.

ARTICLE VII SPECIAL DECLARANT RIGHTS

7.1 Special Declarant Rights. In addition to and without limiting any other right reserved by or for the benefit of Declarant in this Declaration or by operation of the Act (all of which shall also be Special Declarant Rights), Declarant reserves the following Special Declarant Rights, which, except as expressly provided below, may be exercised by Declarant for the duration of the Development Period, with no limitations on the extent to, or the order in which, such rights are exercised:

(a) To complete any Common Elements Improvements described on or in the Plat or this Declaration, and to transfer the right and obligation to complete any such Improvements to any Developer.

(b) To exercise any of the Development Rights;

(c) To maintain sales, construction and management offices and advertising signs on the Property and/or the Additional Lands, and place and maintain construction related equipment, vehicles, sheds and fencing as set forth in Section 7.3;

(d) To merge or consolidate the Association with another common interest community of the same form of ownership; and

(e) To appoint and remove the Directors and the officers of the Association during the Declarant Control Period to the extent permitted by the Act.

7.2 Transfer of Special Declarant Rights. Declarant may transfer any or all of the Special Declarant Rights in accordance with Section 304 of the Act.

7.3 Models and Offices and Construction Items. During the Development Period, Declarant and Developers authorized by Declarant may maintain and carry on upon any Lot owned by Declarant (or any other Lot with consent of its Owner) or any portion of the Common Elements such facilities and activities as, in the reasonable opinion of Declarant, may be required, convenient or incidental to the development, construction or sale of Lots, including, without limitation, construction related materials, equipment, vehicles, sheds and fencing, business offices, construction offices, management offices, signs, model units and sales offices. Such facilities may be of a number, size and location which Declarant determines shall adequately accommodate Declarant's or a Developer's development, sale and marketing of the Lots and the Property. Notwithstanding anything in this Declaration to the contrary, each Developer shall have the right to maintain models and sales offices on any Lot owned by such Developer.

7.4 Other Covenants and Subsidiary Declarations. During the Development Period, no Person shall Record any declaration of covenants, conditions and restrictions, declaration of condominium or similar instrument affecting any portion of the Property, including, without limitation, a Subsidiary Declaration, without Declarant's review and written Recorded consent as to the form and content of such instrument. Any attempted Recording of such an instrument without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by a written consent signed by Declarant and Recorded. Without limiting the foregoing, any Subsidiary Declaration shall: (a) expressly refer to this Declaration by its name and Recording information; (b) provide that each "unit" (as defined in the Act) created by or subject to such Subsidiary Declaration is also subject to the terms and provisions of this Declaration; and (c) provide that the Association established pursuant to this Declaration shall have all the powers set forth for it in this Declaration, the Bylaws and the Act (including, without limitation, the powers identified in Section 302(1)(b) of the Act) and shall be permitted to exercise those powers with respect to the portion of the Property subject to such Subsidiary Declaration. Notwithstanding the preceding sentence, a Subsidiary Association may have and exercise all powers permitted under the Act, subject to this Declaration.

ARTICLE VIII
BOUNDARY RELOCATION AND SUBDIVISION OF LOTS

8.1 Relocation or Removal of Boundaries Between Adjoining Lots. Except as provided in Section 5.1 (f), the boundaries between adjoining Lots may not be relocated or removed; provided that such modification may also be made by Owners upon application to the Association in accordance with Section 212 of the Act. All costs and attorney's fees incurred by the Association as a result of an application by an Owner other than Declarant for relocation or removal of boundaries between adjoining Lots shall be the sole obligation of the Owner or Owners requesting such relocation and may be assessed against the Lot(s) of such Owner or Owners as a Specific Assessment. The Association may require a deposit against attorney's fees and other costs that the Association will incur in reviewing and effectuating the application of an Owner other than Declarant, in an amount reasonably estimated by the Board.

8.2 Subdivision of Lots. Except as provided in Section 5.1 (f), no Lot may be subdivided into two or more Lots.

8.3 No Limitation of Development Rights. Nothing in this Article VIII is intended or shall be deemed to limit Declarant's rights under Section 5.1 or Section 5.2.

ARTICLE IX
THE ASSOCIATION

9.1 Formation: Membership. The Association will be formed no later than the date the first Lot is conveyed to an Owner other than Declarant. Every Owner, including Declarant, shall be a Member of the Association. When an Owner consists of more than one Person, all such Persons will, collectively, constitute one Member of the Association and all such Persons shall be jointly and severally obligated to perform the responsibilities of Owner. Following a termination of this Declaration, the Association will consist of all Owners entitled to share in the distribution of proceeds of a sale of the Property. Membership in the Association will automatically terminate when a Person ceases to be an Owner, whether through sale, intestate succession, testamentary disposition, foreclosure or otherwise. The Association will recognize a new Owner as a Member upon presentation of satisfactory evidence of the sale, transfer, succession, disposition, foreclosure or other transfer of a Lot to such Owner. Membership in the Association may not be transferred, pledged or alienated in any way, except to a new upon conveyance of a Lot. Any attempted prohibited transfer of a membership in the Association will be void and will not be recognized by the Association.

9.2 Board of Directors. The affairs of the Association shall be governed by the Board of Directors, which may, by resolution, delegate any portion of its authority to an executive committee, or an officer, managing agent or Director of the Association. Except as otherwise specifically provided by law or in this Declaration, the Articles or the Bylaws, the Board may exercise all rights and powers of the Association

(including, without limitation, those powers itemized in Section 9.3) without a vote of the Members. Subject to the provisions of this Section and Section 7.1 (e), the qualifications and number of Directors, the term of office of Directors, the manner in which Directors shall be appointed or elected and the manner in which Directors shall be replaced upon removal or resignation shall be as set forth in the Bylaws. In the performance of their duties, the Directors will act according to their ordinary business judgment, except to the extent the Act requires a greater standard of care.

9.3 Association Powers. Subject to the rights, powers and authority reserved by and conferred upon Declarant pursuant to this Declaration or the Act, the Association will serve as the governing body of The Village at Rose Farm Homeowners Association, Inc. and shall have the powers and duties set forth in this Declaration and the Bylaws. The Association may:

(a) adopt and amend the Bylaws, and make and enforce the Rules, consistent with the rights, duties, terms and conditions established by this Declaration and the Bylaws;

(b) subject to Section 10.1(d), adopt and amend budgets for revenues, expenditures and reserves and assess and collect any Assessments and any other amounts due from Owners or others to the Association;

(c) hire and terminate managing agents and other employees, agents and independent contractors;

(d) except as otherwise provided in Section 12.2, appoint the members of the Architectural Review Committee;

(e) exercise any/of the enforcement powers set forth in Section 9.5 or elsewhere in this Declaration;

(f) institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Property;

(g) make contracts and incur liabilities in accordance with the properly adopted and ratified budget;

(h) borrow funds to cover Association expenditures and pledge Association assets as security therefor, provided that Common Elements may be subjected to a security interest only pursuant to Section 15.3;

(i) regulate the use, maintenance, repair, replacement and modification of the Common Elements in accordance with the properly adopted and ratified budget or otherwise in accordance with this Declaration;

(j) cause additional improvements to be made as a part of the Common Elements in accordance with the properly ratified budget, or otherwise in accordance with this Declaration;

(k) acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property (including, without limitation, one or more Lots), provided that Common Elements may be conveyed or encumbered only pursuant to Section 15.3;

(l) grant easements, leases, licenses, and concessions through or over the Common Elements;

(m) impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements and for any services provided to Owners;

(n) impose charges and interest for late payment of Assessments, recover reasonable attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after providing notice and an opportunity to be heard, as provided in the Bylaws, levy reasonable fines for violations of this Declaration, the Bylaws or the Rules;

(o) impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments;

(p) provide for the indemnification of its officers and Directors as provided in the Bylaws or the Articles and maintain directors' and officers' liability insurance; assign its right to future income, including the right to receive Assessments;

(q) exercise any other powers expressly conferred by this Declaration, the Bylaws or the Act or reasonably implied from or necessary to effectuate such powers;

(r) except as prohibited by the Act, exercise all other powers that may be exercised in the State of Colorado by a nonprofit corporation;

(d) exercise all powers delegated to the Association by any Subsidiary Association pursuant to Section 220 of the Act; and

(t) exercise any other powers necessary or appropriate for the governance and operation of the Association.

This Declaration may not and is not intended to impose any limitations on the powers of the Association to deal with the Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with any Other Person.

9.4 Bylaws. The Association may adopt Bylaws for the regulation and management of the Association, provided that the provisions of the Bylaws will not be inconsistent with the provisions of this Declaration or the Act. The Bylaws may include, without limitation, provisions regarding the voting

rights of the Owners, the appointment or election of the Board, and the appointment or election of officers of the Association.

9.5 Enforcement.

(a) Sanctions and Self-Help. After notice and an opportunity to be heard as provided in the Bylaws, the Association, acting through the Board or any authorized agent, may: (i) impose sanctions (including, without limitation, reasonable monetary fines) for violations of this Declaration, the Bylaws or the Rules; (ii) exercise self-help to cure any violations of this Declaration, the Bylaws or the Rules that an Owner of Permittee fails or refuses to cure; and (iii) suspend any services it provides to any Owner who is more than 15 days delinquent in paying any Assessment or other charge due to the Association all of the remedies set forth in this Declaration and the Bylaws shall be cumulative of each other and any other remedies available at law or in equity.

9.6 No Waiver. In no event shall the Association's failure to enforce any covenant, restriction or rule provided for in this Declaration, the Bylaws or the Rules constitute a waiver of the Association's right to later enforce such provision or any other covenant, restriction or rule.

9.7 Reserved. [This section intentionally omitted].

ARTICLE X
FINANCIAL MATTERS AND ASSESSMENTS

10.1 Financial Matters. The Board, on behalf of the Association, will discharge the following obligations with respect to financial matters:

(a) Books and Records. The Board will cause to be maintained full and complete books and records of the Association's business and operations, including, without limitation, current copies of this Declaration and all amendments hereto, the Bylaws, the Rules, the approved budget for the current fiscal year, financial statements, books and records reflecting all assets, liabilities, capital, income and expenses of the Association, and supporting materials, such as bank statements and invoices, for at least the shorter of (i) the prior seven fiscal years or (ii) all of the fiscal years in which the Association has been in existence. All of such books and records will be made available for inspection by any Owner or Eligible Holder or their respective authorized representatives during normal business hours upon reasonable prior written request.

(b) Returns. The Board will cause to be prepared and filed before delinquency any and all tax, corporate or similar returns or reports that the Association is required by law to prepare and file.

(c) Preparation of Budgets. The Board may, and if levying Assessments shall, cause to be prepared and adopt annually, not less than 45 days prior to the beginning of each fiscal year of the Association, a proposed budget (herein referred to as “Common Expense Budget”) for the Common Expenses of the Association. The proposed budget will include the estimated revenue and expenses of the Association for such fiscal year, in reasonable detail as to the various categories of revenue and expense.

(d) Ratification of Budgets. Within 90 days after adoption by the -Board of any proposed budget for the Association, the Board will send by ordinary first-class mail or otherwise deliver to all Owners a summary of the proposed budgets and will set a date for a meeting of the Owners to consider ratification of the proposed budgets not less than 14 nor more than 60 days after mailing or other delivery of the summary. Unless at that meeting Owners to whom are allocated a majority of the votes in the Association vote to reject the proposed Common Expense budget, the proposed budget will be ratified, whether or not a Quorum is present For the first fiscal year of the Association, the Board may adopt the Declarant's estimated Common Expense Budget and Lifestyle Lots Budget for the Association and assess Common Assessments and Limited Assessments and Specific Assessments, provided that the Board submits such budget to the Owners for ratification in accordance with the foregoing provisions within 90 days after adopting the same.

(e) Annual Financial Statements. With respect to each fiscal year in which the Association levies Assessments, the Board will cause to be prepared annually a report that fairly represents the financial condition of the Association. Such report shall consist of a balance sheet as of the end of the preceding fiscal year, an operating (income) statement for such fiscal year and a statement of changes in the Association's financial position for such fiscal year. A copy of such annual report will be distributed to each Owner within 120 days after the close of the fiscal year.

10.2 Creation of Assessments. There are hereby created assessments for such Association expenses as may be authorized from time to time pursuant to this Declaration. There shall be three types of Assessments: (a) Common Assessments; (b) Special Assessments; and (c) Specific Assessments. Each Owner, by accepting a deed for any Lot, is deemed to covenant and agree to pay these Assessments pursuant to the terms and conditions of this Declaration.

10.3 Common Assessments. Each Lot is subject to Common Assessments for the Lot's share of the Common Expenses as allocated pursuant to Section 3.40. Common Assessments will be calculated, paid, adjusted and reconciled in accordance with the following provisions:

(a) Budget and Payment. The Association shall set the Common Assessments for each fiscal year at a level which is reasonably expected to produce total income for the Association for such fiscal year equal to the total Common Expenses set forth in the budget adopted by the Board and ratified by the Owners. In determining the total funds to be generated through the levy of Common Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any Assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to Common Assessments during the fiscal year.

(b) Reconciliation. As soon as reasonably possible after the end of each fiscal year, the Board cause the actual Common Expenses incurred by the Association during such fiscal year to be reconciled against the Common Assessments received by the Association from the Owners. To the extent that any Owner has paid more than its Common Allocation of such actual Common Expenses, the Board may either refund the overpayment to the Owner or credit such overpayment against such Owner's obligation for Common Assessments for the next ensuing fiscal year. To the extent any Owner has underpaid its Common Allocation of such actual Common Expenses, the Board may either demand in writing that such Owner pay the amount of such underpayment of Common Assessments to the Association within a specified period of time, as determined by the Board, after the Board notifies such Owner of such underpayment (which period of time may not be less than thirty (30) days), or the Board may include such underpayment in such Owner's obligations for Common Assessments for the next ensuing fiscal year.

(c) Material Increase. Notwithstanding any other provision of this Section 10.3 or of Section 10.1 (d), after the Board assesses Common Assessments for the Association's first fiscal year, the Board may not increase Common Assessments for any subsequent fiscal year by an amount that causes the Common Assessments levied against any Lot to increase by more than 40% over the Common Assessments levied against such Lot in the prior fiscal year unless such increase is approved by the affirmative vote of 67% of the votes in the Association and by a majority of holders of First Mortgages.

10.4 Reserved. [This section intentionally omitted].

10.5 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements. Each Lot is subject to Special Assessments as follows: (a) in the case of Special Assessments for the General Common Elements or that otherwise benefit all the Owners, each Lot is subject to the Lot's Common Allocation of the Special Assessments levied by the Association;

(b) in the case of Special Assessments that benefit only Limited Common Elements, the Special Assessment shall be levied against the Lots so benefitted in the same manner as Limited Common Elements Expenses; and (c) if the case of Special Assessments not covered by clauses (a) and (b) above, the Special Assessments shall be levied against the benefitted Lots in proportion to their respective Voting Units. No Special Assessment proposed by the Association shall be levied until it is ratified by the Owners of the Lots that will be subject to such Special Assessment. A proposed Special Assessment will be ratified unless Owners representing a majority of the votes allocated to the Lots that will be subject to the Special Assessment vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. During the Development Period, any proposed Special Assessment shall also require Declarant's consent. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials. Without limiting the generality of the foregoing, the Board may levy Special Assessments to cover certain costs of restoration or replacement of General Common Elements or Limited Common Elements in the event of damage, destruction or Taking of such Common Elements.

10.6 Specific Assessments. The Association shall have the power to levy Specific Assessments against one or more particular Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items or services to such Lot or occupants thereof, upon request of the Owner of such Lot pursuant to a menu of special services which the Board may, but is not required to, from time to time authorize to be offered to Owners and occupants (which may include, without limitation, landscape maintenance and snow removal), which Specific Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Association;

(b) to cover liabilities and costs (including, without limitation, attorneys' fees) incurred in bringing the Lot into compliance the terms of this Declaration, the Bylaws or the Rules, or costs incurred as a consequence of the conduct of the Owner or such Owner's Permittees (including, without limitation, any costs incurred at the election of Declarant or the Association to cure a breach or violation of any provision of this Declaration, the Bylaws or the Rules by such Owner or Permittees); provided, however, the Board shall give the Owner of such Lot notice and an opportunity to be heard as provided in the Bylaws before levying any Specific Assessment under this Section 10.6(b); and

(c) to cover costs and expenses incurred by the Association that may be levied as Specific Assessments pursuant to the express terms of this Declaration.

10.7 Owners' Obligations for Assessments.

(a) Personal Obligation. Each Assessment, together with interest computed from the due date of such Assessment at the rate set from time-to-time by the Board or if not so set then at the statutory rate set by applicable Colorado Statute, late charges in such amount as the Board may establish by resolution, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which the Assessment is made until paid, as more particularly provided in Section 10.9. Without limiting Section 15.2, each such Assessment, together with such interest, late charges, costs and reasonable attorneys' fees, and any other obligations or liabilities imposed by or pursuant to this Declaration, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment, obligation or liability arose. No holder of a First Mortgage who becomes the Owner of a Lot by exercising the remedies provided in its Mortgage shall be personally liable for unpaid Assessments which accrued prior to such acquisition of title. Nothing in this Declaration is intended or shall be construed to limit the liability of a First Mortgagee (or its foreclosure purchaser or other successors in interest) who becomes the Owner of a Lot for any Assessments levied against such Lot while such First Mortgagee is the Owner of it.

(b) Terms of Payment. Except for Specific Assessments, which shall be paid in the manner determined by the Board, Assessments shall be paid in equal monthly, quarterly or annual installments on or before the first day of each month, quarter or fiscal year, as applicable, or in such other reasonable manner as the Board may establish. The Board may grant discounts for early payment, require advance payment of Assessments at closing of the transfer of title to a Lot, and impose special requirements upon Owners with a history of delinquent payment. The Board may, in its sole discretion, require any Subsidiary Association to collect Assessments payable by the Owners who are members of such Subsidiary Association on behalf of the Association.

(c) No Set-Off or Abatement. No Owner may exempt himself or herself from liability for Assessments by non-use of Common Elements, abandonment of his Lot or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or the Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action by the Association or the Board.

(d) Estoppel Certificate. Within 14 business days after receipt of a written request from any Owner or Mortgagee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, the Association shall furnish to such Owner or Mortgagee, by personal delivery or certified mail, first-class postage prepaid, return receipt requested, an estoppel certificate in writing signed by an Association officer and addressed to such Owner or Mortgagee, or the designee of either, stating any then unpaid Assessments due from, or other known defaults by, the requesting Owner or the Owner of the Lot

encumbered by such Mortgagee's Mortgage, or stating that there are no unpaid Assessments due from, or other known defaults by, such Owner, as the case may be. Such an estoppel certificate executed in favor of an Owner, Mortgagee or other Persons named therein who rely thereon in good faith will be conclusive upon the Association as to the matters set forth therein and such Owner's Lot will not be subject to a lien for any unpaid Assessments against such Lot arising before the date of such certificate and in excess of any unpaid amounts stated in such certificate. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

10.8 Declarants' Obligation for Assessments. Until the Association levies Assessments, Declarant shall pay the Association's costs and expenses. After Assessments commence as provided in Section 10.10, Declarant's obligations for Assessments may be satisfied in the form of cash or by "in kind" contributions of services or materials to the Association, or by any combination of these.

10.9 Lien for Assessments.

(a) Perfection and Priority of Lien. The Association shall have a lien against each Lot to secure payment of delinquent Assessments, as well as interest (computed from the due date of such Assessment at the rate set from time-to-time by the Board or if not so set then at the statutory rate set by applicable Colorado Statute), late charges in such amount as the Board may establish by resolution, costs and reasonable attorneys' fees. Such lien shall be perfected upon the Recording of this Declaration and no further claim of lien shall be required. Notwithstanding the foregoing and without limitation on the effectiveness or perfection of the lien against each Lot, the Association shall have the right, but not the obligation, to prepare and Record a "Notice of Lien" in a form satisfactory to the Board which may set forth (i) the amount of any Assessment, charge, fine or other amount due and owing to the Association; (ii) the date such amount was due and payable and the date from which interest accrues; (iii) a recitation of the costs and expenses (including reasonable attorneys' fees) incurred in attempting to collect the unpaid amount as of the date of recording of such Notice of Lien; (iv) the Lot encumbered by the lien; and (v) the name or names, last known to the Association, of the Owner of the Lot. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law are superior, and (b) the lien or charge of any First Mortgage made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments shall be prior to a First Mortgage to the extent provided by the Act.

(b) Enforcement of Lien. Such lien, when delinquent, may be enforced as provided for by the Act, and where foreclosure is allowed by the Act in the manner as provided for the foreclosure of mortgages under the laws of the State of Colorado. The Association may bid for a Lot at any foreclosure sale and acquire, hold, lease, mortgage and convey such Lot. While a Lot is Owned by the Association following foreclosure: (a) no right to vote shall be exercised on behalf of the Association as Owner of such Lot; (b) no Assessments shall be levied against such Lot; and (c) each other Lot shall be charged, in addition to its usual Assessments, its pro. rata share of the

Assessments that would have been charged the Lot acquired by foreclosure had such Lot not been acquired by the Association. The Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(c) Transfer of Lot. The sale or transfer of any Lot shall not affect an existing lien for previous Assessments or relieve such Lot from any lien for subsequent Assessment. Upon sale or transfer of a Lot pursuant to foreclosure of a First Mortgage, the amount of Assessments included in any lien extinguished by foreclosure of a First Mortgage shall become Common Expenses collectible as Common Assessments levied against the Lots subject to Common Assessments, excluding, however, the Lot acquired through the foreclosed First Mortgage.

10.10 Commencement of Assessments. The obligation to pay Common Assessments and Special Assessments shall commence as to each Lot on the first day of the month following the later of: (a) the month in which the Lot is made subject to this Declaration or (b) the month in which the Association first establishes and ratifies a budget and levies Assessments pursuant to this Article X. The obligation to pay Specific Assessments shall commence as to any Lot when the Association levies the Specific Assessments against the Lot pursuant to this Declaration. The first annual Common Assessments and Special Assessments levied on each Lot shall be prorated according to the number of months remaining in the fiscal year at the time Assessments commence on the Lot. Notwithstanding the foregoing or any other provision of this Declaration, the Board may require that upon the first transfer of a Lot to a Lot Owner that is not a Declarant, that there be paid to the Association a reasonable amount, not to exceed an amount equal to the then applicable annual amount of Common Assessments for the Lot, to be allocated to the reserve funds of the Association, and such payments are in addition to, and not in lieu of or as a credit against, any other Assessments payable in connection with the Lot at such time, or at any time thereafter.

10.11 Failure to Assess. Failure of the Board to fix Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification or release of any Owner's obligation to pay Assessments. In such event, each Owner shall continue to pay Common Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

10.12 Exempt Property. The following property shall be exempt from payment of Assessments: (i) all Common Elements owned in fee simple by the Association and (ii) any property dedicated to and accepted by any governmental authority or public utility.

ARTICLE XI
MAINTENANCE

11.1 Association's Responsibilities.

(a) Maintenance of Common Elements. The Association shall maintain and keep in good condition, repair and working order the Common Elements, which maintenance may pertain, without limitation, to:

- (i) all landscaping and other flora, parks, open space, ditches and gullies and other Improvements, including any private streets and bike and pedestrian pathways/trails, situated upon the Common Elements;
- (ii) landscaping within public rights-of-way that abut or provide access to the Property (unless maintained by any public entity); and
- (iii) all Fencing installed by Declarant or the Association.

(b) Maintenance of Other Property. The Association may maintain other property which it does not own, including, without limitation, any property that has been transferred to the Town or dedicated to the public, if the Board determines that such maintenance is necessary or desirable.

(c) Operation of Facilities. The Association shall maintain the facilities and equipment within the Common Elements in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, or unless Members representing 80% of the total vote in the Association agree to discontinue such operation.

(d) Election to Perform Owners' Duties. The Association may elect to maintain or repair any Lot or portion thereof, the maintenance or repair of which is the responsibility of an Owner pursuant to Section 11.2, if (i) such Owner has failed, for more than thirty (30) days after notice from the Association, to perform its responsibilities under this Declaration with respect to the maintenance or repair of its Lot, and (ii) such failure has a material effect on the appearance of such Lot when viewed from any area outside such Lot or has a material adverse effect on the use of another Lot or any Common Element for its permitted and intended use; provided, however, that if such failure is not susceptible of being cured within such 30-day period, the Association will not be entitled to perform any repairs or maintenance if such Owner commences performance of its obligations within such 30-day period and thereafter diligently completes such performance. Such Owner will pay all costs (including, without limitation, reasonable attorney's fees) incurred by the Association in exercising its rights under this Section 11.1 (d), and such costs shall be levied

against such Owner as a Specific Assessment. Such payment will be made upon receipt of a demand from the Association therefor. If an Owner fails to make such payment within 30 days of receipt of a demand therefor, the Association will be entitled to take whatever lawful action it deems necessary to collect such payment including, without limitation, foreclosing its lien or instituting an action at law or in equity.

11.2 Owners' Maintenance Responsibility. Each Owner shall maintain such Owner's Lot and the Improvements thereon in a clean, safe, attractive and orderly manner and shall perform all necessary repairs of such Lot and Improvements, unless such maintenance responsibility is otherwise assumed by the Association or a Subsidiary Association pursuant to, respectively, this Declaration or any Subsidiary Declaration applicable to such Lot.

11.3 Provisions for Party Wall Lots. For each Lot upon which a Party Wall is constructed, the following provisions apply:

(a) Mutual Reciprocal Easements. Mutual reciprocal easements are hereby established, declared and granted for all Party Walls for mutual support. Every conveyance of a Party Wall Lot, whether or not expressly so stating, shall be deemed to be conveyed subject to such reciprocal easements.

(b) Maintenance of Utility Installation. An Owner shall have the right to maintain and repair any utility installations located within a Party Wall and in so doing, shall restore the Party Wall to its original condition.

(c) Maintenance and Repair Responsibilities. Except as is otherwise provided hereinafter, the cost of reasonable repairs and maintenance of a Party Wall shall be the joint expense of the Owners who make use of said Party Wall; provided that the costs of repairs and maintenance of the finished surface of a Party Wall located within a Dwelling Unit shall be the sole expense of the Owner of that Dwelling Unit. If an Owner of a Dwelling Unit sharing the Party Wall refuses to pay his proportionate share of the cost of repair or maintenance, then the other Owner may cause the Party Wall to be repaired and shall be entitled to assess the costs attributable against the non-paying adjoining Dwelling Unit Owner. Such assessment shall be due and payable on demand, and if unpaid, shall entitle the Owner advancing costs of repair or maintenance to, in addition to all other remedies available by law or in equity, file a lien for such costs against the lot of the non-paying Owner. Said claim for reimbursement and the lien shall also include interest at the rate of eight percent (8%) per annum until paid, together with reasonable attorney's fees and court costs. Such lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(d) Damage or Destruction. Should a Party Wall be damaged or destroyed by the act, default or negligence of an Owner or occupants, guests or invitees of an Owner, such Owner shall rebuild said

Party Wall, shall bear the cost of furnishing the necessary protection against the elements, and shall compensate the Owner of the adjacent Dwelling Unit for any damage to the property of such Owner.

(e) Damage Covered by Insurance. To the extent that damage to a Party Wall is covered by insurance, the full insurance proceeds shall be used and applied to repair, restore and replace the same. Any deficiency shall be the joint expense of the Owners who make use of the Party Wall, without prejudice, however, to the right of an Owner to demand a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

(f) Right of Contribution. The right of any Owner to contribution from any other Owner under this Declaration shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

11.4 Reserved. [This section intentionally omitted]

ARTICLE XII ARCHITECTURAL STANDARDS

12.1 General.

(a) Compliance and Approval. Subject to Section 12.1(b) and Section 12.8, no Improvements shall be constructed, installed, modified or renovated on any Lot, except in compliance with the Design Guidelines and with the prior approval of the Architectural Review Committee pursuant to this Article XII.

(b) Interior Modifications: Modifications in Accordance with Original Plans. Any Owner may remodel, paint or redecorate the interior of structures on a Lot without approval of the Architectural Review Committee pursuant to this Article XII. However, modifications to the interior of screened porches, patios and similar portions of structures on a Lot visible from outside such structures shall be subject to such approval. No approval shall be required to repair the exterior of a structure in accordance the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(c) Use of Licensed Architects. All dwellings constructed on any portion of the Property shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer; provided, however, that the Architectural Review Committee may waive this requirement for one or more Lots or Owners, in its sole and absolute discretion.

(d) Additions to Common Elements. In connection with granting any approval pursuant to this Article XII, and subject to Board ratification, the Architectural Review Committee may require that any Developer dedicate to the Association as Common Elements, by fee or easement grant, any landscaping tracts or similar areas.

(e) Declarant and Common Elements Exempt: Declarant Approvals. Notwithstanding any provisions to the contrary contained in this Declaration, this Article XII shall not apply to the activities of Declarant or to the construction, modification or removal of Improvements on the Common Elements by or on behalf of the Association. Furthermore, in the event that Declarant, before the formation of the Architectural Review Committee or at any time during the Declarant Control Period, renders any written approval of any specified Improvements at the request of and for the benefit of any Owner, the Architectural Review Committee shall be bound by that approval as if it had given such approval in the first instance pursuant to the terms of this Declaration.

(f) No Amendment without Declarant's Consent. This Article XII may be amended during the Development Period only with Declarant's written consent:

12.2 Architectural Review Committee. Responsibility for promulgating and enforcing the Design Guidelines and review of all applications for Improvements subject to review under this Article XII is vested in the Architectural Review Committee. Until the earlier of (i) 10 years after the date of the initial recording of this Declaration, or (ii) one year after the Declarant (or any successor Declarant) ceases to own any Lots, Declarant shall have the exclusive right, in its sole discretion, to determine the number and appoint and remove all members of the Architectural Review Committee. Declarant may surrender its right to appoint the members of the Architectural Review Committee by a Recorded instrument executed by Declarant. After such period or upon Declarant's earlier surrender of its right to appoint and remove the members of the Architectural Review Committee, the Board shall have the exclusive right, in its full discretion, to appoint and remove the members of the Architectural Review Committee. The Architectural Review Committee shall then consist of either three or five members, as determined from time to time by the Board, who shall be natural Persons. The members of the Architectural Review Committee need not be Owners or representatives of Owners, and may, without limitation, be architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Architectural Review Committee may establish and charge reasonable fees for review of applications hereunder, and may require a reasonable deposit of funds to be applied to any repairs to Common Elements damaged in connection with the improvement that is not corrected by the Lot Owner ("Damage Deposit"); and may require such fees and Damage Deposit to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the Architectural Review Committee in having any application reviewed by architects, engineers or other professionals, and the fees and Damage Deposit may vary between Lots and types of Lots and the character of the improvement to be made.

12.3 Design Guidelines.

(a) Generally. The Architectural Review Committee shall adopt the Design Guidelines at its initial organizational meeting. The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions that vary according to

land use and from one portion of the Property to another depending upon location, unique characteristics and intended use. The Design Guidelines shall provide guidance to Owners and Developers regarding matters of particular concern to the Architectural Review Committee in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Architectural Review Committee and compliance with the Design Guidelines does not guarantee approval of any application.

(b) Amendment. The Architectural Review Committee shall have sole and full authority to amend the Design Guidelines. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to plans or removal of structures previously approved by the Architectural Review Committee. There shall be no limitation on the scope of amendments to the Design Guidelines; the Architectural Review Committee is expressly authorized to amend the Design Guidelines to remove requirements previously imposed and otherwise make the Design Guidelines less restrictive.

(c) Availability: Effect of Recording. The Architectural Review Committee shall make the Design Guidelines available to Owners and Developers who seek to engage in development or construction on a Lot. In the Architectural Review Committee's discretion, such Design Guidelines may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(d) Other Recorded Documents. The Design Guidelines shall be automatically deemed to include any other design, construction, use or landscaping guidelines, requirements or restrictions contained in any other Recorded documents affecting all or substantially all of the Property, including, without limitation, the Plat.

12.4 Procedures.

(a) Submission of Plans. Plans and specifications showing the nature, kind, shape, color, size, materials and location of all proposed Improvements shall be submitted to the Architectural Review Committee for review and approval or disapproval prior to the commencement of construction of such Improvements. In addition, information concerning irrigation systems, drainage, soil conditions (including without limitation the existence and methods of addressing any expansive characteristics), lighting, landscaping and other features of proposed construction shall be submitted as applicable. The Architectural Review Committee may condition its approval on such changes in the plans and specifications as it deems appropriate and may require submission of additional plans and specifications or other information prior to approving or disapproving the material submitted. In reviewing each submission, the Architectural Review Committee may consider the quality of materials and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography and finish grade elevation, among other things. Decisions of the Architectural Review Committee may be based on purely aesthetic considerations. Each

Owner acknowledges that opinions on aesthetic matters are subjective and may vary as Architectural Review Committee members change over time.

(b) Decisions. The Architectural Review Committee shall meet from time to time as necessary to perform its duties hereunder. The vote of the majority of all of the members of the Architectural Review Committee, or the written consent of a majority of all of such members, shall constitute an act of the Architectural Review Committee. In the event that the Architectural Review Committee fails to approve or disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed rejected. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be materially inconsistent with the Design Guidelines unless a variance has been granted in writing by the Architectural Review Committee pursuant to Section 12.8.

12.5 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

12.6 Limitation of Liability. Review and approval of any application pursuant to this Article XII are made on the basis of aesthetic considerations only and the Architectural Review Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board, the Architectural Review Committee, nor any member of any of the foregoing shall be held liable for the approval or rejection of any submittal, nor any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the Architectural Review Committee and its members shall be defended and indemnified by the Association as provided in the Articles.

12.7 Enforcement.

(a) Removal of Improvements. Any Improvement constructed, installed, modified or renovated on or to any Lot in violation of this Article XII shall be deemed to be nonconforming. Upon written request from the Architectural Review Committee, the Owner of the Lot on which such Improvement is located shall, at such Owner's own cost and expense, remove such Improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming work or, if applicable, cure such nonconformance by bringing the Improvement into compliance the requirements of the architectural Review Committee. Should an Owner fail to remove and restore, or cure as required, then the Association, acting through the Board or the Architectural Control Committee in accordance with Section 9.5(a), shall have the right, to enter the Lot, remove the nonconforming Improvement, and restore the Lot to substantially the same condition as previously existed. All costs of any such entry, removal and restoration, together with

interest at the maximum rate then allowed by law, may be assessed against the subject Lot and collected as a Specific Assessment.

(b) Completion of Work. Unless otherwise specified in by the Architectural Review Committee, any approval granted under this Article XII shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association, acting through the Board or the Association in accordance with Section 9.5(a), shall be authorized to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment.

(c) Exclusion from Property. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article XII and the Design Guidelines may be excluded from the Property, subject to the notice and hearing procedures contained in the Bylaws. Neither Declarant, the Association, nor the officers, Directors or committee members of either, shall be held liable to any Person for exercising the rights granted by this Section 12.7(c).

(d) Legal and Equitable Remedies. In addition to the foregoing, Declarant and the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article XII and the decisions of the Architectural Review Committee.

12.8 Variances, Exemptions, and Subsidiary Committees. The Architectural Review Committee, in its sole discretion; may: (a) permit variances from the substantive or procedural provisions of the Design Guidelines with respect to any application submitted pursuant to Section 12.4(a); (b) exempt any Lot from the requirements of the Design Guidelines; (c) delegate its authority under this Article XII to any architectural review committee or similar body established by or pursuant to a Subsidiary Declaration with respect to any Lot subject to such Subsidiary Declaration; or (d) agree that the Design Guidelines are superseded by any similar guidelines adopted pursuant to a Subsidiary Declaration with respect to the any Lot subject to such Subsidiary Declaration.

ARTICLE XIII INSURANCE DAMAGE AND TAKINGS

13.1 Association's Insurance.

(a) Required Insurance. The Association, acting through the Board or its duly authorized agent, shall maintain in effect the insurance coverage required by the Act, and such insurance coverage shall be in the forms, insure the persons, and include the terms, waivers of subrogation and endorsements required by the Act.

(b) Additional Insurance. In addition to the insurance maintained pursuant to Section 13.1 (a), the Association may maintain any other insurance on such terms and in such amounts as the Board determines is prudent or necessary from time to time.

13.2 Damage and Destruction.

(a) Property Insured by Association.

(i) Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means the repair or restoration of the damaged property to substantially the condition in which it existed prior to the damage, allowing for changes necessitated by changes in applicable building codes.

(ii) Any damage to or destruction of the Common Elements shall be repaired or reconstructed unless, within 60 days after the loss, a decision not to repair or reconstruct is made by Members representing at least 67% of the votes in the Association, and, if the damage or destruction occurs during the Development Period, the vote of Declarant. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then such period shall be extended until such finds and information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction to the Common Elements shall be repaired or reconstructed.

(iii) If a decision not to repair or reconstruct the damage or destruction to the Common Elements is made pursuant to Section 13.2(a)(ii) and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive landscaped condition.

(iv) Any insurance proceeds attributable to damage to Common Elements shall be applied to the costs of repair or reconstruction and then, if any insurance proceeds remain, distributed among the Owners in proportion to the Common Allocation for each of their Lots.

(v) If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may levy Special Assessments to cover the shortfall pursuant to Section 10.5.

(vi) Each Lot will continue to be subject to Assessments following any damage to any portion of the Common Elements, without abatement as a result of such damage.

(b) Property Insured by Owners. Each Owner covenants and agrees that in the event of damage or destruction to structures on or comprising his Lot, the Owner shall proceed promptly to either: (i) repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XII, or (ii) clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive landscaped condition. The Owner shall pay any costs of such repair and reconstruction or clearing and maintenance which are not covered by insurance proceeds.

13.3 Takings.

(a) Taking of Lots. In the event of a Taking of all or any part of any Lot, the Owner thereof will be solely responsible for negotiating with the condemning authority concerning the award for such Taking and will be entitled to receive such award after the liens of all Mortgagees on the affected Lot or portion thereof have been satisfied or otherwise discharged. If only part of a Lot is acquired by a Taking, the Owner of such Lot will be responsible for the restoration of its Lot as necessary to return the Lot to a safe and lawful condition that does not adversely affect the use or enjoyment of the other Lots or Common Elements or detract from the general character or appearance of the Property. Any such restoration must be completed in accordance with the provisions of Article XII. If a Taking occurs by which the condemning authority acquires all or any part of one or more Lot(s) in such a manner that such Lot(s) is or are no longer subject to this Declaration, then the Association will consider and pass an amendment to this Declaration revising the allocations made among the various Lots hereunder.

(b) Taking of Common Elements.

(i) The Board will be solely responsible for negotiating, and is hereby authorized to negotiate with the condemning authority on behalf of the Owners concerning, the amount of the award for any Taking by which a condemning authority acquires 100% of the interests in and to any Common Elements in fee simple by the Association without also acquiring 100% of the Lots, and the acceptance of such award by the Board will be binding on all Owners. Any award made for such a Taking shall be payable to the Association as for the Owners and shall be disbursed as set forth in Sections 13.3(b)(ii) and 13.3(b)(iii). Notwithstanding the foregoing, no Common Elements shall be conveyed in lieu of and under threat of condemnation except in accordance with Section 15.3 and, during the Development Period, with the consent of Declarant.

(ii) If a Taking involves a portion of the Common Elements on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Elements to the extent feasible and economically cost-efficient, unless within 60 days after such Taking Members representing at least 67% of the total votes of the Association (or, with respect to Limited Common Elements, 67% of the votes of the Members to whose Lots such Limited Common Elements are allocated) and, if the Taking occurs during the Development Period, Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. If the award made for such Taking is insufficient to cover the costs of restoration or replacement, the Board of Directors may levy Special Assessments to cover the shortfall pursuant to Section 10.5.

(iii) If the Taking involves property owned by the Association but not any Improvements on the Common Elements, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE XIV MORTGAGEE PROVISIONS

The following provisions are for the benefit of First Mortgagees and holders, insurers and guarantors of First Mortgages on Lots. The provisions of this article XIV apply to both this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

14.1 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a Taking of the Common Elements.

14.2 Notice to Mortgagees. Upon receipt by the Association of the notice described in Section 2.21, any Eligible Holder who provides such notice will be entitled to prompt written notice of:

(a) Any condemnation loss or casualty loss that affects a material portion of the Property or that affects any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of Assessments or charges levied against a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a

period of sixty (60) days after notice of such delinquency has been delivered to the Owner, or any other violation of this Declaration or the Bylaws relating to such Lot or the Owner or occupant thereof which is not cured within sixty (60) days of notice of such violation;

(c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association and required by the Act.

ARTICLE XV CONVEYANCING AND ENCUMBRANCING

15.1 Lots. A description of any Lots in accordance with the requirements of Colorado law for the conveyance of real property will, if included in an otherwise proper instrument, be sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only such Lot but also all Easements, rights and other benefits appurtenant thereto as provided in this Declaration. A Person who becomes an Owner will promptly notify the Association of his or her ownership of a Lot. An Owner may encumber his or her Lot as he or she sees fit, subject to the provisions of this Declaration.

15.2 Transferee Liability. In the event of any voluntary or involuntary transfer of a Lot to any Person (other than a Person taking title through a foreclosure of a First Mortgage), the transferee will be jointly and severally liable with the transferor of such Lot for all unpaid Assessments against such Lot up to the time of transfer, without prejudice to such transferee's right to recover from the transferor any amounts paid by such transferee hereunder.

15.3 Common Elements. The Common Elements or portions thereof may be conveyed or subjected to a security interest by the Association pursuant to the minimum requirements of Section 312(1) of the Act. Any net proceeds from the sale of any portion of the Common Elements may be distributed to the Owners as if such amounts were an award paid as a result of the Taking of such portion of the Common Elements.

ARTICLE XVI GENERAL PROVISIONS

16.1 Amendment.

(a) Amendment by Declarant. Declarant may unilaterally amend this Declaration during the Development Period in the exercise of its Development Rights to the extent permitted by the Act. Additionally, notwithstanding any contrary provision contained in this Declaration, Declarant may unilaterally amend this Declaration and/or the Plat to correct any clerical, typographical or technical errors, and may amend this Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association.

(b) Amendment by Association. Except in the case of amendments which may be executed unilaterally by Declarant as set forth in Section 16.1(a), amendments which may be executed by the Association without a vote of the Members as provided in the Act and amendments that are subject to the approval of Eligible Holders pursuant to the terms of this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 50% of the total votes in the Association and, if such amendment occurs during the Development Period, with the consent of Declarant, provided, however, that any amendment which changes the uses to which any Lot is restricted shall require the affirmative vote or written consent or any combination thereof, of Members representing 67% of the total votes in the Association and, if such amendment occurs during the Development Period, with the consent of Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under such clause. Amendments to this Declaration shall be prepared, executed, Recorded and certified by the President of the Association.

(c) Consent of Declarant. During the Development Period, no amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant or Developer.

(d) Consent of Owner. Any amendment of this Declaration made in conformity with this Declaration and the Act shall be conclusively presumed to have received the consent of each Owner and such Owner's Mortgagee, if applicable, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

(e) Effective Dates: Change in Conditions. Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one (1) year of its Recording or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

16.2 Duration and Termination.

(a) Perpetual Duration. Unless terminated as provided in Section 16.2(b), this Declaration shall have perpetual duration. If Colorado law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein.

(b) Termination. This Declaration may not be terminated within 30 years of the date of Recording without the consent of all the Owners and, during the Declarant Control Period, the consent of Declarant. Thereafter, it may be terminated only by an instrument signed by Owners who represent at least 67% of the votes in the Association or such lesser percentage permitted by the Act as it may be amended from time to time. Any termination instrument shall be Recorded and must comply with the termination procedures set forth in the Act. Nothing in this Section 16.2(b) shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

16.3 Litigation. Except as provided below, no arbitration, judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Owners entitled to cast 75% of all the votes in the Association. This Section 16.3 shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of Assessments as provided in Article X; (c) proceedings involving challenges to ad valorem taxation; and (d) counterclaims brought by the Association in proceedings instituted against it. This Section 16.3 may be amended only by a vote of Owners entitled to cast 75% of all the votes in the Association.

16.4 Indemnity. No Owner will hold or attempt to hold the Association or its employees or agents liable for, and each Owner shall indemnify and hold harmless the Association, its employees and agents from and against, any and all demands, claims, liens (including, without limitation, mechanics' and materialmen's liens and claims), causes of action, fines, penalties, damages, liabilities, judgments, costs and expenses (including, without limitation, attorneys' fees and costs of litigation) incurred in connection with or arising from:

(a) the use or occupancy or manner of use or occupancy of the Common Elements (or any other property owned by the Association) by such Owner or such Owner's Permittees;

(b) any activity, work or thing done, permitted or suffered by such Owner in or about the Common Elements or any other property owned by the Association; or

(c) any acts, omissions or negligence of such Owner or such Owner's Permittees; except to the extent that any injury or damage to persons or property on the Common Elements or any other property owned by the Association is proximately caused by or results proximately from the negligence or deliberate act of the Association or its agents or employees.

Nothing contained in this Section 16.4 will be construed to provide for any indemnification which would violate applicable laws, void any or all of the provisions of this Section 16.4, or negate, abridge, eliminate or otherwise reduce any other indemnification or right which the Association or the Owners have by law.

16.5 Use of the Name "The Village at Rose Farm". No Person shall use the name "The Village at Rose Farm" or any derivative in any printed or promotional material without Declarant's prior written consent. However, Owners may use the said name in printed or promotional matter where such term is used solely

to specify that a particular property is located within The Village at Rose Farm and the Association shall be entitled to use the name "The Village at Rose Farm" in its name.

16.6 Owner Enforcement. Except for: (i) the remedies and enforcement rights of Owners of Dwelling Units with Party Walls as provided in Section 11.3; and, (ii) as necessary to prevent a violation or attempted violation that results or would result in direct and immediate physical damage to an Owner's Lot or the Improvements thereon, no Owner may prosecute any proceeding at law or in equity to enforce the provisions of this Declaration other than as provided in this Section 16.6. Except as provided above with respect to Party Wall matters, or threatened immediate physical damage, the Association, acting through the Board, shall have the initial exclusive right, power and authority to enforce the provisions of this Declaration. An Owner may institute a proceeding to enforce a provision of this Declaration only if the Board does not, at its election, take action to enforce such provisions within 63 days after the Owner gives written notice to the Board specifying the violation or attempted violation of the provisions of this Declaration, the facts and circumstances surrounding the violation, and the name of the Person alleged to have violated or attempted to violate the provisions of this Declaration. Nothing in this Section 16.6 is intended or shall be construed to limit the Declarant's exercise or enjoyment of any rights reserved or granted to Declarant pursuant to this Declaration or the Act.

16.7 Severability. In the event any provision of this Declaration is deemed illegal or invalid by judgment or court order, a legally valid provision similar to the invalidated provision shall be substituted therefor. Invalidation of any provision of this Declaration, in whole or in part, or of any application of a provision of this Declaration, by judgment or court order shall in no way affect other provisions or applications of this Declaration.

16.8 Governing Law. This Declaration shall be governed by and construed under the laws of the State of Colorado.

16.9 Captions. The captions and headings on this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

16.10 Notices. Except for notices concerning meetings of the Association or the Board, which will be given in the manner provided in the Bylaws, any notices required or permitted hereunder or under the Bylaws to be given to any Owner, the Association, the Board or any Eligible Holder will be sent by certified mail, first-class postage prepaid, return receipt requested, to the intended recipient at, in the case of notices to an Owner, the address of such Owner at its Lot; in the case of notices to the Association or the Board, the address of the Association's registered agent; or in the case of notices to an Eligible Holder, the address thereof most recently given to the Association by notice from such Eligible Holder. All notices will be deemed given and received three (3) business days after such mailing. Any Owner or Eligible Holder may change its address for purposes of notice by notice to the Association in accordance with this Section 16.10. The Association or the Board may change its address for purposes of notice by notice to all

Owners in accordance with this Section 16.10. Any such change of address will be effective five (5) days after giving of the required notice.

16.11 Colorado Common Interest Ownership Act. This Declaration shall be subject to all mandatory requirements of the Act, as amended. In the event of any conflict between any term or provision of this Declaration and any mandatory provision of the Act, the mandatory provisions of the Act shall control in all instances, and neither the Declarant nor the Association shall have any liability to any party for actions taken in conformity with Act, notwithstanding the fact that such actions may be contrary to the provisions of this Declaration. In the event of any conflict between any term of provision of this Declaration and any permissive or non-mandatory provision of the Act, the provisions of this Declaration shall control in all instances.

16.12 FHA/VA Approval.

(a) During Declarant Control. If and to the extent required by the Fair Housing Administration (the "FHA") and the United States Department of Veterans Affairs ("VA"), during the Declarant Control Period, the following actions will require the approval of the FHA and VA: (i) annexation of additional property into the Property; (ii) amendment of this Declaration; or (iii) termination of The Village at Rose Farm as a planned community under the Act.

(b) Amendment Cooperation. If the FHA or VA, as a condition to approving any development project on the Property for loans insured or guaranteed-by them, require the Owner proposing such development project to obtain an amendment to this Declaration for the purpose of making this Declaration comply with the statutory or regulatory requirements enforced by the FHA or VA, then Declarant and the other Owners agree to cooperate reasonably with such Owner in making such amendment; provided, however, that the proposed amendment must be consistent with the Act and the Owner requesting such amendment shall pay all costs and expenses (including, without limitation, attorneys fees) reasonably incurred by Declarant and the other Owners so cooperating.

16.13 Declarant Liability. Except as otherwise provided in the Act, no Person holding the status of, or exercising any rights or performing any obligations of, Declarant under this Declaration shall be liable to any Owner or Mortgagee for any acts or omissions of another Person holding such status or exercising any rights or performing any obligations associated with the status of Declarant.

16.14 No Merger. Notwithstanding that the Declarant currently holds title to all the Property and the Additional Lands, and notwithstanding that a subsequent Owner may own or hold title to more than one Lot, any such commonality of interests shall not result in or cause any merger and extinguishment, in whole or in part, of any provisions of this Declaration, it being intended by Declarant, for its benefit and the benefit of its successors in interest, that the terms of this Declaration not be merged by virtue of those common ownership interests to any extent, but instead that such terms be and remain in full force and effect upon and following the making and Recording of this Declaration.

ARTICLE XVII
CONSTRUCTION DISPUTE RESOLUTION

1. Construction Dispute Resolution.

(a) Except as otherwise agreed to in a written instrument signed by the parties to a Construction Dispute, including without limitation any purchase and sale agreement or similar document (each a "Superseding Agreement"), any claim, controversy or dispute over or related to the design, construction or construction defect of a residential dwelling unit, any Common Elements or any improvements thereon or therein, or any other off-Lot subdivision improvements or facilities serving all or any portion of the Lots made against the Declarant or the Association, each of which shall be deemed a "Construction Dispute", shall be resolved by binding arbitration. Any such proceeding must be commenced before the date when commencement of legal proceedings based on such claim or dispute would be barred by the applicable statute of limitations and no such proceeding shall be commenced after the date when such proceedings would be barred by the applicable statute of limitations. The foregoing shall not be construed as prohibiting the parties to a Construction Dispute that has arisen from thereafter agreeing in writing to resolve a Construction Dispute through litigation before a court of law. The arbitration shall be conducted by the Judicial Arbitrator Group ("Arbitrator") in Denver, Colorado, or such other neutral, independent arbitration service that Declarant shall appoint; provided, however, the arbitration service shall be selected as provided in any applicable warranty if the arbitration involves a claim under such a warranty, at the time the request for arbitration is submitted. If an opposing party objects to the arbitration service appointed by Declarant, the opposing party must inform Declarant in writing within 10 days of receipt of Declarant's written notice informing such party of the appointed arbitration service. Declarant will then appoint an alternative neutral arbitration service provider. If the opposing party objects to this alternative arbitration service provider and if Declarant and the opposing party are unable to agree on another alternative, then either party may, pursuant to the applicable provisions of the Uniform Arbitration Act, Section 13-22-201, et seq., C.R.S. as amended, ("Arbitration Act") apply to a court of competent jurisdiction to designate an arbitration service provider, which designation shall be binding upon the parties. Selection of the arbitrator shall be the responsibility of Arbitrator or the appointed arbitration service, as applicable. The rules and procedures of the designated arbitration organization that are in effect at the time the request for arbitration is submitted will be followed unless the parties expressly agree otherwise, and the applicable discovery and other time periods thereunder may be adjusted, as determined by the arbitrator, in order to permit the prompt conclusion of the arbitration proceeding. The arbitration shall be governed by and shall be specifically enforceable under Colorado law pursuant to the Arbitration Act, now in effect and as it may be hereafter amended. The parties to the arbitration shall share equally in the arbitrator's fees and expenses. Each party to a Construction Dispute shall bear its own costs (including expert costs), expenses and attorneys' fees incurred in the arbitration. If any Owner, the Association, or the Declarant (except as provided in Section 1(f) below) files a proceeding in any court to resolve any Construction Dispute, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration of that or any other Construction Dispute, and the Court shall, upon motion of any party to the proceeding, direct that such Construction Dispute be arbitrated in accordance therewith and all costs incurred by the moving party in removing the Construction Dispute to arbitration, including without limitation, attorney's fees and costs, shall be awarded to the moving party. If a Construction Dispute is resolved through negotiation or mediation, and any party thereafter fails to abide by the terms of such agreement, or if any party thereto fails to comply with an arbitration award, then any other party may file suit or initiate administrative proceedings to enforce such agreement or arbitration award without need to comply with the provisions of this Article. In such event, the party taking action to

enforce the agreement or award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement or award, including without limitation, attorney's fees and costs.

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

(c) The Association shall comply with Section 38-33.3-305 of the Act, as may be amended, before instituting any "construction defect action" (as defined in said Section 38-33.3-305). Any Construction Dispute that constitutes an "action" as defined by Section 13-20-802.5 of the Colorado Construction Defect Action Reform Act shall be subject to the provisions of the Colorado Construction Defect Action Reform Act, Section 13-20-801, et seq, C.R.S.

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

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

(f) Notwithstanding any of the terms or provision of this Article XVII to the contrary, if arbitration is required under Section 1(a) above, the Declarant may, in its sole discretion, elect to resolve any Construction Dispute involving Declarant as a plaintiff or defendant by court proceeding instead of through arbitration. If the Declarant elects to resolve any such Construction Dispute by court proceeding, Declarant may file and commence a proceeding in a court, or upon initiation of arbitration by another party and motion of the Declarant, the arbitrator shall direct that such Construction Dispute be litigated in a court of law, in which event the Court shall not grant any motion requesting that the Construction Dispute be arbitrated over the objection of Declarant.

(g) In the event of any conflict between this Article XVII of this Declaration and any Superseding Agreement, the provisions of the Superseding Agreement shall control.

(h) Notwithstanding anything to the contrary set forth in this Declaration, this Article XVII may not be terminated or amended without the prior written consent and approval of the Declarant.

Consent of Lienholder

The undersigned holder of a lien on the Property hereby approves of and consents to the foregoing Declaration.

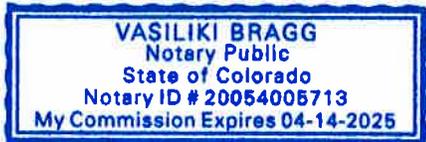
Waypoint Bank

By: David Besch

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me in the County of Larimer, State of Colorado, this 10th day of March, 2022, by David Besch as Branch President of Waypoint Bank.

My Commission Expires: 4.14.25



Vasiliki Bragg
Notary Public

Consent of Lienholder

The undersigned holder of a lien on the Property hereby approves of and consents to the foregoing Declaration.

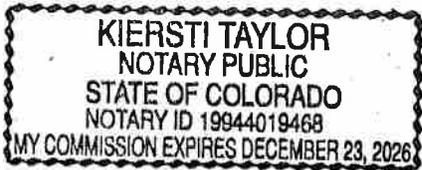
Arlene J. Gabriel

Arlene J. Gabriel

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me in the County of Larimer, State of Colorado, this 18 day of March, 2022, by: Arlene J. Gabriel

My Commission Expires: 12/23/26



Kiersti Taylor
Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Lots 6 through 9, inclusive, Lots 16, 22 and 23, Block 1
Lots 1 through 12, inclusive Block 2,
Lots 1 through 9, inclusive Block 3,
Lots 1 through 22, inclusive Block 4,
Tracks A, B, C, D, E, F, G,
Outlot A,
The Village at Rose Farm recorded December 3, 2020 at Reception No. 20200100966,
County of Larimer State of Colorado

Lots 1 through 5, inclusive Block 1,
Lots 10 through 15, inclusive Block 1,
Lots 17 through 21, inclusive Block 1,
The Amended Plat of The Village at Rose Farm recorded December 15, 2021 at
Reception No. 20210113379, County of Larimer State of Colorado

EXHIBIT B
EASEMENTS LICENSES AND OTHER MATTERS AFFECTING THE PROPERTY

Permitted Title Exceptions THE VILLAGE AT ROSE FARM

1. Terms, conditions, provisions and obligations contained in the Deed recorded March 20, 1906 in Book 214 at Page 154.
2. Terms, conditions, provisions and obligations contained in the Right-of-Way Easement as Granted to Poudre Valley Rural Electric Association Inc. recorded July 14, 1972 at Reception No. 31632.
3. Terms, conditions, provisions and obligations contained in the Notice pursuant to C.R.S. 9-1.5-103 (1) (1981) Concerning Underground Facilities of Poudre Valley Rural Electric Association, Inc recorded November 16, 1984 at Reception No. 597617.
4. Terms, conditions, provisions and obligations contained in the Schmidt Farm Annexation recorded December 14, 1998 at Reception No. 98109443.
5. Terms, conditions, provisions and obligations contained in the Town of Berthoud Development Agreement recorded December 14, 1998 at Reception No. 98109444.
6. Notes, easements and restrictions as shown on the plat of Schmidt Farm First Subdivision recorded December 14, 1998 at Reception No. 98109445.
7. Terms, conditions, provisions and obligations contained in the Determination of School Site/ Facility Adequacy recorded December 14, 1998 at Reception No. 98109446.
8. Any assessment or lien of Land in the Northern Colorado Water Conservancy District District as disclosed by the instrument recorded September 30, 2010 at Reception No.20100058874.
9. Terms, conditions, provisions and obligations contained in the Mineral Deed recorded May 20, 2014 at Reception No. 20140025528.
10. Terms, conditions, provisions and obligations contained in the Ordinance No. 1206 recorded December 31, 2015 at Reception No. 20150087954.
11. Terms, conditions, provisions and obligations contained in the Rose Farm Acres Zoning Map recorded December 31, 2015 at Reception No. 20150087955.
12. Terms, agreements, provisions, conditions, obligations, easements and restrictions, if any, which do not contain a forfeiture or reverter clause, (deleting any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as contained in instrument recorded December 31, 2015 at Reception No. 20150087956.

13. Terms, conditions, provisions and obligations contained in the Request for Notification of Application for Development recorded July 12, 2016 at Reception No. 20160044648.
14. Notes, easements and restrictions as shown on the plat of The Village at Rose Farm recorded December 3, 2020 at Reception No. 20200100966.
15. Terms, conditions, provisions and obligations contained in The Amended Plat of The Village at Rose Farm Town of Berthoud Development Agreement the Village at Rose Farm recorded December 15, 2021 at Reception No. 20210113378.

EXHIBIT C
LEGAL DESCRIPTION OF ADDITIONAL LANDS

None identified. Declarant reserves right to annex additional property.

EXHIBIT D
COMMON ALLOCATION AND VOTING UNITS FOR INITIAL LOTS

All Lots, being a total of 66, are identified on the Plat, and shall each have one (1) Voting Unit and Common Allocation of 1.52 %.

EXHIBIT E
DESCRIPTION OF COMMON ELEMENTS

General Common Elements Are:

TRACT A: ACCESS & DRAINAGE EASEMENT

TRACT B: PEDESTRIAN, LANDSCAPE & DRAINAGE EASEMENT

TRACT C: TRAIL CORRIDOR, UTILITY, DRAINAGE & LANDSCAPE
EASEMENT

TRACT D: COMMUNITY GARDEN, PEDESTRIAN ACCESS, POSTAL,
DRAINAGE & LANDSCAPE EASEMENT

TRACT E: PRIVATE PARK, PEDESTRIAN ACCESS EASEMENT

TRACT F: OPEN SPACE

TRACT G: PEDESTRIAN ACCESS EASEMENT

OUTLOT A: PRIVATE STREET PARKING, POSTAL, LANDSCAPE, UTILITY AND
DRAINAGE EASEMENT, INCLUDING, WITHOUT LIMITATION:

PHEASANT TAIL DRIVE

BUCK VALLEY DRIVE

ELK TRAIL DRIVE

DAKOTA PRAIRIE DRIVE

SUMMIT VISTA DRIVE

HILLSVIEW DRIVE