

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR HIDEAWAY JUNCTION**

**THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR HIDEAWAY JUNCTION** (this "Declaration") is made as of this 21<sup>ST</sup> day of FEBRUARY, 2006, by **WINTER PARK AFFORDABLE HOUSING CORPORATION**, a Colorado nonprofit corporation ("Declarant").

**RECITALS**

- A. Declarant is the owner of that portion of the real property legally described on Exhibit A attached hereto, together with certain other real property interests appurtenant thereto (the "Property"); and
- B. Declarant desires to create a Planned Community on the portion of the Property described in Exhibit A attached hereto, pursuant to the Colorado Common Interest Ownership Act, as set forth in Colorado Revised Statutes ("C.R.S.") §38-33.3-101, et seq., as the same may be amended from time to time (the "Act"); and
- C. Declarant desires and intends to develop the Property as a high-quality residential project with both single family residences constructed on individual lots and multifamily residences consisting of two or more attached residences or dwelling units, each on a separate lot and each sharing party walls, constructed thereon; and
- D. Declarant desires and intends to preserve and protect the affordability of the residences constructed on and within the Property in accordance with the terms of that certain Affordable Housing Restrictive Covenant and Agreement by and between the Town of Winter Park and Winter Park Affordable Housing Corporation recorded in the Grand County, Colorado real property records contemporaneously with this Declaration; and
- E. Declarant has adopted and made this Declaration so that the entire Property so encumbered may ultimately be developed, owned, used, occupied and improved as a single project for the benefit of every part thereof and interest therein under a uniform series of restrictions and covenants to preserve the natural amenities of the project, to assure architectural harmony of the improvements, to preserve the environmental values inherent in the project, and to preserve and protect the affordability of the residences constructed on and within the Property; and
- F. Declarant desires to provide for the preservation of the values and amenities of the Property and, to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each owner of any part thereof; and

G. Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an agency to which should be delegated and assigned the powers of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

H. HIDEAWAY JUNCTION HOMEOWNERS ASSOCIATION, INC. has been incorporated by Declarant as a Colorado nonprofit corporation for the purpose of administering and enforcing the covenants, conditions and restrictions set forth in this Declaration.

### **DECLARATION**

NOW, THEREFORE, Declarant hereby creates a Planned Community pursuant to the Act and adopts this Declaration as an encumbrance upon the Property described on Exhibit A attached hereto, for the preservation of the Property and the benefit of the Lots contained therein and the respective owners thereof. Declarant declares that the Property is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, all of which shall be covenants running with title to the Property, or equitable servitudes thereon, as the case may be, and shall be binding on all parties having any right, title or interest in the Property (except as otherwise set forth herein), and their respective successors, successors-in-title, assigns, heirs, devisees, executors, administrators, and personal representatives, and shall inure to the benefit of each owner of any portion of the Property.

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

It is the intent of Declarant to create Hideaway Junction as a quality residential community development that is controlled by this Declaration. The Property is subjected to this Declaration for the purpose of insuring the best use and the most appropriate development and improvement of each building site within the Property; to protect the owners of building sites against improper use of surrounding building sites; to preserve, so far as practicable, the natural beauty of the Property; to ensure development in accordance with the plans of Declarant; to encourage the construction on the Property of proportioned, attractive structures and structures built of materials, textures and colors compatible with the natural surroundings; to obtain harmonious color schemes; to secure and maintain proper setbacks from streets, and adequate space between single family and multifamily residential structures to ensure privacy; to apply a concept of architecture that creates continuity with the forest; and, in general, to provide for high quality improvements on the Property and thereby to enhance the value of all building sites within the Property.

## ARTICLE II DEFINITION OF TERMS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

**“Act”** means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as the same may be amended from time to time. Undefined terms contained herein shall have the definitions set forth in the Act.

**“Additional Property”** means any additional real property that may be subjected to this Declaration in the future by filing a Supplemental Declaration pursuant to the provisions of Section 15.5(A) hereof. As used herein, the term shall include the real property described on Exhibit B attached hereto and certain other currently unspecified additional real property which is permitted to be subjected to this Declaration pursuant to §38-33.3-222 of the Act, so long as the area of the same does not exceed ten percent (10%) of the total area of the real property legally described on Exhibit A and Exhibit B attached hereto.

**“Affordable Housing Covenant”** means that certain Affordable Housing Restrictive Covenant and Agreement by and between the Town of Winter Park and Winter Park Affordable Housing Corporation recorded in the Grand County, Colorado real property records contemporaneously with this Declaration.

**“Allocated Interests”** means the allocation of liability for Common Expenses and voting rights in the Association to and among each Lot as further described herein.

**“ARC”** means the architectural review committee of the Board appointed for the purpose of reviewing all clearing, grading, construction, improvement and landscaping plans submitted to it for approval as provided herein.

**“Area of Common Responsibility”** means the Common Elements, together with those other areas or matters which by the terms of this Declaration, any Supplemental Declaration, or other applicable covenant, contract, or agreement with any Person, including, without limitation, any Special District and the Town of Winter Park, Colorado, are or will become the responsibility of the Association.

**“Articles of Incorporation”** or **“Articles”** means the articles of incorporation of Hideaway Junction Homeowners Association, Inc., a Colorado nonprofit corporation, as filed with the Colorado Secretary of State.

**“Association”** means Hideaway Junction Homeowners Association, Inc., a Colorado nonprofit corporation, its successors or assigns, with all the rights and powers of a unit owners’ association pursuant to the Act and applicable Colorado law.

**“Assessment”** means Base, Special and Specific Assessments.

**“Base Assessment”** means assessments levied on all Lots subject to assessment as provided herein to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 7.1 and 7.2.

**“Basement”** means any area of which fifty percent (50%) or more is underground and does not have an exterior entrance at ground level. A garden level walk out area is not deemed a basement.

**“Board of Directors”** or **“Board”** means the body responsible for the administration of the Association, selected as provided in the Bylaws and serving as the board of directors of the Association under Colorado corporate law. As used herein, the terms “Board” and “Board of Directors” shall have the same meaning as the term “executive board” in the Act.

**“Builder”** means any Person that purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such Person’s business.

**“Building Setback and Separation”** refers to the minimum building setbacks and separations required under the terms of the Final Planned Development Ordinance governing the uses and development of Hideaway Junction, and as more particularly described and depicted on the Final Plat. Specifically, with respect to detached Primary Living Units, and with respect to attached Primary Living Units that share Party Wall Improvements (and regardless whether the structure within which the attached Primary Living Units are located occupies two or more Lots), the following minimum setbacks and separations shall apply: 3’ minimum side and rear yard setbacks with no encroachments of any type permitted; 20’ minimum front yard setback to front loaded garage; 12’ minimum separation between eaves and decks of adjoining structures; and 15’ minimum separation between exterior building walls of adjoining structures.

**“Bylaws”** means the Bylaws of Hideaway Junction Homeowners Association, Inc., a Colorado nonprofit corporation, as the same may be amended from time to time.

**“Common Elements”** means any real property that the Association owns, leases or otherwise holds possessory or use rights in for the common use or enjoyment of the Owners other than a Lot. The initial Common Elements are designated on the Community Plat.

**“Common Expenses”** means expenditures made or liabilities incurred by or on behalf of the Association for the general benefit of all Owners, including any reasonable reserves as the Board may find necessary or appropriate pursuant to this Declaration, the Bylaws and the Articles.

**“Community Plat”** means each two-dimensional drawing of any portion of the property that contains information concerning the general development scheme for that portion of the Property as required by the Act. If the Final Plat contains all information required by the Act, the Final Plat may serve as the Community Plat if so elected by Declarant in its sole discretion.

**“Community-Wide Standard”** means the standard of conduct, maintenance, or other activity generally prevailing throughout the Property. The Board and the ARC may more specifically determine such standard.

**“Declarant”** means Winter Park Affordable Housing Corporation, a Colorado nonprofit corporation, or its successors, successors-in-title, or assigns who take title to any portion of the Property 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. Persons and/or entities other than Winter Park Affordable Housing Corporation, or its successors, successors-in-title, or assigns may with the consent of the then-current Declarant, submit property to the terms of this Declaration. Any such person and/or entity shall not, however, be a “Declarant” under this Declaration unless such person and/or entity are designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

**“Design Guidelines”** means the design guidelines for the Property and the application and review procedures that have been adopted by Declarant and which may be amended as set forth herein. All Builders, developers, Owners and residents of the Property shall follow these guidelines. The ARC shall follow the Design Guidelines in its review of plans submitted to it for approval as provided herein.

**“Final Plat”** means the duly adopted, approved and recorded subdivision plat of any portion of the Property.

**“Finishable Floor Area”** means that portion of the floor area of a structure which is or will be located above finish grade of a building site and is capable of being finished and thereafter used and occupied for its intended Single Family Residential Use or Multifamily Residential Use. Finishable Floor Area does not include Basements, cellar or attic areas, decks, porches, terraces, walkways or roof overhangs.

**“Hideaway Junction”** means the common interest planned community located

in Winter Park, Colorado that will be developed on the Property.

**“Home Occupation”** means any activity that is defined as a home occupation business pursuant to the ordinances, regulations or rules of the Town of Winter Park, Colorado.

**“Limited Common Elements”** means those portions of the Common Elements allocated by this Declaration or by operation of the Act for the exclusive use of one or more Lots, but fewer than all the Lots. Without limiting the generality of the foregoing, “Limited Common Elements” include, without limitation, the “Landscape and Driveway Easement LCE” that encumbers each Lot described on Exhibit A, and which easement area occupies each Lot’s entire front yard and that portion of each Lot’s side yard that is located adjacent to the front yard and extends through the side yard to the mid-point of the structure located on that Lot. The Association is responsible for maintaining, repairing and replacing all landscape materials and driveway improvements located within the Landscape and Driveway Easement LCE as part of the Common Elements. Each Landscape and Driveway Easement LCE is for the exclusive use of the Owner whose Lot is encumbered by that Landscape and Driveway Easement LCE. The term “Limited Common Elements” also refers to any other real property that is designated on the Community Plat as “Limited Common Element” or “LCE.”

**“Lot”** means a portion of the Property which is intended for Single Family Residential Use or Multifamily Residential Use, whether improved or unimproved, and which may be independently owned and conveyed. The term shall refer to the land, if any, which is part of the Lot as well as any improvements located thereon, but shall not include Common Elements or property dedicated to the public. The boundaries of each Lot located upon and within the Property are depicted on the Final Plat and the Community Plat and labeled similarly as “Lot x,” where “x” represents the Lot number within the filing depicted on the Final Plat and the Community Plat. The Declarant reserves the right, with the prior approval of the Town of Winter Park, to create up to one hundred (100) Lots within the Property. As used herein, the term “Lot” shall have the same meaning as the term “unit” pursuant to the Act.

**“Member”** means any person or entity entitled to membership in the Association.

**“Mortgage”** means a mortgage, deed of trust, a deed to secure debt, or any other form of security deed.

**“Mortgagee”** means a beneficiary or holder of a Mortgage.

**“Mortgagor”** means any Person who gives a Mortgage.

**“Multifamily Residential Use”** means the permitted development, use and

occupancy of a grouping of Lots within a portion of the Property for the construction and location of a single building improvement that satisfies all Building Setback and Separation requirements, and which single building improvement contains two or more separate but attached Primary Living Units, each on a separate Lot, which share Party Wall Improvements, together with permitted accessory uses.

**“Owner”** means any Person who holds record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

**“Party Wall Improvement”** shall mean any wall, roof, or other structural component of a building which is part of the original construction of the building located on Lots as such wall, roof or other structural component may be repaired or reconstructed from time to time, and such structural component either is placed on or is immediately adjacent to a Lot line and separates two or more Primary Living Units as a common wall, or is designed as a single structural component of a building which, if not maintained, repaired or replaced as a single structural component, would result in damage to other portions of the building within which other Primary Living Units are located.

**“Pedestrian Purposes”** means walking, hiking, snowshoeing, cross country skiing and bicycling, but specifically exclude any form of motorized travel.

**“Person”** means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

**“Primary Living Unit”** means that portion of the building situated on a Lot which is intended for separate occupancy by a single family or an individual.

**“Property”** means that portion of the real property described on Exhibit A to this Declaration. At such time as any portion of the Additional Property becomes subject to this Declaration by Supplemental Declaration, the Additional Property described in the Supplemental Declaration shall thereafter be deemed to be part of the Property.

**“Public View”** means the view of property or improvements on Lots from roads within the Property, a neighboring Lot, or Common Elements.

**“Rules and Regulations”** means the various rules, regulations, requirements, policies and procedures adopted from time to time by the Association, acting through the Board, which govern or control various aspects of living within and use of the Property.

**“Security Deposit”** shall have the meaning assigned thereto in Section 10.5.

**“Single Family Residential Use”** means the permitted development, use and occupancy of a Lot for the construction and location of a single building improvement that is located within that Lot in compliance with the minimum Building Setback and Separation requirements, and which single building improvement contains one (1) Primary Living Unit, together with permitted accessory uses.

**“Special Assessment”** means assessments levied in accordance with Section 7.5.

**“Special District”** means any service and utility district created as a special purpose unit of local government in accordance with Colorado law that is capable of providing certain community services to some or all of the Property. The term includes, without limitation, Grand County Water and Sanitation District No. 1 which will provide treated water and sanitation services to the Property.

**“Specific Assessment”** means assessments levied in accordance with Section 7.6.

**“Supplemental Declaration”** means an amendment or supplement to this Declaration filed pursuant to Section 15.5 that subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described. A Supplemental Declaration may not be filed without the consent of the Declarant during the Declarant control period as described in Section 4.3(A).

### ARTICLE III PROPERTY RIGHTS

3.1 **Common Elements.** Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Elements, subject to:

- A. This Declaration and any other applicable covenants;
- B. Any restrictions or limitations contained in any instrument conveying such property to the Association or granting the Association possessory or use rights therein;
- C. The right of the Association, acting through the Board, to adopt Rules and Regulations concerning the use and enjoyment of the Common Elements, including rules limiting the number of guests who may use the Common



Elements;

D. The right of the Association, acting through the Board, to suspend the right of an Owner to use facilities within the Common Elements (but not access to any Lot) (1) for any period during which any charge against such Owner's Lot remains delinquent, and (2) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of this Declaration, any applicable Supplemental Declaration, the Bylaws, or the Rules and Regulations of the Association after notice and a hearing pursuant to Section 6.12 of the Bylaws;

E. The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Elements pursuant to Section 5.2 and in accordance with the Act;

F. The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission, use, or other fees for the use of any facility situated upon the Common Elements;

G. The right of the Board to permit use of any facilities situated on the Common Elements by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

H. The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred in accordance with the Act and subject to such approval as may be required by Section 17.2; and

I. The rights and obligations of the Association, acting through the Board, to restrict, regulate or limit Owners' and occupants' use of the Common Elements for environmental preservation purposes, including, without limitation, wildfire mitigation, wildlife corridors, winter wildlife ranges and natural wildlife habitat.

**3.2 Use of Common Elements by Other Persons.** Any Owner may extend such Owner's rights of use and enjoyment to the Common Elements described herein to the members of such Owner's family, or to such Owner's lessees and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases its Lot shall be deemed to assign all such rights to the lessee of such Lot. An Owner who extends or assigns its rights of use and enjoyment to the Common Elements as described herein shall be responsible for ensuring that all members of such Owner's family, and such Owner's lessees and social invitees, as applicable, shall comply with the terms and conditions of this Declaration and the Rules and Regulations.

## ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

4.1 **Membership.** Every Owner shall be a Member of the Association. No Owner, whether one or more Persons, shall have more than one membership per Lot owned. If a Lot is owned by more than one Person, all co-Owners shall be entitled to the privileges of membership, subject to the restrictions on voting set forth in Section 4.2 and in the Bylaws, and all co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse or domestic partner. The membership rights of an Owner which is a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. Upon transfer of record title to any Lot, the new Owner shall provide the Board with a copy of the deed of conveyance and of any trust deed or mortgage and the Board shall then record the transfer in the books of the Association.

4.2 **Meetings of Members; Voting.** Those Members appearing in the records of the Association at 9:00 a.m. Mountain Time on the day preceding the date of any meeting of the Members, shall be entitled to attend any such meeting, either in person or by proxy. Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 4.1. The Allocated Interest of each Member for voting purposes shall be one vote per Lot. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Owner's vote shall be suspended if more than one Person seeks to exercise it.

### 4.3 **Declarant Control of Board of Directors.**

A. The Declarant shall have all of the powers reserved in C.R.S. §38-33.3-303(5) of the Act to appoint and remove officers and members of the Board during the period of Declarant control permitted therein. The period of Declarant control shall expire no later than either sixty (60) days after conveyance to Owners other than Declarant of seventy-five percent (75%) of the Lots that may be created, two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business, or two (2) years after any right to add new Lots was last exercised, whichever occurs first.

B. Pursuant to C.R.S. §38-33.3-303(6), not later than sixty (60) days after conveyance to Owners other than Declarant of twenty-five percent (25%) of the Lots that may be created, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other

than the Declarant.

C. Not later than sixty (60) days after conveyance to Owners other than Declarant of fifty percent (50%) of the Lots that may be created, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board must be elected by Owners other than Declarant.

## **ARTICLE V RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

5.1 **Common Elements.** Subject to the rights of the Owners set forth in this Declaration, the Association shall manage and control the Common Elements and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep such areas in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard. Without limiting the generality of the foregoing, the Association shall provide year round maintenance of those Common Elements which comprise the Property's access roads and the Landscape and Driveway Easement LCEs. Property conveyed as Common Elements to the Association by or on behalf of Declarant shall be accepted by the Association subject to the terms of this Declaration and the Act, and such property shall thereafter be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed. Declarant shall convey the initial Common Elements designated on the Community Plat to the Association prior to the conveyance of a Lot to any Person.

5.2 **No Reduction of Common Elements.** The Common Elements and the other portions of the Area of Common Responsibility shall not be reduced by amendment of this Declaration, by dedication to the Town of Winter Park, Colorado, a Special District, or to any other local, state or federal governmental or quasi-governmental entity, or by any other means except in accordance with the Act and subject to such approval as may be required by Section 17.2.

5.3 **Maintenance of Other Property.** The Association may maintain other property that it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. By way of illustration and not by way of limitation, the Association may maintain and repair entry monumentation if located in the public right-of-way adjacent to the entry to Property with the permission of the Town of Winter Park or its successor.

5.4 **Enforcement.** The Association may enforce this Declaration, the Bylaws, or the Rules and Regulations in accordance with the terms and conditions of Article XIV

hereof.

**5.5 Indemnification.** The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be made a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**5.6 Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designated to make the Property safer than they otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE FIRE PROTECTION OR SECURITY OR INEFFECTIVENESS OF FIRE PROTECTION OR SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DECLARANT, ANY SUCCESSOR DECLARANT, AND THE ARC DO NOT REPRESENT OR WARRANT THAT ANY WILDFIRE MITIGATION PLAN, FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT OR THE ARC MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY WILDFIRE MITIGATION PLAN, FIRE PROTECTION OR BURGLAR ALARM SYSTEMS, OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR THAT ANY WILDFIRE MITIGATION PLAN, FIRE PROTECTION OR BURGLAR ALARM SYSTEMS, OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE PLAN OR

SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY WILDFIRE MITIGATION PLAN, FIRE AND/OR BURGLAR ALARM SYSTEMS, OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

**ARTICLE VI  
MAINTENANCE AND ADMINISTRATION OF  
THE AREA OF COMMON RESPONSIBILITY**

6.1 **Association's Responsibility.** The Association shall maintain and keep in good repair the Common Elements and the other portions of the Area of Common Responsibility, and shall perform its other obligations and responsibilities with respect to the same, which shall include, but need not be limited to:

A. Maintaining and keeping in good repair all landscaping and other flora, parks, ponds, structures and improvements, including any private streets, bicycle and pedestrian pathways or trails, situated upon the Common Elements and the other portions of the Area of Common Responsibility;

B. Maintaining and keeping in good repair all landscaping within public rights-of-way within or abutting the Property, landscaping and other flora within any utility easement within the Property (subject to the terms of any easement agreement relating thereto), and landscaping within any Landscape and Driveway Easement LCE, and maintaining and keeping in good repair all driveway surfaces located within any Landscape and Driveway Easement LCE, including required snow removal services;

C. Maintaining and keeping in good repair such portions of any Additional Property included within the Common Elements as may be dedicated by this Declaration or any Supplemental Declaration;

D. Maintaining, keeping in good repair, and insuring additions to the Area of Common Responsibility by a covenant to share costs, or any contract or agreement for maintenance thereof;

E. Maintaining and keeping in good repair all storm water retention systems and improvements located within the Property or which are included in the Area of Common Responsibility by a covenant to share costs, or any contract or agreement for maintenance thereof, and which serve as part of the residential water, fire protection, drainage and storm water retention systems for the Property, including any retaining walls, pipelines, bulkheads or dams (earthen or otherwise) retaining or conveying water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith;

F. Maintaining and keeping in good repair any property or facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and the Owners, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as the Declarant revokes such privilege of use and enjoyment by written notice to the Association;

G. Maintaining and keeping in good repair any environmental reserves and administering any other responsibilities assigned to the Association in connection therewith, including, without limitation, creating and maintaining wildlife corridors, winter wildlife ranges and natural wildlife habitats; and

H. Adopting Rules and Regulations dealing with the provisions of this Declaration, establishing procedures to provide equitable enforcement, and providing appropriate penalties for violations.

**6.2 Association Right to Contract.** By contract or agreement, the Association may, but shall not be obligated to, assign any of its obligations and responsibilities for maintenance, repair, replacement, inspection or administration described in this Article VI to any properly qualified Person, including, without limitation, the Town of Winter Park and the Grand County Water and Sanitation District No. 1.

**6.3 Common Expenses.** Except as otherwise specifically provided herein, all costs associated with the maintenance, repair, replacement, inspection or administration of the Common Elements and the other portions of the Area of Common Responsibility, including all costs associated with the Association's performance, either directly or indirectly, of its other obligations and responsibilities with respect to the

same, shall be Common Expenses to be allocated among all Lots as part of the Base Assessments, without prejudice to the right of the Association to seek reimbursement from the Owner(s) of, or other Persons responsible for portions of the Common Elements or the Area of Common Responsibility pursuant to this Declaration, a covenant to share costs, other recorded covenants, or agreements with the owner(s) thereof.

## **ARTICLE VII ASSESSMENTS**

### **7.1 Creation of Assessments.**

A. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 7.4; and (c) Specific Assessments as described in Section 7.5. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments.

B. All assessments, together with interest (at a rate not to exceed the highest rate allowed by the Act) as computed from the date the delinquency first occurs, fees, charges, late charges, costs, fines and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 7.6. Each such assessment, together with interest, fees, charges, late charges, costs, fines and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment was levied by the Board. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, a first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments that accrued after the date of recording of its Mortgage only to the extent provided in the Act.

C. The Association shall furnish to an Owner or such Owner's designee, or to a holder of a Mortgage or other security interest or its designee, upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, properly addressed to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board, and every Owner. If no statement is furnished to the Owner, a holder of a Mortgage or other security interest, or their designee,

delivered personally or by certified mail, first-class postage prepaid, return receipt requested, properly addressed to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

D. Assessments shall be paid in such manner and on such dates as the Board may establish. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each calendar month. If any Owner is delinquent in paying any assessments or other charges levied on such Owner's Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

E. No Owner may exempt himself from liability for assessments, by non-use of Common Elements, abandonment of the Owner's 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 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 it takes, except as otherwise provided in the Act.

F. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

## **7.2 Computation of Base Assessment.**

A. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 7.3.

B. The Base Assessment shall be levied equally against all Lots in accordance with the Allocated Interest formula set forth in Section 7.2(C). The Base Assessment shall be set at a level that is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of the Base Assessment, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under Section 7.7 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated becoming



subject to assessment during the fiscal year.

C. Base Assessments shall be allocated equally among all Lots regardless of their size. Each Owner shall be liable for a percentage of the Base Assessment applicable to such Owner's Lot determined by multiplying the Base Assessment by a fraction, wherein one (1) is the numerator representing a Lot, and the total number of Lots is the denominator. The total number of Lots is subject to change in the event Declarant exercises its reserved annexation or withdrawal rights described in Section 15.5, but the foregoing formula shall apply regardless of the number of Lots. Any overpayments that have been made in advance shall be credited to the following fiscal year or, at the Board's discretion, refunded to each Owner according to the Owners' respective Allocated Interest in the Common Expenses.

D. So long as the Declarant has the right unilaterally to annex Additional Property pursuant to Section 15.5, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy, which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

E. Within thirty (30) days after adoption of any proposed budget for the Property, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget and notice of the amount of the proposed Base Assessment for the following year to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget and the Base Assessment not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting at least seventy-five percent (75%) of all Owners vote to reject the budget and the Base Assessment, the budget and Base Assessment shall be ratified, whether or not a quorum is present. In the event that the proposed budget and the Base Assessment are rejected, the periodic budget and the Base Assessment last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget and Base Assessment proposed by the Board.

**7.3 Reserve Budget and Capital Contribution.** The Board shall annually prepare reserve budgets that take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit

meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments over the budget period.

**7.4 Special Assessments.** In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses, expenses in excess of those budgeted, or capital costs associated with new improvements in accordance with the terms of this Section. Such Special Assessment may be levied against the entire membership if the Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least sixty-seven percent (67%) of the total votes allocated to Lots that will be subject to such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**7.5 Specific Assessments.** The Board shall have the power to specifically assess expenses of the Association against Lots that (a) receive benefits, items, or services not provided to all Lots within the Property that are incurred upon request of, or for the benefit of, the Owner of a Lot for specific items or services relating to the Lot, including, without limitation, Limited Common Elements, if any, appurtenant to that Owner's Lot, or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests, or (c) that relate to a disproportionate impact upon the benefits, items or services provided by the Association due to special factors, such as the existence of higher land use densities upon a particular Lot as compared to other Lots, but only as such unequal assessments are permitted by the Act or any Supplemental Declaration affecting title to a Lot. The Board may also levy a Specific Assessment against any Lot to reimburse the Association for costs incurred in bringing the Lot into compliance with the provisions of this Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and/or the Rules and Regulations, provided the Board gives prior notice to the Owner and an opportunity to cure the alleged lack of compliance.

**7.6 Lien for Assessments.** Upon the recordation of this Declaration and any Supplemental Declaration adding Additional Property pursuant to Section 15.5 hereof, the Association shall have a perfected lien against each Lot to secure payment of delinquent Assessments, as well as interest, fees, charges, late charges (subject to the limitations of the Act), costs of collection (including attorneys' fees), and fines. Without limiting the generality of the foregoing, the Board shall have the power to levy a late charge equal to five percent (5%) of the total amount of any assessment due hereunder which is not paid in full within forty-five (45) days of the date fixed for payment of such assessment as established by the Board pursuant to Section 7.1(D). Any assessment or portion thereof remaining unpaid following expiration of such forty-five (45) day period shall additionally accrue interest at the rate of eighteen percent (18%) per annum until

paid in full. The lien created by this Section 7.6 shall be superior to all other liens and encumbrances on a Lot, except those liens and encumbrances described in the Act as being prior and superior to the lien described in this paragraph. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure in the manner provided in the Act, or by deed in lieu of foreclosure. The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same. The sale or transfer of any Lot shall not affect the Assessment lien or relieve such Lot from the lien for any subsequent Assessments except as otherwise provided in the Act. By acceptance of the deed or other instrument of transfer of a Lot, an Owner irrevocably waives the homestead exemption provided by Colorado Revised Statute Section 38-41-201 et seq.

**7.7 Date of Commencement of Assessments.** The obligation to pay Assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies Assessments pursuant to this Article VII, whichever is later. The first Base Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time such assessments commence on the Lot, and the adjusted Base Assessment for that Lot shall then be paid in the manner and on the dates determined by the Board in accordance with Section 7.1(D).

**7.8 Failure to Assess.** Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice as may be required by the Act shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which such assessments were made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

**7.9 Capitalization of Association.** Upon acquisition of record title to a Lot by the first Owner thereof, including a Builder (but specifically excluding the Declarant), a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to \$500.00 per Lot for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

**7.10 Exempt Property.** The following property shall be exempt from payment of Base Assessments and Special Assessments:

- A. All Common Elements and any other property owned by the Association from time to time; and
- B. Any property dedicated to and accepted by any governmental authority or public or private utility provider.

## ARTICLE VIII INSURANCE AND CASUALTY LOSSES

### 8.1 Association Insurance.

A. Commencing not later than the time of the first conveyance of a Lot to a Person other than a Declarant, the Association, acting through its Board or its duly authorized agent, shall obtain and thereafter maintain, to the extent reasonably available, the following insurance coverage:

1. Property insurance on the Common Elements through a so-called blanket "risks of direct physical loss" property insurance policy, if reasonably available, covering all insurable improvements on the Common Elements and on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If blanket "risks of direct physical loss" coverage is not generally available at reasonable cost, then "broad form" coverage, including coverage for vandalism and malicious mischief, shall be obtained. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property, less applicable deductibles, at the time the insurance is purchased and each renewal date. In determining the face amount of the property insurance policy required pursuant to this paragraph, land, excavations, foundations and other items normally excluded from property insurance policies shall be excluded from the calculation of full replacement cost.

2. Commercial general liability insurance on the Common Elements and the other Area of Common Responsibility, insuring the Board, the Association, the Association's management agent, if any, and their respective employees, agents and all other Persons acting as agents, against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements and the other Area of Common Responsibility. The Declarant shall be included as an additional insured on the commercial general liability policy in its capacity as both an Owner and a member of the Board. The other Owners shall be

included as additional insureds only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements and the other Area of Common Responsibility. The commercial general liability policy shall specifically cover claims of one or more insured parties against other insured parties. If generally available at reasonable cost, the "commercial liability insurance" policy shall have at least a \$1,000,000.00 combined single limit as respects bodily injury and property damage and at least a \$2,000,000.00 limit per occurrence and in the aggregate. The Board may increase these limits if, in its reasonable judgment, it determines the limits are no longer sufficient.

B. If the insurance coverage described in Section 8.1(A) is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association, through its Board, shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

C. Premiums for all insurance on the Common Elements and the other portions of the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

D. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 6.12 of the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 7.5.

E. All insurance coverage obtained by the Board shall:

1. Be written with a company authorized to do business in Colorado which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the closest equivalent rating available;

2. Be written in the name of the Association as trustee for the benefited parties with such additional named insured endorsements as required by Section 8.1(A) or the Act. Policies on the Common Elements

shall be for the benefit of the Association and its Members;

3. Vest in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss;

4. Not be reduced by the amount of any insurance purchased by individual Owners, occupants, or their Mortgagees and exclude individual Owner's policies from consideration under any "other insurance" clause so that if, at the time of a loss under any Association policy, there is other insurance in the name of an Owner covering the same risk covered by the Association's insurance policy, the Association's insurance shall provide primary insurance;

5. Have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Grand County, Colorado area;

6. Waive subrogation as to any claims against the Association's Board, officers, employees, and its manager (if any), the Owners or members of the Owner's household, and their tenants, servants, agents, and guests;

7. Provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, shall void the Association policy or be a condition to recovery under the policy; and

8. Commit to issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a Mortgage or other security interest, reciting that the insurer issuing the policy may not cancel or refuse to renew the policy until thirty (30) days after the proposed cancellation or nonrenewal has been mailed to the Association, and each Owner and holder of a Mortgage or other security interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

F. The Board shall be required to use reasonable efforts to secure insurance policies containing endorsements that:

1. Waive the insurer's rights to repair and reconstruct instead of paying cash; and

2. Preclude cancellation, invalidation, suspension, or nonrenewal by the insurer on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure.

G. The Association shall also obtain, as a Common Expense: worker's compensation insurance if and to the extent required by law; directors' and officers' liability coverage, if reasonably available; and flood insurance, if advisable.

H. If required by the Act, the Association also shall obtain, as a Common Expense, a fidelity bond or bonds or fidelity insurance covering all persons responsible for handling Association funds. If such fidelity bonding or insurance is required by the Act, then the Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to the greater of \$50,000.00 or one-sixth of the annual Base Assessments on all Lots for the current fiscal year plus reserves on hand, unless an other amount is required by the Act. Bonds or insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

I. The Association may carry any other insurance it considers appropriate, including insurance on Lots it is not obligated to insure, to protect the Association or the Owners.

J. All insurance policies required by law to be obtained and maintained by the Association shall comply in all respects with the requirements of the Act that are in effect from time to time.

## 8.2 Owners' Insurance.

A. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "risks of direct physical loss" property insurance on such Owner's Lot and structures thereon providing full replacement cost coverage less a reasonable deductible; provided, however, if blanket "risks of direct physical loss" coverage is not generally available at reasonable cost, then "broad form" coverage, including coverage for vandalism and malicious mischief, shall be obtained.

B. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on a Lot or Lots, the Owner or Owners thereof shall proceed as soon as reasonably possible to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article X of this Declaration. Alternatively, the Owner or Owners shall clear the Lot of all debris and ruins as soon as reasonably possible and thereafter maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. In either case, the Owner or Owners of the affected Lot shall complete such repair, reconstruction or clearing within twelve (12) months of the date of such damage or destruction. Such Owner or Owners shall pay any costs that are not covered by insurance proceeds.

### 8.3 Damage and Destruction.

A. 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; provided, however, the insurance proceeds for the loss related to such damage or destruction shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Mortgage or other security interest. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

B. Any damage to or destruction of the Common Elements shall be repaired or reconstructed unless the Owners representing at least sixty-seven percent (67%) of the total votes of the Association entitled to be cast in accordance with the Act decide within sixty (60) days after the loss not to repair or reconstruct.

C. 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 sixty-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Elements shall be repaired or reconstructed, except as otherwise provided in the Act.

D. If determined in the manner described above that the damage or destruction to the Common Elements shall not be repaired or reconstructed 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 consistent with the Community-Wide Standard.

E. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed as provided in the Act.

F. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the amount of any shortfall shall be a Common Expense and the Board shall be entitled to levy assessments to cover the amount of the shortfall in accordance with the provisions of Article VII.

### **ARTICLE IX CONDEMNATION**

If any part of the Common Elements shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least sixty-seven percent (67%) of the total Association votes entitled to be cast in accordance with the Act) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

A. If the 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 available, unless within sixty (60) days after such taking at least sixty-seven percent (67%) of the total votes of the Association entitled to be cast in accordance with the Act shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 8.3 regarding funds for the repair of damage or destruction shall apply.

B. If the taking does not involve 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 as permitted by the Act.

**ARTICLE X  
ARCHITECTURAL REVIEW COMMITTEE**

**10.1 Philosophy and General Rule.**

A. The area in which the Property is located is one of great natural beauty that Declarant intends to protect and enhance. While recognizing that development of the Property as described in this Declaration will inevitably entail disturbance of local ecosystems, it is the goal of Declarant that this disturbance be minimized to the greatest extent reasonably possible and that structures and other improvements within the Property be designed and constructed so as to further this goal.

B. No structure shall be placed, erected, or installed upon any Lot, and no improvements (including, without limitation, staking, clearing, tree cutting, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article, approval of the ARC, and approval of the Town of Winter Park under and pursuant to the Affordable Housing Covenant.

C. Any Owner may remodel, paint or redecorate the interior of structures on such Owner's Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild without any change or modification in strict accordance with originally approved plans and specifications.

D. 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. Building permit applications submitted to the Town of Winter Park Building Department for construction of dwellings on the Property shall comply with all Building Setback and Separation requirements and include specific architectural elevations for each building design, including floor plans, and plans and specifications for engineered building foundations and under-foundation drain and radon mitigation systems. A site specific soils and foundation report is required to be submitted with any building permit application to the Town of Winter Park Building Department. The required soils and foundation report shall include recommendations for the most appropriate foundation system for the proposed building structure. The report shall also comply with the recommendations of the Colorado Geological Survey for Property, a copy of which is on file with the Town of Winter Park Planning Department. In addition, all building permit applications to the Town of Winter

Park Building Department for Lots within the Property shall be accompanied by a surveyed site plan evidencing that all proposed improvements, including decks, will be located entirely in compliance with the Building Setback and Separation requirements for the Lot or grouping of Lots for which the building permit is requested. In addition, as-built survey drawings evidencing that all constructed improvements are located entirely in compliance with the Building Setback and Separation requirements for the Lot or grouping of Lots for which a building permit was issued, are required as a condition of issuance of a certificate of occupancy by the Town of Winter Park Building Department for the completed improvements.

E. This Article shall not apply to the activities of the Declarant, or to improvements to the Common Elements by or on behalf of the Association.

#### **10.2 The ARC and Its Functions.**

A. The members of the ARC shall be appointed by the Board. The ARC shall consist of an odd number of members. Initially, the ARC shall consist of at least three, but not more than five, persons as members. ARC members must be Owners or representatives of Owners, and at least one (1) ARC member shall also be a member of the Board. Initial ARC members shall hold office until the appointment of their successor at the 2006 annual Board meeting. Thereafter, subject to the right of the Board to remove any ARC member at any time, with or without cause, each ARC member will hold office for a term of one (1) year and the Board shall appoint ARC members at the Board's annual meetings. Upon expiration of the Declarant Control Period, the Board, at a special meeting, shall divide the members of the ARC into three approximately equal groups or "classes" and appoint ARC members from each such class for a term of one (1) year, two (2) years, or three (3) years so that the tenure of each class is staggered and ARC turnover does not occur at the same time. The ARC member who is also a member of the Board shall be assigned to the ARC class whose members have a three (3) year term. Each such ARC member's term shall be deemed to have begun as of the date of the next annual Board meeting following such special meeting. At each annual Board meeting thereafter, the Board shall appoint the same number of ARC members as there are ARC members whose terms are expiring at the time of each such annual Board meeting, for terms of three (3) years. Each ARC member shall hold office until the appointment and qualification of his successor or until his earlier death, resignation or removal. Members of the ARC shall serve at the pleasure of the Board; their tenure may be terminated at any time, with or without cause.

B. The members of the ARC shall not be entitled to any compensation for services performed as members of the ARC but shall be entitled to

reimbursement of expenses incurred. Notwithstanding the foregoing, however, nothing contained herein shall preclude any member of the ARC from performing services for the ARC in any capacity other than as a member of the ARC (such as an architect or engineer performing detailed professional evaluations of proposed building plans) and receiving compensation therefor, so long as the arrangement has been approved by a majority of disinterested ARC members.

C. The ARC shall have exclusive jurisdiction and responsibility for administration of the Design Guidelines and for the review of applications for construction and modifications under this Article X. The Board may establish and charge reasonable fees for the ARC's review of applications hereunder and may require such fees to be paid in full to the ARC prior to review. In addition, the ARC may impose, in connection with any particular review, an additional fee to cover its anticipated expenses for conducting such review, including the anticipated cost of obtaining professional guidance from a licensed architect, licensed engineer or other appropriate licensed professional. In the event such an additional fee is imposed, the Board may require that the additional fee be paid in full prior to ARC review.

### **10.3 Design Guidelines and Procedures.**

A. The Declarant shall prepare the initial Design Guidelines which shall apply to all construction activities within the Property that are subject to review as provided in Section 10.1. The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, and intended use thereof.

B. The ARC shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have authority to amend them with the approval of the Board. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

C. The ARC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Property and all such Persons shall conduct their activities in accordance with such Design Guidelines. In the Declarant's discretion, the Design Guidelines may be recorded in the public records of Grand County, Colorado, 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. Plans and specifications prepared in accordance with the submission requirements described in the Design Guidelines which show the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements, including, without limitation, specific architectural elevations with floor plans that comply with all Building Setback and Separation requirements for each building design, shall be submitted to the ARC for review and approval (or disapproval). In addition, information concerning domestic water and irrigation systems, drainage, lighting, plans and specifications for an engineered building foundation and under-foundation drain and radon mitigation system, a surveyed site plan evidencing that all proposed improvements, including decks, will be located in compliance with all Building Setback and Separation requirements for the Lot or grouping of Lots for which ARC approval is requested, and other features of proposed construction shall be submitted as required by the Design Guidelines as applicable. In reviewing each submission, the ARC may consider, among other things, the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation.

E. In the event the ARC fails to approve or to disapprove any application within sixty (60) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARC pursuant to Section 10.3(G).

F. 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.

G. The ARC may make periodic inspections of the Lots in order to ensure compliance with the Design Guidelines in accordance with the terms of Section 13.6.

H. The ARC may, in its sole and absolute discretion, authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (1) be effective unless in writing; (2) be contrary to this Declaration; or (3) estop the ARC from denying a variance in

other circumstances. For purposes of this paragraph, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

I. Only after the ARC approves an application may the applicant apply to the Town of Winter Park for approval pursuant to the Affordable Housing Covenant. If the Town of Winter Park, acting in its capacity as a grantor and declarant under the Affordable Housing Covenant and not in its capacity as the issuer of building permits within the Town of Winter, imposes conditions on its approval of the application, the applicant is required to re-apply to the ARC for approval of those conditions as well. Only after both the ARC and the Town of Winter Park approve an application, may the applicant apply to the Town of Winter Park Building Department for issuance of a building permit. Design changes which may be required by the Town of Winter Park Building Department as a condition of its approval, are subject to re-approval by the ARC and the Town of Winter Park acting in its capacity as a grantor and declarant under the Affordable Housing Covenant. Only when proposed development is approved by the ARC, the Town of Winter Park acting in its capacity as a grantor and declarant under the Affordable Housing Covenant, and the Town of Winter Park Building Department, can site work begin and a building permit be issued by the Town of Winter Park. Approval of a proposed plan by the ARC or the Town of Winter Park acting in its capacity as a grantor and declarant under the Affordable Housing Covenant, does not ensure that the same development will be approved by the Town of Winter Park Building Department, nor does approval of a proposed plan by the Town of Winter Park Building Department ensure that the same development will be approved by the ARC or the Town of Winter Park acting in its capacity as a grantor and declarant under the Affordable Housing Covenant.

#### 10.4 Enforcement.

A. Each year during the month of June, the ARC shall conduct a comprehensive Property inspection to evaluate the status of Common Elements and the other portions of the Area of Common Responsibility, to determine whether any maintenance, repair or improvement is necessary to bring such areas into compliance with the Community-Wide Standard, and to identify potential or existing violations of this Declaration. The ARC shall make a written report of its findings and recommendations to the Board for the Board's consideration and action in connection with the preparation of the Association's budget and the determination of assessments to be levied in accordance with Article VII.

B. Any structure or improvement placed or made in violation of this Article

shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees (including, without limitation, members of the ARC) shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot or Lots and collected as a Specific Assessment.

C. Any Builder, contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines, other than the Declarant, may be excluded by the Board from the Property, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, nor its officers or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

D. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC. The enforcement rights described herein are in addition to any enforcement rights vested in the Town of Winter Park acting in its capacity as a grantor and declarant under the Affordable Housing Covenant.

**10.5 Security Deposit.** Prior to the commencement of any work approved by the ARC other than work to be performed by Declarant or its designee, the Person wishing to commence such work (other than Declarant or its designee) shall pay to the ARC, in addition to the fees described in Section 10.2(C), a deposit (the "Security Deposit") which shall secure that Person's prompt and faithful compliance with the terms and conditions of this Article, including, without limitation, the requirement that any construction or modification be completed according to the plans approved by the ARC, and that any damage done to the roads, easements or Common Elements will be properly repaired and revegetated, if required. In the event such damage or revegetation has not been repaired or accomplished within thirty (30) days following the issuance of a Certificate of Occupancy for the dwelling or, in the event there is no dwelling involved, within thirty (30) days after substantial completion, as determined by the ARC, then the deposited funds may be used by the ARC to repair the damage or complete the revegetation. Prior to the use of such funds, however, the ARC shall give the Person making the Security Deposit ten (10) days' written notice of its intention to make use of the Security Deposit. Notice shall be given by certified mail to the address or any address shown on the plans and shall be posted on the affected Lot or Lots. Should the deficiency be remedied during the ensuing ten (10) days, then the Security

Deposit shall be refunded. The Security Deposit shall initially be in the amount of \$5,000.00 but the ARC may, by rule approved by the Board, adopt a greater or lesser amount, or may adopt a formula with Board approval to determine an amount, as experience dictates. The ARC may also provide, with Board approval, for different amounts for different types of projects and may provide for retention of the Security Deposit for a period not to exceed one (1) year after substantial completion in the event revegetation is required.

**10.6 Limitation of Liability.** Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the ARC 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 the Declarant, the Association, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. Any Owner or other person or entity submitting plans to the ARC for approval, by doing so, agrees and covenants that such Owner will not bring any action or suit against the Board, the ARC, its members, or their advisers, employees, or agents which in any way relates to such plans or the decision of the ARC in relation thereto.

## **ARTICLE XI DESIGN REQUIREMENTS AND ARCHITECTURAL STANDARDS**

The ARC has the right to review, in its reasonable discretion, all development described in Section 10.1(B) for conformance with the general purposes of this Declaration, including but not limited to the following:

**11.1 Setbacks.** No structure, including decks, shall be located on any Lot if it does not comply with all Building Setback and Separation requirements.

**11.2 Fences and Walls.** Fencing shall be limited and is generally discouraged. No fence or wall shall be permitted without the approval of the ARC as provided in this Article XI. Such fences, if approved by the ARC, shall be designed in accordance with a consistent Property-wide theme established by the ARC.

**11.3 Signs.** To the extent permitted by applicable law, no signs shall be permitted without the prior approval of the ARC. All signs shall comply with the Town of Winter Park Municipal Code.



#### 11.4 **Architectural Standards.**

A. In its review of architectural plans, the ARC shall be guided by the basic precepts set forth in Article I and Section 10.1(A). The ARC shall encourage architectural design incorporating the use of natural materials, steep roof pitches, colors that blend with the landscape and varied structural forms that adapt to the topography and vistas of the site.

B. The following design standards shall be followed for all structures:

1. **Building Siting.** All structures shall conform to the Building Setback and Separation criteria set forth on the Final Plat and in this Declaration, and as established by the ARC.

2. **Driveway Access, Utilities and Parking.** Driveways shall be constructed on each Lot by the Owner in the location approved by the ARC or in the location indicated by the Declarant if provided pursuant to Section 11.7(A). Driveways shall have no more than one access opening. Driveway clearings should be not more than twenty feet (20') in width and be not less than twenty feet (20') in depth, and constructed to provide all-weather access to the Primary Living Unit to be located on each Lot. No dwelling shall be constructed unless there is concurrently provided on the same Lot adequate off-street parking within the driveway and garage enclosure located thereon, for at least two (2) automobiles. The placement of the spaces shall be shown on the plans submitted to the ARC prior to construction. All driveways within the Property providing access to, and outside parking spaces for, that Lot must be improved with concrete, asphalt, stone or gravel. All such driveway accesses shall be constructed to meet the Driveway Design Standards of the Town of Winter Park. No certificate of occupancy will be issued for a building improvement constructed on a Lot within Property until the Town of Winter Park Building Department inspects and approves the completion of the driveway for that Lot.

3. **Structures.** Materials, colors and building mass of structures located within the Property shall be appropriate and attractive to the site as determined by the ARC and the Town of Winter Park acting in its capacity as a grantor and declarant under the Affordable Housing Covenant.

11.5 **Architectural Guidelines.** Certain architectural guidelines, in addition to the Design Guidelines, shall be used by the ARC to evaluate the suitability of plans and, although subjective, shall be the basis for approving plans that do not clearly adhere to

the standards.

- A. If the structure is effectively screened from Public View and from the view from adjoining Lots, the ARC may accept variation from the standards in the use of materials, colors and building mass.
- B. Although architectural homogeneity is not a standard, the intent of plan review shall be to ensure uniform standards of high quality in the use of materials and workmanship.

**11.6 Landscaping.** Landscaping on Lots and around buildings shall be subject to approval by the ARC. Water efficient landscaping is strongly encouraged. To the extent permitted by the rules and regulations of the Grand County Water and Sanitation District No. 1 or any successor entity which provides water and sewer service to the Property, irrigated areas shall be limited to entry and yard locations adjacent to buildings and kept to a minimum to limit water consumption. Installation of turf shall be kept to a minimum and used only for accent or border purposes. The ARC specifically reserves the right to disapprove any landscape plan that proposes to install irrigated turf within any Lot's permitted irrigated area in an amount or for purposes that are inconsistent with the terms of this Section.

**11.7 Tree Removal and Cleanup.** No tree or shrub shall be cut, felled or trimmed without the prior written approval of the ARC and of the Town of Winter Park acting in its capacity as a grantor and declarant under the Affordable Housing Covenant. In the event trees or brush are allowed to be cut, felled or trimmed as provided herein, the Owner shall remove the remnants, including slash, from the Lot. Stumps may be left if cut off to ground level, or they shall be removed and hauled away. In the event an Owner does not properly remove and cleanup, after notice and a reasonable opportunity to cure, the Board or the ARC may perform the clean up and charge the Owner for the cost thereof as a Specific Assessment.

**11.8 Continuity of Construction.** The entire exterior of any building shall be completed within twelve (12) months from issuance of a building permit therefor, subject to extensions approved by the Town of Winter Park and the ARC. In the event there is a violation of this requirement, or if construction is abandoned for a period in excess of one hundred twenty (120) days, the ARC may assess a Specific Assessment against the Owner in an amount not less than \$100.00 per day. Such an assessment may only be made after notice and opportunity for hearing pursuant to Section 6.12 of the Bylaws. At such hearing the only defense shall be that the failure to complete construction on a timely basis, or the abandonment, was caused by a circumstance beyond the Owner's control.

**ARTICLE XII  
OVERALL RESTRICTIONS AND REQUIREMENTS**

**12.1 General Use Restrictions.**

A. Lots shall be used only for Single Family Residential Use and Multifamily Residential Use. Building permits will only be issued for a single building improvement to be constructed on a single Lot, or on a grouping of Lots within the Property if approved by the ARC and the Town of Winter Park acting in its capacity as a grantor and declarant under the Affordable Housing Covenant, and the entire building improvement must be constructed as a single unit in accordance with the terms and conditions of the issued building permit. The entire building improvement to be constructed on a Lot or grouping of Lots for which a building permit has been issued must be completed within twelve (12) months from the date of issuance of the building permit as provided in Section 11.9. Until such time as a certificate of occupancy is issued by the Town of Winter Park Building Department for a building improvement constructed on a grouping of Lots within the Property, such grouping of Lots may only be sold, conveyed and transferred as a single unit. Upon issuance of a certificate of occupancy for a single building improvement intended for Multifamily Residential Use and compliance with all other applicable Town of Winter Park Zoning and Subdivision Regulations, the Owner of the single building improvement may sell, transfer and convey the individual constituent Lots (and the improvements located thereon) included in the relevant Lot grouping. Upon issuance of a certificate of occupancy for a single building improvement intended for Single Family Residential Use and compliance with all other applicable Town of Winter Park Zoning and Subdivision Regulations, the Owner of the single building improvement may only sell, transfer and convey the individual constituent Lots (and the improvements located thereon) included in the relevant Lot grouping as a single unit.

B. No noxious or offensive trade or activity shall be carried on upon any building site as determined by the Board. To minimize disturbance of other Owners of the Property, no construction work shall occur anywhere on the Property before 7:00 a.m. or after 7:00 p.m.

C. No trailers, tents, shacks, or any temporary buildings or structures shall ever be permitted on any portion of the Property, except an actual construction trailer or trailers may be permitted by the ARC in connection with ongoing construction on any Lot. In no event shall any such temporary building or structure at any time be used for human habitation temporarily or permanently.

D. Except to the extent the applicable zoning for the Property provides a

greater height, no structure located on any Lot shall exceed 35 feet in height as measured in accordance with applicable Town of Winter Park zoning rules and regulations.

E. All lighting within the Property shall use low wattage bulbs or lamps. All lighting shall be directed away from adjoining Lots and Public Views. Except for signage lighting permitted within the Common Elements, uplighting is strictly prohibited within the Property.

F. No animals or poultry of any kind other than a maximum of two cats or two dogs, or one cat and one dog, shall be kept or maintained on any part of a Lot. No animals may be raised, bred or kept for any commercial purposes. Notwithstanding the foregoing, domesticated house pets normally kept with human habitation such as a bird, or other small mammal as well as non-poisonous reptiles, are permitted. The number of pets in each household shall be maintained at a level where they are under complete control and care by the occupant and are of no nuisance from noise, odor or trespass to any other portion of the Property. Any complaint shall be brought before the Board and the Board shall have the right to limit the activity of such pets on any Lot or prohibit them from continued habitation on the Lot if further complaints occur. Animals within the Property must be either kept within an enclosure, on a leash being held by a person capable of controlling the animal, or under command control. Pets shall be allowed to accompany Owners and their guests on trails when under leash or command control, but Owners shall bear full responsibility for animals not under leash. Each Owner, and such Owner's guests or tenants, shall have the duty and responsibility to clean up after an animal when on or off such Owner's Lot.

G. Oil drilling, oil development operations, refining, mining operations of any kind, or quarrying shall not be permitted upon or in any of the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any of the Property.

H. Except as otherwise permitted by applicable law or as described in Section 12.1(I), no motorized vehicle whatsoever may be kept or placed upon any portion of the Property except in an enclosed garage or other storage structure screened from Public View in a manner approved by the ARC. Parking of commercial vehicles, recreational vehicles, mobile homes, snowmobiles, boats or other watercraft, or other oversized vehicles, stored vehicles, unregistered vehicles or inoperable vehicles, with or without wheels, in places other than enclosed garages or approved screened storage structures, is prohibited unless otherwise permitted by applicable law. This restriction shall not prohibit commercial or construction vehicles, in the ordinary course of business, from

making deliveries or otherwise providing service to the Property, and shall not apply to the initial construction by Declarant or by other Owners. Garages shall be attached to or part of each Primary Living Unit. Garage doors must be kept closed when the garage is not in active use.

I. No automobile or pickup or utility truck (van) with a capacity of one-half ton or less, may be parked outside of the parking spaces specified in the plans submitted to the ARC pursuant to Section 10.3, except in an enclosed garage or other storage structure screened from Public View in a manner approved by the ARC, unless otherwise permitted by applicable law.

J. No site shall be used for any type or kind of exterior storage of construction equipment or materials, except during construction. Such materials and equipment shall be expeditiously removed upon completion of the construction and in no case shall such external storage be permitted longer than two (2) years after a permit is issued or construction begins, whichever is earlier.

K. No business or commercial enterprise shall be allowed to operate within the boundaries of the Property, except for Home Occupations as long as they provide adequate off-street parking and do not primarily engage in direct sale of goods or services on the premises (whether at retail or wholesale), and provided that the following additional conditions are observed or satisfied:

1. All operations shall be conducted entirely within the dwelling unit, and/or accessory structure, with the exception of bed and breakfast operations and other commercial lodging businesses and child care services, which are strictly prohibited;
2. The Home Occupation shall be conducted exclusively by the permanent residents of the Primary Living Unit;
3. The Home Occupation must clearly be a secondary use of the Primary Living Unit;
4. There shall be no permanent evidence outside of the home, visible or audible, including signs, that a Home Occupation is being conducted therein;
5. There shall be no excess vehicular traffic, deliveries or trash. The determination of what constitutes excess vehicular traffic, deliveries or trash shall be made solely by the Board; and
6. The Home Occupation shall comply with the Home Occupation

Section of the Town of Winter Park Zoning Regulations.

L. Common Elements shall be used only for access or Pedestrian Purposes as depicted on the Final Plat, or for such other uses as may be permitted by the Board pursuant to its Rules and Regulations.

M. No outbuildings shall be constructed or erected on any Lot without the prior written approval of the ARC. In making a determination to approve or deny an outbuilding, the ARC shall assess the impacts to neighboring Lots as to size, location and design consistent with the building structure within which the Primary Living Unit is located. If allowed, all outbuildings shall be constructed of the same exterior siding and roofing materials as the building structure within which the Primary Living Unit is located.

N. All utilities, including but not limited to electricity, natural gas, telephone, and cable, shall be installed underground (except for those improvements and facilities which are customarily required to be located above ground). All utilities providing service to a Lot shall be located within the driveway clearing or as otherwise permitted by the ARC upon an Owner's prior application to locate any such utilities outside of a Lot's driveway clearing. In the event an Owner does not properly remove and clean up any residual debris after construction or installation of any utility, the Board or the ARC is hereby authorized to cause the cleanup to be done at the Owner's expense and, if not timely paid, the Board may collect the unpaid sum in the same manner as a Specific Assessment.

O. All equipment, service yards, woodpiles, above-ground storage, trash containers, satellite dishes and the like on any Lot shall be screened by adequate planting or fencing so as to conceal them from Public View. All rubbish and trash shall be regularly removed and shall not be allowed to accumulate. In the case of a violation, the Board may go on the Lot and remove such rubbish and trash, or cause it to be removed, and charge the Owner all costs therefor as a Specific Assessment. Trash shall be stored in "bear-proof" containers as approved by the North American Bear Society or by the Division of Wildlife of the State of Colorado. Individual trash receptacles shall be stored inside dwelling units or behind screening and out of Public View except on the day of trash pick-up.

P. Other than Declarant's initial development activities, burning is strictly prohibited anywhere within the Property for any purpose. Solid wood burning devices shall only be permitted with the approval of the ARC and in compliance with the requirements of the Town of Winter Park Municipal Code.

Q. Each Lot, including all structures, parking areas, and other improvements comprising the Lot, shall be maintained in good condition by the Owner as

required by the Rules and Regulations and this Declaration. The responsibility for maintenance shall include the responsibility for repair and replacement, as necessary.

R. The Property is subject to the noxious weed control plan recorded at Reception No. 96003640 of the Grand County, Colorado real property records. The Association is responsible for administering the noxious weed control plan for Property.

**12.2 Sanitation District.** Each Owner shall utilize the services and facilities of the Grand County Water and Sanitation District No. 1, and each Owner shall be responsible for compliance with all rules and regulations, and paying all fees, charges and rates as may be determined by the Special District from time to time.

**12.3 Restricted Activities.** The following activities are prohibited within the Property unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

A. Capturing, trapping, hunting or killing of wildlife within the Property outside of structures and the discharge of firearms, except in circumstances posing an imminent threat to the safety of persons using the Property;

B. Any activity which materially disturbs or destroys the vegetation, wildlife, wetlands, or air quality within the Property or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

C. Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent;

D. Subdivision of a Lot into two or more Lots after a Final Plat which includes such Lot has been approved and filed;

E. Conveying or encumbering less than the entirety of any Lot after a Final Plat including such Lot has been approved and filed;

F. Except with the approval of the Board, operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years;

G. Conversion of any carport, garage, attic or other unfinished space, other than a Basement, to finished space for use as an integral part of the Primary Living Unit on any Lot, unless approved by the ARC as set forth in Article X;

H. Any construction, erection, or placement of a thing, permanently or temporarily, on the outside portions of a Lot whether such portion is improved or unimproved, unless approved by the ARC and the Town of Winter Park acting in its capacity as a grantor and declarant under the Affordable Housing Covenant as set forth in Article X;

I. The use of the exterior portion of any Lot for the storage of any materials related to any business or commercial use or enterprise;

J. Allowing concrete suppliers and other contractors to clean their equipment other than at a location designated for that purpose by the ARC;

K. The use of surface water for construction; and

L. The installation or display of signs of any kind except those required or permitted by applicable law and those allowed by this Declaration or the Design Guidelines.

Notwithstanding the foregoing to the contrary, the Board may prohibit any activity, business or otherwise, which, in the sole discretion of the Board, constitutes a nuisance, or a hazardous or offensive use, or threatens the security, safety, or quiet enjoyment of other residents of Property.

### **ARTICLE XIII EASEMENTS**

#### **13.1 Recorded Easements and Licenses; Affordable Housing Covenant.**

A. Attached hereto as Exhibit C is a list, including recording data, of recorded easements and licenses appurtenant to, or included in Property or to which any portion of Property is or may become subject by virtue of a reservation in this Declaration.

B. Each Person that acquires any interest in the Property, or any portion thereof, specifically acknowledges and agrees that all of the Property is subject and subordinate to the Affordable Housing Covenant. The Affordable Housing Covenant imposes upon all portions of the Property a set of regulatory and restrictive covenants which are intended to preserve and protect the attractiveness and affordability of the Lots for "**Qualified Buyers**" and "**Qualified**



**Residents**" (as those terms are defined in the Affordable Housing Covenant), and assigns to the Town of Winter Park or its designee the right and responsibility to enforce compliance with the Affordable Housing Covenant. The Affordable Housing Covenant is a covenant running with title to the Property and is binding upon the Town of Winter Park, Winter Park Affordable Housing Corporation, and all subsequent owners of the Lots until and unless this Agreement is released and terminated in the manner described in the Affordable Housing Covenant.

C. Subject to the limitations and restrictions contained in this Declaration, Declarant does hereby establish, remise, release, sell, convey, quitclaim and dedicate unto the Association, its successors and assigns, for the use of the Owners, their family members, tenants, guests and invitees, the following perpetual non-exclusive easements described in Sections 13.2 through 13.7, inclusive, over, across and upon the Property and other real property (or interests therein) owned by Declarant as depicted and described on the Community Plat:

**13.2 Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Element, outside of any designated Building Setback and Separation, and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. In no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

### 13.3 Easements for Utilities, Etc.

A. There are hereby reserved unto the Declarant (so long as the Declarant owns any property described on Exhibit A or Exhibit B of this Declaration), the Association, and the designees of each (which may include, without limitation, the Town of Winter Park, a Special District and any utility provider) non-exclusive access and maintenance easements upon, across, over, and under all of the Property to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, road slope easements, walkways, bicycle pathways, landscaped medians, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewer, meter boxes, telecommunications, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within

easements designated for such purposes on recorded plats of the Property. The Declarant further hereby reserves an easement in favor of itself, the Association, and the designees of each, upon, across, over, and under all of the Property for the creation, use, and maintenance of retaining walls benefitting specific Lots with the approval of the ARC and trail systems for Pedestrian Purposes, and for the creation, use and maintenance of wildlife corridors, winter wildlife ranges, and natural wildlife habitats. The foregoing easements may traverse the private property of any Owner; provided, however, an easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of an easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of an easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

B. The Declarant specifically reserves the right to convey to a Special District and any electric company, natural gas supplier, and cable television or communications systems supplier, easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Board or the Declarant.

C. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement over the Property without conflicting with the terms hereof. The easements provided for in this Section shall in no way adversely affect any other recorded easement on the Property.

**13.4 Easements for Storm Water Retention Maintenance.** Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the Common Elements and the other portions of the Area of Common Responsibility which contain storm water retention and conveyance systems and improvements serving the Property to (1) construct, maintain, and repair any bulkhead, wall, dam, berm, ditch, pipeline or other structure retaining or conveying storm water; and (2) remove trash and other debris therefrom and fulfill their maintenance responsibilities, if any, with respect thereto. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Property abutting or

containing any portion of any of the storm water retention and conveyance systems and improvements serving the Property to the extent reasonably necessary to exercise their rights under this Section.

**13.5 Easements to Serve Additional Property.** The Declarant hereby reserves for itself and its duly authorized agents, employees, designees, successors, assigns, licensees, and mortgagees, an easement over the Common Elements for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Elements for construction of roads and for connecting and installing utilities on such Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Elements as a result of vehicular traffic connected with development of such Additional Property. Declarant further agrees that if the easement is exercised for permanent access to such Additional Property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such Additional Property.

**13.6 Right of Entry.** The Association and its designees, including, without limitation, members of the ARC, shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance upon any Lot if an Owner fails to do the same as provided in this Declaration, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and the Rules and Regulations, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association and its designees, including, without limitation, members of the ARC, to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner except by emergency personnel acting in their official capacities.

**13.7 Easements Shown on the Community Plat.** In addition to the easements granted pursuant to the terms of this Article XIII, there shall also be the easements benefitting and burdening those portions of the Property described on the Community Plat. Without limiting the generality of the foregoing, there shall be reciprocal easements of use for each Lot Owner within a grouping of Lots approved by the ARC and the Town of Winter Park for Multifamily Residential Use to cross the driveway of adjoining Lots to access that Owner's Lot. No easement, right of use, or

right of entry is granted or conveyed by this Declaration on, over, across or through any property not otherwise included within the Property. Any entry upon such property without the permission of the affected landowner shall be deemed a trespass.

### **13.8 Party Wall Improvements.**

A. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all Party Wall Improvements located within the Property. The cost of maintenance, repair and replacement of a Party Wall Improvement shall be shared by the Owners who make use of the Party Wall Improvement in proportion to the Finishable Floor Area of the respective Primary Living Units benefited from such Party Wall Improvement. If a Party Wall Improvement is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall Improvement may restore it, and if the other Owners thereafter make use of the Party Wall Improvement, they shall contribute to the cost of restoration in proportion to the Finishable Floor Area of the respective Primary Living Units benefited from such Party Wall Improvement without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes a Party Wall Improvement to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

B. Except in the case of destruction of or damage to a Party Wall Improvement caused by fire or other casualty described in Section 13.8(A), in the event all Owners benefited by a Party Wall Improvement do not agree with any proposed maintenance, repair or replacement thereof, the decision of a majority of such Owners shall bind all other Owners of Primary Living Units located in the same building structure to complete the proposed maintenance, repair or replacement, and the decision of such majority of Owners shall be reported to the ARC for monitoring and enforcement by the ARC and/or the Board if required. If the Owners of Primary Living Units located within the same building structure cannot agree as to the proper maintenance, repair or replacement of portions of any Party Wall Improvements (due to lack of a majority vote), the Board shall act as arbiter of the matter and following notice and a hearing in accordance with Section 6.12 of the Bylaws, the Board's decision with respect to the matter shall be final and may be enforced in any manner permitted by this Declaration, at law or in equity. Notwithstanding the foregoing, however, the Board in its sole discretion may relinquish its right to arbitrate the dispute concerning a Party Wall

Improvement, in which case the Owners benefited by the Party Wall Improvement shall be free to pursue any other available remedy at law or in equity, subject, however, to the terms and conditions of Section 14.2.

#### **ARTICLE XIV ENFORCEMENT OF COVENANTS**

**14.1 Violations.** The Association may impose sanctions for violations of this Declaration, the Bylaws, or the Rules and Regulations in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote and to use any facilities within the Common Elements. In addition, the Association, through the Board, in accordance with Section 6.12 of the Bylaws, may exercise self-help to cure violations, and may suspend any services it provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit the Town of Winter Park to enforce ordinances on the Property for the benefit of the Association and its Members. In addition, the Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege.

#### **14.2 Dispute Resolution.**

A. The Association and its members, the Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Section 14.2 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association Rules and Regulations, or the Articles of Incorporation (collectively "Claim"), except for those Claims exempt in Section 14.2(B), shall be resolved using the procedures set forth in Section 14.2(C), in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

B. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 14.2(C):

1. Any suit by the Association against any Bound Party to enforce the

provisions of Article VII (Assessments);

2. Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article X (Architectural Review Committee), Article XI (Design Requirements and Architectural Standards) and Article XII (Overall Restrictions and Requirements);

3. Any suit between Owners (other than the Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the law of the State of Colorado in the absence of a claim based on the Declaration, Bylaws, Articles, or Rules and Regulations of the Association, if the amount in controversy exceeds \$25,000.00;

4. Any suit by the Association in which similar or identical claims are asserted against more than one Bound Party; and

5. Any suit by a Bound Party for declaratory or injunctive relief that seeks a determination as to applicability, clarification or interpretation of any provision of this Declaration.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 14.2(C), but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 14.2(C) shall require the approval of the Association.

C. All Claims other than Exempt Claims shall be resolved using the following procedures:

1. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

a. The nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

b. The basis of the Claim (i.e., the provisions of this Declaration, the

Bylaws, the Articles, Rules and Regulations, or other authority out of which the Claim arises);

c. What Claimant wants Respondent to do or not do to resolve the Claim; and

d. That Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

2. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

3. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

4. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association, the Colorado chapter of the Community Association Institute, or such other independent agency providing mediation services upon which the Parties may mutually agree.

5. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

6. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the parties met, that the Parties are at an impasse, and the date

that mediation was terminated.

7. Each Party shall, within five (5) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

8. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the appropriate rules of the American Arbitration Association, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings. If the American Arbitration Association ceases to exist then a similar organization shall be designated by the Association.

9. The immediately preceding paragraph is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Colorado. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

10. If the Claims are resolved through negotiation or mediation as provided in Sections 14.2(C)(2) through (7), each Bound Party shall bear all of its own costs incurred in resolving the Claims, including its attorneys fees and mediation expenses, unless the Bound Parties otherwise agree; if the Claims are not resolved through negotiation or mediation as provided in Sections 14.2(C)(2) through (7), and the Claims go to binding arbitration as provided in Section 14.2(C)(8), the "Prevailing Party" shall receive as a part of its Award from the opposing party(ies) all of its costs, including attorneys fees, costs for other representatives in resolving each Claim, and any expenses incurred as a result of the dispute resolution procedures of this Section 14.2.



11. If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 14.2(C) and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 14.2(C). 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, attorneys fees and court costs.

## **ARTICLE XV DEVELOPMENT CONSIDERATIONS**

**15.1 Limitation on Number of Lots.** The maximum number of Lots that the Declarant reserves the right to create within the Property with the prior approval of the Town of Winter Park is one hundred (100). The boundaries of each Lot affected by this Declaration, including the Lot's identifying number, are set forth on the Final Plat. If Additional Property is subjected to this Declaration, a Final Plat will be recorded for each filing showing the boundaries of each Lot and all other matters required by the Town of Winter Park and the Act.

**15.2 Duration.** This Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of then Owners, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein.

**15.3 Assignment of Powers.** Any or all of the rights, powers and reservations of Declarant may be assigned to any individual or entity which assumes the duties of Declarant pertaining to the particular assignment. When such assignee has evidenced consent in writing to accept such assignment and assume such duties, it shall, to the extent of the assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by the Declarant.

**15.4 Declarant's Right to Use of Common Elements.** During the

construction phase of the Property, which shall end on December 31, 2055, the Declarant may use the Common Elements for purposes related to construction of subdivision improvements. Declarant shall reasonably restore the Common Elements following such use and shall be responsible for any and all costs of such restoration. The Declarant may maintain signs on the Common Elements advertising the Property subject to the provisions of any local sign ordinance.

## 15.5 **Annexation and Withdrawal of Property.**

### A. **Annexation.**

1. **Annexation of Specified Real Estate.** Declarant is the Owner of the real property described on Exhibit B, which constitutes Additional Property that may be subjected to this Declaration in the future. Until all of the Additional Property described on Exhibit B has been subjected to this Declaration or December 31, 2055, whichever first occurs, Declarant may from time to time unilaterally subject all or any portion of the Additional Property described on Exhibit B to the provisions hereof. No assurances are made as to the portion of such Additional Property that may be subjected to this Declaration or the order in which such Additional Property may be so subjected. Declarant may transfer this right to annex specified property so long as such transfer is accomplished by a written instrument executed by Declarant and recorded in the Grand County, Colorado real property records.

2. **Annexation of Unspecified Real Estate.** Declarant reserves the right to amend this Declaration, at any time prior to December 31, 2055, to subject Additional Property, the location of which is not described in this Declaration, to this Declaration. The area of any Additional Property subjected to this Declaration pursuant to this reserved right may not exceed ten percent (10%) of the total area of the real property described in Exhibit A and Exhibit B, and in no event may the total number of Lots subject to this Declaration exceed one hundred (100). No assurances are made as to the portion of such Additional Property that may be subjected to this Declaration or the order in which such Additional Property may be so subjected.

3. **Procedure for Annexation.** Annexation shall be accomplished by filing a Supplemental Declaration in the real property records of Grand County annexing such Additional Property. No Supplemental Declarations may be recorded without the consent of the Declarant during the Declarant control period. Such Supplemental Declaration shall be sufficient if it: (a) describes the Additional Property to be annexed; (b)

states that such Additional Property shall thereafter be subject to the terms of this Declaration; and (c) is properly acknowledged by Declarant or by the transferee of such annexation right.

**B. Withdrawal of Property.** The Declarant reserves the right to amend this Declaration so long as it has a right to annex Additional Property pursuant to this Section 15.5, without prior notice and without the consent of any Person, for the purpose of removing from the coverage of this Declaration any portion of the Property now or hereafter subjected to this Declaration if then owned by the Declarant or its affiliates or designees, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Property, provided such withdrawal is consistent with the Act.

**15.6 Additional Development Rights And Special Declarant Rights.** In addition to any such rights described above, the Declarant reserves the following Development Rights and Special Declarant Rights until December 31, 2055. If any Development Right is exercised in any portion of the Property subject to that Development Right, that Development Right does not have to be exercised in all or in any other portion of the Property:

- A. The right to complete or make improvements indicated on the Community Plat;
- B. The right to exercise any Special Declarant Right, including any Development Right, described in this Declaration;
- C. The right to create Lots, Common Elements or Limited Common Elements within the Property;
- D. The right to maintain and remove sales offices, management offices and/or sales models on Lots, all of which structures shall be and remain the Declarant's sole and exclusive property unless and until sold or transferred to a third party, and all of which structures shall be deemed to be neither a Lot nor a Common Element;
- E. The right to maintain signs on the Property to advertise the Lots and/or the Property so long as such signs conform to the local sign code;
- F. The right to use, and to permit others to use, easements through the Property as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this Declaration;
- G. The right to make Hideaway Junction subject to a master association, or

to cause Hideaway Junction to be the master association for any subassociation with jurisdiction over any portion of the Property;

H. The right to merge or consolidate Hideaway Junction into another common interest community of the same form of ownership;

I. The right to appoint or remove any officer of the Association or any Director during the Declarant control period consistent with the Act; and

J. The right to transfer any one or all of the rights reserved herein subject to the requirements of the Act.

## **ARTICLE XVI AMENDMENT**

### **16.1 Amendment By Declarant.**

A. In that Article 33.3 of Title 38 of the Colorado Revised Statutes provides that the provisions of that Article may not be varied by agreement and rights conferred by that Article may not be waived, for a ten (10) year period from the date this Declaration is recorded, Declarant reserves the right to unilaterally amend this Declaration to comply therewith in the event any provision of this Declaration is determined not to comply with the Act.

B. For a period of ten (10) years from the date this Declaration is recorded, Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of any Owner or Mortgagee.

C. For so long as it owns any real property described in Exhibit A or Exhibit B, Declarant may unilaterally amend this Declaration if such amendment is (1) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (2) necessary to enable any title insurance company to issue title insurance coverage on the Lots; (3) required by an institutional or governmental lender or purchaser of Mortgage loans to enable such lender or purchaser to make or purchase Mortgage loans on the Lots; (4) necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the Lots; or (5) otherwise necessary to satisfy the requirements of any governmental agency. No such amendment may adversely affect the title to any Lot unless the Owner thereof consents thereto in writing.

## 16.2 Amendment By Owners and Mortgagees.

A. Except as provided above or in the Act, this Declaration may be amended only by a written instrument signed by Owners of Lots to which more than fifty percent (50%) of the votes in the Association are allocated, and by at least fifty-one percent (51%) of the beneficiaries of first Mortgages encumbering Lots. So long as Declarant still has the right to subject Additional Property to this Declaration, the written consent of Declarant to an amendment shall also be required.

B. Until December 31, 2055, no amendment may revoke, modify or eliminate any right or privilege of the Declarant without the written consent of Declarant or of the assignee of any such right or privilege.

C. No amendment may revoke, modify or eliminate the Affordable Housing Covenant. The Affordable Housing Covenant may only be revoked, modified or eliminated by written instrument executed by the Town of Winter Park and Declarant.

## ARTICLE XVII SPECIAL MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**17.1 Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

A. Any condemnation loss or any casualty loss which affects a material portion of the Property or which 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 owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days. Notwithstanding this provision, any holder of a first Mortgage,

upon written request to the Association at any time, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws which is not cured within sixty (60) days;

C. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

D. Any proposed action that would require the consent of a specified percentage of Eligible Holders.

**17.2 Special FHLMC Provision.** So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first Mortgagees, or at least sixty-seven percent (67%) of the total Association votes entitled to be cast in accordance with the Act consent, the Association shall not:

A. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Elements which the Association owns, directly or indirectly (the granting of easements for public utilities or similar purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this paragraph);

B. Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot; provided, however, a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Property regarding assessments shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration;

C. By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Elements (provided, however, the issuance and amendment of Design Guidelines, architectural standards, procedures, Rules and Regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

D. Fail to maintain insurance, as required by this Declaration; or

E. Use hazard insurance proceeds for any Common Element losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Elements and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**17.3 Other Provisions for First Lien Holders.** To the extent possible under, and in addition to other requirements set forth in the Act:

A. Any restoration or repair of the Property after a partial condemnation or damage to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Lots to which at least sixty-seven percent (67%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

B. Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

**17.4 Amendments to Documents.** The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 17.3(A) and (B), or to the addition or withdrawal of land in accordance with Section 15.5.

A. The consent of at least sixty-seven percent (67%) of the total Association votes entitled to be cast, and the approval of the Eligible Holders of first Mortgages on Lots to which at least sixty-seven percent (67%) of the votes of Lots subject to a Mortgage appertain, shall be required to terminate the Association.

B. The consent of at least sixty-seven percent (67%) of the total Association votes entitled to be cast, and the approval of Eligible Holders of first Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, Bylaws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

1. Voting;

2. Increases in assessments that raise the previously assessed amount by more than twenty five percent (25%) in any one calendar year, assessment liens, or the priority of assessment liens;
3. Reductions in reserves for maintenance, repair, and replacement of the Common Elements;
4. Hazard or fidelity insurance requirements;
5. Rights to use the Common Elements;
6. Convertibility of Lots into Common Elements or vice versa;
7. Responsibility for maintenance and repair of the Property;
8. Expansion or contraction of the Property or the addition, annexation, or withdrawal of Property to or from the Association;
9. Boundaries of any Lot;
10. Leasing of Lots;
11. Imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey its, his or her Lot;
12. Establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
13. Any provisions included in the Declaration, Bylaws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Lots.

**17.5 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.

**17.6 Notice to the Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**17.7 Amendment by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any



of its respective requirements that necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

**17.8 Applicability of Article XVII.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or the Act for any of the matters set forth in this Article XVII.

**17.9 Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested, and otherwise satisfies the requirements of the Act.

## **ARTICLE XVIII PRINCIPLES OF INTERPRETATION**

**18.1 Interpretation of the Declaration.** Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the covenants and provisions hereof.

**18.2 Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable, in whole or in part, shall not affect the validity and enforceability of any other provisions hereof.

**18.3 Disclaimer of Representations.** Notwithstanding anything to the contrary in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Property can or will be carried out or that any land now owned or hereafter acquired by the Declarant is or will be subjected to this Declaration, is or will be committed to or developed for a particular use, or that, if such land is once used for a particular use, such use will continue in effect.

**18.4 Successors and Assigns of Declarant.** Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder, on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

**18.5 Captions and Titles.** The captions and titles of headings of Articles and

Sections in this Declaration are solely for the purpose of reference and convenience and shall not be deemed or construed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

**18.6 Masculine and Feminine, Singular and Plural.** As used in this Declaration, when the context so requires, the masculine shall include the feminine, the singular the plural; and vice versa.

**18.7 Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**18.8 Litigation.** No dispute resolution, judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Members. This Section 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 VII; (C) proceedings involving challenges to ad valorem taxation; or (D) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**18.9 Use of the Words "Hideaway Junction" or Logo.** No Person shall use the words "Hideaway Junction" or any derivative thereof or the logo of the development in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Hideaway Junction" in printed or promotional matter where such term is used solely to specify that particular property is located within Hideaway Junction, and the Association shall be entitled to use the words "Hideaway Junction" in its name.

**18.10 Compliance.** Every Owner and occupant of any Lot shall comply with this Declaration, the Bylaws, and the Rules and Regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Owner.

**18.11 Waiver of Homestead.** By acceptance of the deed or other instrument of transfer of a Lot, an Owner irrevocably waives the homestead exemption provided by Colorado Revised Statute Section 38-41-201 et seq.

18.12 **Notices.** All Owners of each Lot shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representatives of the Owners of a Lot shall furnish such registered address to the Secretary of the Association within ten (10) days after transfer of title to the Lot to such Owner or Owners. Such registrations shall be in written form and signed by all of the Owners of a Lot or by such persons as are authorized to represent the interests of all Owners of the Lot. If no address is registered or if all of the Owners cannot agree, then the address of the Lot shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Lot. Any transferor of a Lot shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. All notices and demands intended to be served upon the Association shall be sent to the following address or such other address as the Association may designate from time to time by notice to the Owners:

Hideaway Junction Homeowners Association, Inc.  
c/o Town of Winter Park  
P.O. Box 3327  
Winter Park, Colorado 80482

*[Signature on Following Page]*

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the day and year first above written.

**WINTER PARK AFFORDABLE HOUSING CORPORATION,** a Colorado nonprofit corporation

By [Signature]  
Name MICHAEL L PERIGLAT  
Its PRESIDENT

STATE OF COLORADO )  
  )ss.  
COUNTY OF GRAND )

The foregoing instrument was acknowledged before me this 21ST day of FEBRUARY, 2006, by MICHAEL PERIGLAT as PRESIDENT of **WINTER PARK AFFORDABLE HOUSING CORPORATION**, a Colorado nonprofit corporation, on behalf of the corporation.

Witness my hand and official seal.

[Signature: KATHALEEN E. SPENCER]  
Notary Public

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



My Commission Expires 01-19-2009

**EXHIBIT A**  
**PROPERTY SUBJECTED TO THIS DECLARATION**

LOTS 1 THROUGH 3, INCLUSIVE, AND TRACTS A, B-1 AND B-2, HIDEAWAY  
JUNCTION SUBDIVISION FILING NO. 1, ACCORDING TO THE FINAL PLAT THEREOF  
RECORDED AT RECEPTION NO. 2006-002542 OF THE GRAND COUNTY,  
COLORADO REAL PROPERTY RECORDS.

**EXHIBIT B**  
**ADDITIONAL PROPERTY THAT MAY BECOME**  
**SUBJECTED TO THIS DECLARATION**

LOTS 4 THROUGH 10, INCLUSIVE, HIDEAWAY JUNCTION SUBDIVISION FILING NO. 1, ACCORDING TO THE PLAT RECORDED AT RECEPTION NO. 2006-002542 OF THE GRAND COUNTY, COLORADO REAL PROPERTY RECORDS.

TRACT C, HIDEAWAY JUNCTION SUBDIVISION FILING NO. 1, ACCORDING TO THE PLAT RECORDED AT RECEPTION NO. 2006-002542 OF THE GRAND COUNTY, COLORADO REAL PROPERTY RECORDS.

LOT 2, DIMMIT EXEMPTION, ACCORDING TO THE FINAL PLAT RECORDED AT RECEPTION NO. 97004438 OF THE GRAND COUNTY, COLORADO REAL PROPERTY RECORDS.

**EXHIBIT C**  
**EASEMENTS AND LICENSES INCLUDED IN OR TO WHICH THE PROPERTY IS OR  
MAY BECOME SUBJECT**

[Need current title commitment to complete]