

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
TWO RIVERS COMMONS**

**TABLE OF CONTENTS**

**ARTICLE I - STATEMENT OF PURPOSE AND DECLARATION** .....-1-

    Section 1.1. **Owner**.....-1-

    Section 1.2. **Purpose and Intent**.....-1-

    Section 1.3. **Binding Effect**.....-1-

    Section 1.4. **Initial Plan for Development**.....-1-

**ARTICLE II - DEFINITIONS** .....-1-

    Section 2.1. **Definitions**.....-1-

**ARTICLE III - MEMBERSHIP, VOTING RIGHTS, & ASSOCIATION OPERATIONS**-6-

    Section 3.1. **The Association** .....-6-

    Section 3.2. **Transfer of Membership** .....-6-

    Section 3.3. **Vote Allocations** .....-6-

    Section 3.4. **Declarant Control Period**.....-7-

    Section 3.5. **Compliance with Association Documents**.....-8-

    Section 3.6. **Books and Records**.....-8-

    Section 3.7. **Manager** .....-8-

    Section 3.8. **Implied Rights and Obligations**.....-8-

    Section 3.9. **Executive Board, Powers, Limitations** .....-8-

    Section 3.10. **Indemnification of Officers, Directors and Others**.....-9-

**ARTICLE IV - MAINTENANCE OF THE PROPERTY** .....-9-

    Section 4.1. **Maintenance by the Association** .....-9-

    Section 4.2. **Maintenance of Units**.....-10-

    Section 4.3. **Limited Common Element Maintenance**.....-10-

    Section 4.4. **Allocation of Specified Common Elements**.....-10-

    Section 4.5. **Maintenance Contract** .....-10-

    Section 4.6. **Right of Access** .....-10-

**ARTICLE V - PROPERTY RIGHTS AND EASEMENTS** .....-11-

    Section 5.1. **Legal Description** .....-11-

    Section 5.2. **Owner's Easements**.....-11-

    Section 5.3. **Easements for Encroachment** .....-11-

    Section 5.4. **Utility Easements** .....-11-

    Section 5.5. **Easements to Serve Expansion Property** .....-12-

    Section 5.6. **General Maintenance and Emergency Easement** .....-12-

    Section 5.7. **Declarant's Rights Incident to Construction**.....-12-

    Section 5.8. **Easement for Access** .....-13-

    Section 5.9. **Recorded Easements**.....-13-

    Section 5.10. **Easement to Inspect and Right to Correct** .....-13-

**ARTICLE VI - PARTY WALLS** .....-13-

    Section 6.1. **General**.....-13-

    Section 6.2. **Maintenance; Damage and Destruction**.....-13-

<b>ARTICLE VII - RIGHTS RESERVED BY DECLARANT</b> .....	-14-
Section 7.1. <b>Expansion Rights</b> .....	-14-
Section 7.2. <b>Reservation of Withdrawal Rights</b> .....	-14-
Section 7.3. <b>Reservation of Additional Development Rights</b> .....	-14-
Section 7.4. <b>Exercise of Development Rights</b> .....	-15-
Section 7.5. <b>Interpretation</b> .....	-15-
Section 7.6. <b>Special Declarant Rights</b> .....	-15-
Section 7.7. <b>Right to Notice of Design or Construction Claims</b> .....	-16-
Section 7.8. <b>Right to Approve Additional Covenants</b> .....	-16-
Section 7.9. <b>Right to Approve Changes in Standards</b> .....	-16-
Section 7.10. <b>Parking Area</b> .....	-17-
Section 7.11. <b>Transfer and Termination of Declarant Rights</b> .....	-17-
<b>ARTICLE VIII - INSURANCE AND FIDELITY BONDS</b> .....	-17-
Section 8.1. <b>Authority to Purchase</b> .....	-17-
Section 8.2. <b>Notice to Owners</b> .....	-17-
Section 8.3. <b>General Insurance Provisions</b> .....	-17-
Section 8.4. <b>Physical Damage Insurance on Improvements</b> .....	-18-
Section 8.5. <b>Liability Insurance</b> .....	-18-
Section 8.6. <b>Provisions Common to Physical Damage Insurance, and Liability</b> <b>Insurance</b> .....	-19-
Section 8.7. <b>Other Insurance</b> .....	-19-
Section 8.8. <b>Insurance Obtained by Owner</b> .....	-19-
<b>ARTICLE IX - ASSESSMENTS</b> .....	-20-
Section 9.1. <b>Obligation and Purpose of Assessments</b> .....	-20-
Section 9.2. <b>Budget</b> .....	-20-
Section 9.3. <b>Working Capital Fund</b> .....	-20-
Section 9.4. <b>Periodic Assessments</b> .....	-21-
Section 9.5. <b>Apportionment of Periodic Assessments</b> .....	-21-
Section 9.6. <b>Specific Assessments</b> .....	-22-
Section 9.7. <b>Special Assessments</b> .....	-22-
Section 9.8. <b>Default Assessments</b> .....	-22-
Section 9.9. <b>Commencement of Assessments</b> .....	-23-
Section 9.10. <b>Assessment Lien</b> .....	-23-
Section 9.11. <b>Reserve Fund</b> .....	-24-
Section 9.12. <b>Effect of Nonpayment</b> .....	-24-
Section 9.13. <b>Successor's Liability for Assessment</b> .....	-24-
Section 9.14. <b>Notice to Mortgagee</b> .....	-25-
Section 9.15. <b>Statement of Assessments</b> .....	-25-
<b>ARTICLE X - DAMAGE OR DESTRUCTION</b> .....	-25-
Section 10.1. <b>The Role of the Executive Board</b> .....	-25-
Section 10.2. <b>Estimate of Damages or Destruction</b> .....	-25-
Section 10.3. <b>Repair and Reconstruction</b> .....	-25-
Section 10.4. <b>Funds for Repair and Reconstruction</b> .....	-26-

Section 10.5. Disbursement of Funds for Repair and Reconstruction .....	-26-
Section 10.6. Decision Not to Rebuild Common Elements .....	-26-
<b>ARTICLE XI - CONDEMNATION .....</b>	<b>-26-</b>
Section 11.1. Rights of Owners.....	-26-
Section 11.2. Partial Condemnation, Distribution of Award; Reconstruction .....	-26-
Section 11.3. Complete Condemnation.....	-27-
<b>ARTICLE XII - DURATION OF COVENANTS AND AMENDMENT .....</b>	<b>-27-</b>
Section 12.1. Covenants Binding.....	-27-
Section 12.2. Amendment .....	-27-
Section 12.3. When Modifications Permitted.....	-28-
Section 12.4. Termination.....	-28-
<b>ARTICLE XIII - INITIAL PROTECTIVE COVENANTS.....</b>	<b>-28-</b>
Section 13.1. Plan of Development, Applicability, Effect.....	-28-
Section 13.2. Authority to Promulgate Use Restrictions.....	-28-
Section 13.3. Owners Acknowledgment .....	-28-
Section 13.4. Rights of Owners.....	-28-
Section 13.5. Initial Use Restrictions .....	-29-
Section 13.6. Restrictions on Parking and Vehicles. ....	-30-
<b>ARTICLE XIV - ARCHITECTURE AND LANDSCAPING, DESIGN REVIEW .....</b>	<b>-31-</b>
Section 14.1. General.....	-31-
Section 14.2. Alterations or Modifications by Owners.....	-31-
Section 14.3. Declarant's Design Review .....	-32-
Section 14.4. Design Review Committee.....	-32-
Section 14.5. Fees; Assistance.....	-32-
Section 14.6. Design Guidelines.....	-33-
Section 14.7. Procedures .....	-33-
Section 14.8. Variances. ....	-34-
Section 14.9. No Waiver, Limitation on Liability .....	-34-
<b>ARTICLE XV - MORTGAGEE'S RIGHTS .....</b>	<b>-35-</b>
Section 15.1. Title Taken by Mortgagee .....	-35-
Section 15.2. Distribution of Insurance or Condemnation Proceeds.....	-35-
Section 15.3. Right to Pay Taxes and Charges.....	-35-
Section 15.4. Financial Statement .....	-35-
Section 15.5. Notice of Action .....	-36-
Section 15.6. Amendment of Association Documents .....	-36-
Section 15.7. Action by Mortgagee.....	-37-
<b>ARTICLE XVI - DISPUTE RESOLUTION AND LIMITATION ON LITIGATION .....</b>	<b>-37-</b>
Section 16.1. Agreement to Encourage Resolution of Disputes Without Litigation .....	-37-
Section 16.2. Dispute Resolution Procedures.....	-38-

Section 16.3. <b>Construction Defect Claims</b> .....	-39-
Section 16.4. <b>Initiation of Litigation by Association</b> .....	-42-
<b>ARTICLE XVII - GENERAL PROVISIONS</b> .....	-42-
Section 17.1. <b>Enforcement</b> .....	-42-
Section 17.2. <b>Failure to Enforce</b> .....	-42-
Section 17.3. <b>Severability</b> .....	-43-
Section 17.4. <b>Conflicts Between Documents</b> .....	-43-
Section 17.5. <b>References to the City Standards</b> .....	-43-
Section 17.6. <b>Notices</b> .....	-43-
Section 17.7. <b>General</b> .....	-43-
Section 17.8. <b>Counterparts</b> .....	-43-
<b><u>EXHIBIT A - LEGAL DESCRIPTION</u></b>	
<b><u>EXHIBIT B - ALLOCATED INTERESTS</u></b>	
<b><u>EXHIBIT C - EXPANSION PROPERTY</u></b>	
<b><u>EXHIBIT D - RECORDED EASEMENTS</u></b>	

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, AND EASEMENTS  
FOR  
TWO RIVERS COMMONS**

THIS DECLARATION is made by Old Stage, LLC, a Colorado limited liability company, 202 N. F St. B-2, P.O. Box 745, Salida, Colorado 81201 (“Declarant”).

**ARTICLE I  
STATEMENT OF PURPOSE AND DECLARATION**

**Section 1.1. Owner.** Declarant is the owner of the real property located in Chaffee County, Colorado, described in *Exhibit A* (the “Property”).

**Section 1.2. Purpose and Intent.** The purpose of this Declaration is to create a mixed use residential and commercial planned community as defined in the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq. (the “Act”), which will be known as “Two Rivers Commons”, which shall be subject to the Act. Declarant sells and conveys the Common Elements to the Two Rivers Commons Owners Association, a Colorado nonprofit corporation. Declarant intends to protect the value and desirability of the Project, further a plan for the improvements, sales and ownership of the Project, create a harmonious and attractive development, and promote and safeguard the health, comfort, safety, convenience and welfare of the Owners of Units in the Project.

**Section 1.3. Initial Plan for Development.** The Project shall initially consist of three (3) Parcels, which will initially contain eleven (11) separately owned Lots. Separate Buildings may be built on each Parcel, or on each separately owned Lot. Subject to the limitations and restrictions set forth in this Declaration, separately owned Units may be created within each Building. The Project may be expanded as provided in that Article entitled Development Rights, and upon completion will consist of a maximum of one hundred (100) Units. The identification number of each Parcel and each Lot is shown on the Plat recorded as a part of this Declaration in the Chaffee County, Colorado real property records (the “Plat”).

**Section 1.4. Imposition of Covenants.** To accomplish the purposes indicated above, Declarant declares that upon recording this Declaration, the Property shall constitute a planned community, and shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements. These covenants shall run with the Property and will inure to the benefit of and are binding upon all persons having any right, title or interest in all or any part of the Property, including Declarant, the Association, Owners and their heirs, successors and assigns, and their tenants, employees, guests and invitees. Any right or any interest reserved or contained in this Declaration to or for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more of such rights or interests, to any Person

**ARTICLE II  
DEFINITIONS**

**Section 2.1. Definitions.** The following words when used in this Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

a. **“Act”** means the Colorado Common Interest Ownership Act, C.R.S. Sections 38-33.3-101, et seq., as it may be amended from time to time.

b. **“Agencies”** shall mean and collectively refer to the Federal National Mortgage Association (“FNMA”), the Government National Mortgage Association (“GNMA”), the Department of Housing and Urban Development (“HUD”), the Federal Housing Administration (“FHA”), the Veterans Administration (“VA”), the Colorado Housing Finance Authority (“CHFA”) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by any of such entities.

c. **“Allocated Interests”** means the votes in the Association and the percentage of the Common Expense liability assigned to each Unit as set forth in *Exhibit B*.

d. **“Articles”** means the Articles of Incorporation of Two Rivers Commons Owners Association on file with the Colorado Secretary of State, and any amendments which may be made.

e. **“Assessments”** means all the assessments for Common Expenses levied by the Association against a Unit or its Owner pursuant to this Declaration or the Act.

f. **“Association”** means the Two Rivers Commons Owners Association, a Colorado nonprofit corporation, and any successor entity by whatever name, charged with the duties and obligations of administering the Project.

g. **“Association Documents”** means this Declaration, the Plat, the Articles and the Bylaws of the Association, and any procedures, rules, regulations or policies adopted under such documents by the Association.

h. **“Building”** means a building (including all fixtures and improvements contained within it) constructed within a Parcel or Lot in which one or more Units are located.

i. **“Bylaws”** means the Bylaws adopted by the Association as amended from time to time.

j. **“Common Elements”** means all the Property as labeled on the Plat, except the independently owned Lots or Units, which the Association owns for the common use and enjoyment of the Owners on a non-exclusive basis as provided below. Without limiting the generality of the foregoing, the Common Elements include the following components:

i. The unimproved land surrounding the Lots, the easements benefiting the Project as granted in this Declaration or the Plat, the water, sewer and other utility or communication lines and facilities serving the Project which are not owned by any public entity, the trails not dedicated to the public, the sidewalks, walkways, paths, grass, shrubbery, trees, driveways, roadways, landscaping, and related facilities upon the Property.

**ii.** All other parts of the Project designated by Declarant as Common Elements and existing for the use of one or more of the Owners.

**iii.** The term Common Elements shall also include the Limited Common Elements, which are exclusively reserved for use of the Owner of one or more, but fewer than all, of the Units.

**k.** “**Common Expense**” means:

**i.** any and all of the Association’s costs, expenses and liabilities including, without limitation, costs, expenses and liabilities incurred for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements; (B) providing facilities, services and other benefits to Owners and their Guests; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created in the Association Documents, (D) levying, collecting and enforcing the Assessments; (E) regulating and managing the Project; (F) operating the Association; (G) utilities not separately metered and billed directly to Unit Owners;

**ii.** other expenses declared to be Common Expenses pursuant to the Association Documents or the Act, and expenses agreed upon as Common Expenses by the Association; and

**iii.** reserves for any such costs, expenses and liability.

**l.** “**Declarant**” means Old Stage, LLC, a Colorado limited liability company, and its successors and assigns.

**m.** “**Declarant Control Period**” means the period of time described in Section 3.4, subject to the limitations set forth in this Declaration or in the Act.

**n.** “**Declaration**” means this Declaration of Covenants, Conditions, Easements and Restrictions for Two Rivers Commons.

**o.** “**Design Guidelines**” means the Two Rivers Commons Design Guidelines, which may include review procedures adopted pursuant to Article XIV.

**p.** “**Development Rights**” means those rights reserved by the Declarant in Article VII.

**q.** “**Director**” means a member of the Executive Board.

**r.** “**Eligible Mortgagee**” means those First Mortgagees or insurers or guarantors of First Mortgages who have made written request to the Association for notification of certain matters and actions in accordance with the provisions of Section 15.5.

**s.** “**Executive Board**” means the Association’s governing body elected to perform the Association’s obligations relative to the operation, maintenance, and management of the Property and all improvements on the Property.



t. **“Expansion Property”** means the real estate described in *Exhibit C* and identified on the Plat as “Expansion Property”, which may be converted into additional Parcels, Lots, Units, or Common Elements.

u. **“First Mortgage”** means any Deed of Trust or Mortgage which has priority over all other security interests in any Unit.

v. **“First Mortgagee”** means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

w. **“Guest”** means an Owner’s family members, tenants, invitees, licensees, employees, contractors or agents.

x. **“Improvement”** means any construction, structure, equipment, fixture or facilities existing, or to be constructed, on the Property that is include in the Project including, without limitation, the Buildings, walkways, sidewalks, parking areas, loading areas, driveways, landscaping, sprinkler systems, and utility installation improvements including without limitation, utility conduits, wires, pipes, and light poles.

y. **“Limited Common Elements”** means a portion of the Common Elements allocated by the Declaration or Plat, or by operation of C.R.S. § 38-33.3-202(1)(b) or (1)(d), for the exclusive use of one or more, but fewer than all, of the Unit Owners. Without limiting the generality of the foregoing, the Limited Common Elements include the following:

i. Each Building and its attached Improvements including, without limitation, the foundation, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, roofs, patios, balconies, entrances and exits, and the mechanical installations of the Building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating and central air conditioning which exist for use by some or all of the Units in the Building, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith.

ii. Except as otherwise provided, if a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside a Unit’s designated boundaries, the portion serving only that Unit is a Limited Common Element allocated solely to that Unit, the use of which is limited to that Unit, but any portion serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

iii. Any awnings, window boxes, doorsteps, stoops, porches, decks, balconies, patios, and exterior doors and windows, or other fixtures designed to serve a single Unit, located outside the Unit’s boundaries, are Limited Common Elements allocated exclusively to that Unit and their use is limited to that Unit. Exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit’s boundaries, are Limited Common Elements allocated exclusively to that Unit. Without limiting the foregoing, the Limited Common Elements shall include: stoops, steps, and walls above door openings at the entrances to the

Building, which provide access to less than all Units, the use of which is limited to the Units to which they provide access; utility areas or storage spaces outside and allocated to any Unit.

**iv.** The Parking Area as described in this Declaration and depicted on the Plat is a Limited Common Element the use and expenses of which may be exclusively allocated to Units by the Executive Board.

**z.** “**Lot**” refers to a portion of the Property depicted on the Plat, which may be independently owned, whether improved or unimproved. A Building containing one or more independently owned Units may be constructed on a Lot. An unimproved Lot on which no Building has been constructed is synonymous with “Unit” as defined in the Act.

**aa.** “**Manager**” means a person or entity that the Association may engage to perform certain duties, powers or functions as the Executive Board may authorize from time to time.

**bb.** “**Member**” means a Person holding a membership in the Association.

**cc.** “**Mortgage**” means any mortgage, deed of trust or other document which encumbers any Unit or interest therein as security for payment of a debt or obligation.

**dd.** “**Mortgagee**” means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

**ee.** “**Owner**” means any record owner including, without limitation the Declarant or a contract vendor, whether one or more persons or entities, of a fee simple title interest to any Unit. Owner does not include a Person having only a security interest or any other interest in a Unit solely as security for an obligation.

**ff.** “**Parcel**” means a portion of the Property depicted on the Plat, which may contain one or more independently owned Lots.

**gg.** “**Parking Area**” means the Limited Common Element parking area and the “Parcel 5 Parking Area” located within the Property that are depicted on the Plat.

**hh.** “**Person**” means an individual, corporation, trust, partnership, limited liability company, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

**ii.** “**Plat**” means the Plat for Two Rivers Commons recorded in the office of the Clerk and Recorder of Chaffee County, Colorado.

**jj.** “**Project**” means the planned community created by this Declaration, consisting of the Property, the Units and any other improvements constructed on the Property.

**kk.** “**Property**” means the real property described in Section 1.1 and subject to this Declaration.

**mm. “Salida Code”** means all the laws of the City of Salida including without limitation City ordinances, together with rules, regulations and other governmental requirements adopted pursuant thereto.

**nn. “Special Declarant Rights”** means those rights reserved in Article VII for the benefit of the Declarant, including Development Rights.

**oo. “Successor Declarant”** means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record in the office of the Clerk and Recorder of Chaffee County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant’s rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

**pp. “Supplemental Declaration”** means a recorded instrument that subjects additional property to this Declaration or imposes additional restrictions and obligation on the land described in such instrument.

**qq. “Supplemental Plat”** means a recorded instrument that depicts additional property subjected to the Declaration.

**rr. “Unit”** means a physical portion of the Project which is designated for separate ownership or occupancy and the boundaries of which are described in this Declaration or depicted on the Plat. The term shall refer to the land, if any, which is part of the Unit as well as any Improvements thereon. Each dwelling in a multi-dwelling Building shall be a separate Unit.

### **ARTICLE III**

#### **MEMBERSHIP, VOTING RIGHTS, & ASSOCIATION OPERATIONS**

**Section 3.1. The Association.** Every Unit Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Unit ownership.

**Section 3.2. Transfer of Membership.** An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit.

#### **Section 3.3. Vote Allocations.**

**a. Executive Board Elections.** Except during the Declarant Control Period, each Parcel shall be represented on the Executive Board by one (1) Director, who shall be elected by the Owners of Units within that Parcel. With respect to election of a Director, the number of votes allocated to each Owner of a Unit within that Parcel shall be based on the square footage of the Unit divided by the square footage of all Units within that Parcel as more specifically set forth in *Exhibit B*.

**b. Common Vote.** Except for Executive Board elections, and matters to be decided separately by one of the classes of Parcel Members pursuant to this Declaration, all Owners shall vote on: (1) matters concerning all of the Units; and (2) matters that cannot be clearly categorized as affecting only one class of Parcel Members, based on the square footage of the Unit

divided by the square footage of all Units as more specifically set forth in **Exhibit B**.

c. Parcel Votes. Subject to Section 3.3. (a) and (b) above, the Association shall have a separate membership classes for each Parcel subjected to this Declaration. Initially there shall be three (3) membership classes:

i. **“Parcel 2 Members”** shall consist of the Owners of Units within Parcel 2. The votes allocated to the Parcel 2 Members shall be based on the square footage of the Member’s Unit divided by the square footage of all Parcel 2 Units as more specifically set forth in **Exhibit B**. Only Parcel 2 Members may vote as to those matters concerning only Parcel 2 Units.

ii. **“Parcel 3 Members”** shall consist of the Owners of Units within Parcel 3. The votes allocated to the Parcel 3 Members shall be based on the square footage of the Member’s Unit divided by the square footage of all Parcel 3 Units as more specifically set forth in **Exhibit B**. Only Parcel 3 Members may vote as to those matters concerning only Parcel 3 Units.

iii. **“Parcel 5 Members”** shall consist of the Owners of Units within Parcel 5. The votes allocated to the Parcel 5 Members shall be based on the square footage of the Member’s Unit divided by the square footage of all Parcel 5 Units as more specifically set forth in **Exhibit B**. Only Parcel 5 Members may vote as to those matters concerning only Parcel 5 Units.

Declarant may, by Supplemental Declaration, create additional membership classes for the Owners of Units within any property made subject to this Declaration. These classes shall have rights, privileges, and obligations as specified in such Supplemental Declaration. Neither recordation nor amendment of such Supplemental Declaration by Declarant shall constitute an amendment to this Declaration, and no consent or approval of any person shall be required except as stated in this paragraph. After expiration of the Declarant Control Period, the Board shall have the right to record or amend such Supplemental Declaration upon the majority approval of all the Owners.

**Section 3.4. Declarant Control Period.** During the Declarant Control Period, Declarant or any successor who takes title to all or part of the Property for the purpose of development and sale of the Property and who is designated as Successor Declarant in a recorded instrument executed by Declarant, will have exclusive power to appoint and remove Directors and officers subject to the limitations in the Act. The Declarant Control Period begins the date this Declaration is first recorded in the Chaffee County Clerk and Recorder’s office, and will terminate the earlier occurrence of the following:

i. sixty (60) days after conveyance of 75% of the Unit that may be created to Owners other than Declarant;

ii. two (2) years after Declarant’s last conveyance of a Unit in the ordinary course of business; or

iii. two (2) years after Declarant last exercised its right to add new Units.

Notwithstanding the foregoing, Declarant may voluntarily surrender the right to appoint and remove officers and Directors before termination of Declarant Control Period, but, in that event, the Declarant may require for the duration of the Declarant Control Period, that specified Association or Board actions, as described in an instrument executed and recorded in the Chaffee County Clerk and Recorder's office by the Declarant, be approved by the Declarant before those actions become effective.

**Section 3.5. Compliance with Association Documents.** Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens and benefits of Association membership concern the land and shall be covenants running with each Unit for the benefit of all other Units.

**Section 3.6. Books and Records.** The Association shall make available for inspection, upon advance request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements prepared pursuant to the Bylaws. The Association may recover expenses and charge reasonable fees for copying or delivering such materials.

**Section 3.7. Manager.** The Executive Board may employ a Manager and delegate certain Association powers, functions, or duties, as provided in the Bylaws. The Manager shall not have the authority to make expenditures except upon the Executive Board's prior approval and direction. The Executive Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

**Section 3.8. Implied Rights and Obligations.** The Association may exercise any right or privilege expressly granted in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

**Section 3.9. Executive Board Powers, Limitations.**

**a. Powers.** The Executive Board shall have power to take the following actions:

**i.** Adopt and publish rules and regulations governing the use of the Common Elements and governing the personal conduct of the Members and their guests on the Project; the Association may establish penalties, including, without limitation, the imposition of fines, for the infraction of such rules and regulations;

**ii.** Suspend a Member's voting rights during any period in which such Member is in default on payment of any Assessment. Such rights may also be suspended after notice and hearing for a period up to ninety (90) days for infraction of published rules and regulations, unless such infraction is ongoing, in which case the rights may be suspended during the period of the infraction and for up to ninety (90) days thereafter;

iii. Exercise all powers, duties, and authority vested in or delegated to the Executive Board and not reserved to the Members or Declarant by other provisions of this Declaration or the Articles or Bylaws or as provided by the Act; and

iv. Assign its right to future income, including the right to receive Common Expense Assessments.

b. Limitations. Pursuant to C.R.S. § 38-33.3-303(3)(a), the Executive Board may not act on the Association's behalf to amend the declaration, terminate the common interest community, elect Directors or determine the qualifications, powers and duties, or terms of office of Directors.

**Section 3.10 Indemnification of Officers, Directors and Others.** Subject to Colorado law, the Association shall indemnify every officer, Director, and committee member against all damages and expenses, including attorney fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Executive Board) to which they may be a party by reason of being or having been an officer, Director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section.

a. The officers, Directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or Directors may also be Members).

b. 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. This right to indemnification 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.

#### **ARTICLE IV** **MAINTENANCE OF THE PROPERTY**

**Section 4.1. Maintenance by the Association.** In order to maintain a uniform appearance and a high standard of maintenance within the Project, the Association, or its designated agent, shall be responsible for the following:

a. The Association shall maintain, repair, and replace the Property including the Common Elements, and shall otherwise manage and operate such property as it deems necessary or appropriate. Without limiting the generality of the foregoing, the Association shall keep clean, maintain, repair, or replace the landscaping, the Parking Areas, sidewalks, driveways, and the Improvements related thereto. Additionally, the Association shall be responsible for all snow removal.

b. The Association may maintain, repair and replace the exterior surfaces of all of the Buildings including the siding and roofs. Exterior maintenance will include painting, replacement of trim, caulking, repairs, and such other services deemed appropriate by the Executive Board. All costs of maintenance will be paid as a Common Expense. However, upon amendment of the Bylaws in a non-discriminatory and equitable manner, the Executive Board may delegate and the Owners of Units in a particular Building will assume responsibility for any part of such Building's exterior maintenance. Additionally, the Board may delegate and the Owner of Unit will assume the responsibility for maintenance of the Limited Common Elements appurtenant to said Unit.

#### **Section 4.2. Maintenance of Units.**

a. Each Unit Owner, at such Unit Owner's expense, shall maintain, repair, and replace all portions of such Owner's Unit, except the portions of the Unit required by the Declaration to be maintained, repaired, or replaced by the Association. Each Unit Owner shall be responsible for removing snow, leaves, and debris from all patios and balconies that are Limited Common Elements appurtenant to such Owner's Unit, and shall keep any Limited Common Element appurtenant to their Unit clean and in good order in conformance with this Declaration.

b. If an Owner does not properly maintain their Unit, the Association, after ten (10) days prior written notice to the Owner and with the Executive Board's approval, may enter the Unit to perform such work as is reasonably required to restore the Unit and other improvements thereon to a condition of good order and repair. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment.

**Section 4.3. Trash Removal.** The Owners of Units located on a Parcel shall be responsible for Common Expenses incurred in maintaining, repairing, and replacing separate trash receptacles for residential and commercial use within the Parcel, and for weekly trash removal service benefitting the Parcel.

**Section 4.4. Allocation of Specified Common Elements.** The Executive Board may designate parts of the Common Elements from time to time for use by less than all of the Unit Owners or by non-owners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use that the Board may establish. Any such designation shall not be a sale or disposition of such portions of the Common Elements.

**Section 4.5. Maintenance Contract.** The Executive Board may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Elements.

**Section 4.6. Right of Access.** Any person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Project for the purpose of performing installations, alterations, or repairs and for the purpose of reading, repairing, and replacing utility meters and related pipes, valves, wires, and equipment; provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no request or notice is required, and the right of

entry shall be immediate and with as much force as is reasonably necessary to gain entrance, whether or not the Unit Owner is present at the time.

## **ARTICLE V** **PROPERTY RIGHTS AND EASEMENTS**

**Section 5.1. Legal Description.** An agreement for the sale of a Unit entered into prior to the recording the Plat and this Declaration with the Chaffee County, Colorado Clerk and Recorder may legally describe such Unit as set forth below and may indicate that the Plat and this Declaration are to be recorded. After the Plat and this Declaration are recorded, instruments of conveyance of Units, and every other instrument affecting title to a Unit shall describe such Unit as set forth below, and may include such omissions, insertions, recitals of fact, or other provisions that may be necessary or appropriate under the circumstances:

Parcel \_\_, Unit [or Lot] \_\_, Two Rivers Commons, according to the Plat recorded with the Chaffee County, Colorado Clerk and Recorder on \_\_\_\_\_, 2019 at Reception No. \_\_\_\_\_, and the Declaration, recorded on \_\_\_\_\_, 2019 at Reception No. \_\_\_\_\_, City of Salida, Chaffee County, Colorado.

**Section 5.2. Owner's Easements.** Every Owner has a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Unit, subject to the designation of Common Elements as Limited Common Elements and the provisions in the Association Documents. In particular, each Owner shall have:

**a.** A non-exclusive access easement for reasonable pedestrian access, ingress and egress to and from each Lot over and across the Parking Area, all walkways, sidewalks, steps and stairways in and around the Lots, and a non-exclusive access easement for vehicular access, ingress and egress to and from the Parking Area.

**b.** A non-exclusive easement for vehicular parking in the Parking Area, subject to the Declarants rights to allocate any portion of the Parking Area for the exclusive use of one or more but less than all of the Units.

**Section 5.3. Easement of Encroachment.** Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Elements and between adjacent Lots or any Lot, due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, an easement for encroachment shall not exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

### **Section 5.4. Utility Easements.**

**a. Installation and Maintenance.** Declarant reserves for itself, so long as Declarant owns any property described in ***Exhibit A or C***, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Property (but not through a



structure) to the extent reasonably necessary for the purpose of: installing utilities and infrastructure to serve the Property, cable and other systems for sending and receiving data, or other electronic signals, security and similar systems walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public right-of-way or easements reserved for such purpose on recorded plats; inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in this Section; and access to read utility meters.

**b. Specific Easements.** Declarant reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in *Exhibit A or C*. The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

**c. Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on a Lot, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

**Section 5.5. Easements to Serve Expansion Property.** Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Elements for the purpose of enjoyment, use, access, and development of the Expansion 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 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 their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion benefiting from such easement is not made subject to this Declaration, Declarant, its successors and assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance that the Association provides to or along any roadway providing access to such Property

**Section 5.6. General Maintenance and Emergency Easement.** An easement is hereby reserved to Declarant, and granted to the Association, any Director or the Manager, and their respective officers, agents, employees, and assigns, upon, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, including the right to enter upon any Lot.

**Section 5.7. Declarant's Rights Incident to Construction.** Declarant, for itself

and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction in the Units of improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by Declarant in a way which prohibits the occupancy, use, or access to the Project by the Owners.

**Section 5.8. Easement for Access.** Declarant reserves for itself, its successors, assigns, and designees, a perpetual easement over the roads, trails, and walkways within the Property for access by employees, independent contractors, and accompanied guests of Declarant in connection with real estate sales activities within the Property.

**Section 5.9. Recorded Easements.** The Property is subject to additional existing recorded easements as listed in *Exhibit D*.

**Section 5.10. Easement to Inspect and Right to Correct.** Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property, and a perpetual nonexclusive easement of access across, over and through the Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry into a Unit shall be only after reasonable notice to the Owner and with the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

## **ARTICLE VI** **PARTY WALLS**

**Section 6.1. General.** A "Party Wall" refers to the wall along the dividing line between two adjoining Buildings constructed on adjacent Lots. Any dispute arising or concerning a Party Wall shall be subject to the dispute resolution provisions set forth in this Declaration.

**Section 6.2. Maintenance; Damage and Destruction.** Owners of Units within Buildings that make use of a Party Walls shall equally share the cost of reasonable repairs and maintenance of such structure with the Owners of Units within the adjoining Building.

**a.** If a party wall structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

**b.** The right of any Owner to contribution from the other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

c. If the negligence of any one Owner or any parties claiming under such Owner causes damage to or destruction of a Party Wall, such negligent Owner will bear the entire cost of such repair or reconstruction.

## **ARTICLE VII** **RIGHTS RESERVED BY DECLARANT**

**Section 7.1. Expansion Rights.** Declarant expressly reserves the right to use all or any part of the Expansion Property to develop additional Units, Common Elements and Limited Common Elements. Declarant may exercise such rights on all or any portion of the Expansion Property in whatever order of development Declarant, in its sole discretion, determines. The existing Owners or Mortgagees' consent is not required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option.

a. Declarant makes no assurances as to the boundaries of the portions of the Expansion Property that will be added at any time or the order that such portions will be added. Furthermore, Declarant has no obligation to subject all or any portion of the Expansion Property to the provisions of this Declaration.

b. Exercise of this Development Right with respect to any portion of the Expansion Property shall not obligate the Declarant to exercise such Development Right in any other portion of the Expansion Property. Any portion of the Expansion Property that is not subjected to this Declaration may be developed as Declarant or any subsequent owner of such portions may determine.

c. The addition of any Expansion Property to the Project shall be achieved by recording with the Chaffee County Clerk and Recorder a Supplemental Declaration, or Supplemental Plat containing a legal description of the real estate to be added to the Project and such other terms and provisions as Declarant may prescribe.

**Section 7.2. Reservation of Withdrawal Rights.** Declarant reserves the right to withdraw Declarant owned Lots from the Project and the provisions of this Declaration. If property is withdrawn from the Property ("Withdrawn Property"):

a. Owners of real estate within the Property or the Withdrawn Property will have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Property and Withdrawn Property.

b. Declarant will prepare and record in the Chaffee County Clerk and Recorder's office whatever documents are necessary to evidence such easements and will amend the Plat to include reference to the recorded easement(s). Declarant's preparation and recordation of an easement pursuant to this Section will conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

**Section 7.3. Reservation of Additional Development Rights.** In addition to any rights reserved elsewhere in this Declaration, Declarant reserves the following Development Rights:

a. The right to subdivide any portion of the Property to develop additional Units, Common Elements, and Limited Common Elements.

b. The right to subject any portion of the Property to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If someone other than Declarant owns the property, then the consent of the owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

c. The right to enlarge or reduce the size of the Lots; the right to relocate boundaries between adjoining or otherwise contiguous Lots, and the right to complete or make Improvements as such rights may be approved by the governmental authorities having jurisdiction over the Project.

**Section 7.4. Exercise of Development Rights.** Declarant shall exercise its Development Rights by recording with the Chaffee County Clerk and Recorder a Supplemental Declaration, Supplemental Plat, or any other Declaration or Plat amendments that may be appropriate. Such documents shall include, without limitation, the information required to properly exercise the Development Rights reserved in this Article, and any other provisions or information permitted or required under the Act.

**Section 7.5. Interpretation.** Recording of Declaration and Plat amendments or supplements in the Chaffee County Clerk and Recorder's office shall:

a. Automatically vest in each existing Owner any additional rights or interest appurtenant to their Lot; and

b. Automatically vest in each existing Mortgagee a perfected security interest in the additional rights or interest appurtenant to the encumbered Lot.

c. Properly amend the Allocated Interests as necessary to preserve the share ratios established in this Declaration.

d. Apply the definitions used in this Declaration to the Property as it exists after Declarant's exercise of a Development Right. All Lot conveyances after such amendment or supplement will be effective to transfer rights in the Common Elements and Limited Common Elements as improved, regardless of reference to any Declaration or Plat amendment or supplement. Reference to the Declaration and Plat in any instrument will include all Declaration and Plat amendments or supplements without specific reference thereto.

**Section 7.6. Special Declarant Rights.** Declarant reserves the right to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

**a. Completion of Improvements.** The right to complete improvements indicated on the Plat filed with the Declaration.

**b. Exercise of Development Rights.** The right to exercise any Development Right reserved in this Article. The fact that Declarant may exercise one or more Development Rights or Special Declarant Rights on one portion of the Property will not operate to require Declarant to exercise any such right with respect to any other portion of the Property.

**c. Sales Management and Marketing.** The right to maintain sales offices, management offices, signs advertising the Project and models. The offices, model Unit and signs will be of sizes and styles determined by Declarant, and may be relocated by Declarant from time to time. At all times, the offices, model Unit and signs will remain the property of Declarant and may be removed from the Property by Declarant at any time.

**d. Construction Easements.** The right to use easements through the Common Elements for the purpose of making improvements within the Project.

**e. Merger.** The right to subject the Property or the Expansion Property to one or more common interest communities, the right to annex any such common interest community into the Association, and the right to merge or consolidate the Project with another project operated as a planned community.

**f. Control of Association and Executive Board.** The right to appoint or remove any Officer or any Director during the Declarant Control Period.

**g. Control of Construction, Design Review.** The right to control any construction, design review, or aesthetic standards committee or process.

**h. Amendment of Association Documents.** The right to amend any Association Document in connection with the exercise of any Development Rights or Special Declarant Rights.

**Section 7.7. Right to Notice of Design or Construction Claims.** No person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Project in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the property Owner to discuss the Owner's concerns and conduct their own inspection.

**Section 7.8. Right to Approve Additional Covenants.** No person shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and recorded by Declarant.

**Section 7.9. Right to Approve Changes in Standards.** No amendment to or

modification of any restrictions, rules or architectural guidelines shall be effective without the Declarant's prior written approval so long as Declarant owns property subject to this Declaration.

**Section 7.10. Parking Area.** Declarant reserves the right to modify or allocate any portion of the Limited Common Element Parking Area identified on the Plat for the exclusive use one or more but less than all of the Units. The use or expense of any portion of the Parking Area may be reallocated among the Units by the Executive Board pursuant to the Bylaws and in compliance with the Act. Declarant reserves the right to install signage to regulate the use of the Parking Area.

**Section 7.11. Transfer and Termination of Declarant Rights.**

**a. Transfer.** The rights created or reserved under this Article for Declarant's benefit may be transferred to any person by an instrument describing the rights transferred, signed by the transferor Declarant and the transferee, and recorded in Chaffee County. These rights are appurtenant to, benefit, and burden all of the Property, and a Successor Declarant may exercise such Development Rights to the same extent as the Declarant, subject to any limitations imposed by the Declarant, this Declaration or applicable law.

**b. Termination.** The rights created or reserved under this Article for Declarant's benefit shall terminate twenty (20) years after the recording of this Declaration, unless such rights are: (i) earlier terminated by recording of Declarant's written relinquishment of such rights; or (ii) extended as allowed by law.

**ARTICLE VIII**  
**INSURANCE AND FIDELITY BONDS**

**Section 8.1. Authority to Purchase.** The Association shall purchase all insurance policies relating to the Common Elements. The Executive Board, the Manager, and Declarant shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are available only at demonstrably unreasonable cost. In such event, the Executive Board shall cause notice of such fact to be delivered to all Owners.

**Section 8.2. Notice to Owners.** The Association, through the Executive Board, shall promptly furnish to each Owner written notice of the procurement of, subsequent change in, or termination of, insurance coverages obtained under this Article.

**Section 8.3. General Insurance Provisions.** All such insurance coverage obtained by the Executive Board shall be governed by the following provisions.

**a.** As long as Declarant owns any Unit on which a certificate of occupancy has been issued, Declarant shall be protected by all such policies as an Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this Article shall not protect or be for the benefit of any general contractor engaged by Declarant, nor shall such coverage protect Declarant from (or waive any rights with respect to) warranty claims against Declarant as developer of the Project.

**b.** The deductible amount, if any, on any insurance policy the Executive Board purchases may be treated as a Common Expense payable from Annual Assessments or Special Assessments, or as an item to be paid from working capital reserves established by the Executive Board; or alternatively, the Executive Board may treat the expense as an assessment against an Owner whose Unit is specifically affected by the damage or whose negligence or willful act resulted in damage. The Association may enforce payment of any amount due from an individual Owner toward the deductible in the same manner as an Assessment.

**c.** The insurance coverage described in this Article shall be considered minimum coverage and the Association will be obligated to secure and maintain such other or additional coverage as may be required by law or C.R.S. § 38-33.3-313, which is also applicable to supplement the provisions of this Article.

**d.** Except as otherwise provided in this Declaration, insurance premiums for the insurance coverage provided by the Executive Board pursuant to this Article shall be a Common Expense to be paid by regular Assessments levied by the Association.

**Section 8.4. Physical Damage Insurance on Improvements.** The Association shall obtain and maintain in full force and effect physical damage insurance on all Units, (excluding, unless the Executive Board directs otherwise, the fixtures, equipment, furniture, wall coverings, improvements, additions or other personal property installed by Owners) and all insurable Common Elements improvements within the Project, in an amount equal to full replacement value (i.e., 100% of the current "replacement cost" exclusive of land, foundation, excavation, and other items normally excluded from coverage). Such insurance shall afford protection against at least the following:

**a.** Loss or damage caused by fire and other hazards covered by the standard extended coverage endorsement with the standard all-risk endorsement including but not limited to sprinkler leakage, debris removal, demolition, vandalism, malicious mischief, windstorm, and water damage;

**b.** Property damage insurance covering personal property owned by the Association.

**Section 8.5. Liability Insurance.**

**a.** The Executive Board shall obtain and maintain in full force and effect commercial general liability insurance with such limits as the Executive Board may from time to time determine, insuring the Association, each Director, the Manager, and their respective employees and agents. The liability policy will cover claims and liabilities arising out of or incident to the ownership existence, management, operations, maintenance or use of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

**b.** The Executive Board shall review such limits once every two years, but in no event shall such insurance be less than \$1,000,000.00 covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability

insurance in excess of the primary limits may also be obtained.

c. Each Commercial Unit Owner shall obtain and maintain in full force commercial general liability coverage with limits and terms as the Executive Board shall approve.

**Section 8.6. Provisions Common to Physical Damage Insurance, and Liability Insurance.** Any insurance coverage the Association obtains pursuant to this Article shall be subject to the following provisions and limitations:

a. The named insured under any such policies shall include Declarant, until all the Units have been conveyed, and the Association, as attorney-in-fact for the use and benefit of the Owners, or the Association's authorized representative (including any trustee, or any successor trustee, with whom the Association may enter into an insurance trust agreement, sometimes referred to in this Declaration as the "Insurance Trustee" and such Insurance Trustee will be recognized by an insurer providing insurance pursuant to this Article) who shall have exclusive authority to negotiate losses and receive payments under such policies, and the "loss payable" clause should designate the Association or the Insurance Trustee, if any, who will act as trustee for each Owner and the holder of each Unit's Mortgage.

b. Each Owner shall be an insured person with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.

c. The insurance coverage obtained and maintained pursuant to this Article shall not be brought into contribution with insurance purchased by the Owners or their Mortgagees;

d. The policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Owner or Guest when such act or neglect is not within the control of the Association, or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control;

e. The policies shall contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located, and provide that coverage may not be canceled nor may the insurer refuse to renew (including cancellation for non-payment of premium) without at least thirty (30) days' written notice to the Association, each Owner and any First Mortgagee listed as an insured in the policies; and

f. The policies shall contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Executive Board, the Association, the Manager, and any Owner or Guest; and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

**Section 8.7. Other Insurance.** The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

**Section 8.8. Insurance Obtained by Owners.** Each Owner may obtain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering



personal property and personal liability. Additionally, an Owner may obtain such other and additional insurance coverage on their Unit as such Owner their sole discretion shall conclude to be desirable. However, no such insurance coverage shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant own any Unit. No Owner shall obtain separate insurance policies on the Common Elements.

## **ARTICLE IX** **ASSESSMENTS**

### **Section 9.1. Obligation and Purpose of Assessments.**

**a.** Owners, by accepting a deed for a Unit, covenant to pay the Association (1) the Periodic Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Elements and to perform the functions of the Association; (2) Supplemental Assessments for the purpose of providing the additional funds required to meet unexpected increases in budgeted Common Expenses; (3) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted by law; (4) Specific Assessments for Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element may be assessed against the Units to which such Limited Common Element is assigned, or as determined by the Executive Board; and (5) Default Assessments which may be assessed against a Unit for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents. No Owner may exempt himself or herself from liability for assessments by non-use of Common Elements, abandonment of his or her Unit, 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.

**b.** The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of the Property and for the improvement and maintenance of the Common Elements all as more fully set forth in this Declaration and on the Plat.

**Section 9.2. Budget.** The Executive Board will adopt a budget with Assessments sufficient to pay all Common Expenses and adequate reserves on an annual basis before the commencement of each calendar year. Within ninety (90) days after adoption of any proposed budget, the Executive Board will provide the budget to all the Owners with notice of a date for a Owners meeting to consider ratification of the budget. The budget will be deemed approved by the Owners unless at that meeting a majority of all Owners vote to veto the budget. If the proposed budget is vetoed, the last approved periodic budget shall be continued until a subsequently proposed budget is not vetoed by the Owners.

**Section 9.3. Working Capital Fund.** The Association or Declarant shall require

each buyer of a Unit to make a non-refundable payment to the Association in an amount equal to one-half (1/2) of the Unit's Periodic Assessment for that year, which sum shall be segregated and held, without interest, by the Association to meet unforeseen expenditures, acquire additional services or equipment or as a maintenance reserve. A working capital fund contribution shall be collected and transferred to the Association at the time of closing of each sale, or re-sale, of each Unit, and shall be maintained for the Association's use and benefit. An Owner's contribution shall not relieve an Owner from paying Periodic Assessments as they become due. Upon the transfer of a Unit, an Owner shall not be entitled to a credit from the transferee for any unused portion of the working capital fund. Declarant may not use any of the working capital fund to defray any of its expenses or construction costs.

**Section 9.4. Periodic Assessments.** Periodic Assessments for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners. The Periodic Assessments shall be due in advance, without notice on the first day of the year. Owners may pay their Periodic Assessment in monthly installments, due on the first of each month, without notice, or such other installments as the Executive Board may determine. The Association's failure to fix the Periodic Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Periodic Assessments in excess of the actual expenses incurred in any fiscal year. Periodic Assessments will commence after the Executive Board has approved a budget and levied Assessments and a Certificate of Occupancy is issued for a Unit.

**Section 9.5. Apportionment of Periodic Assessments.** The apportionment of Periodic Assessments for each Unit's appurtenant Common Expense liability is as set forth below.

**a. Shared Expenses.** All Units shall be responsible for a share of the Common Expenses related to the administration, management, and operation of the Association and the Property, cleaning, maintenance, repair and replacement of the Common Element driveways, roadways, sidewalks, landscaping, and snow removal. Each Unit's share of such Common Expenses is calculated by dividing the approximate square footage of such Unit by the total approximate square footage of all Units.

**b. Parcel Expenses.** The Units within any Parcel shall be responsible for 100% of the "Parcel Expenses" of administration, operation, management, maintenance, repair or replacement of the Limited Common Elements located within that Parcel including, without limitation, any Buildings or other Improvements that are exclusively used and enjoyed by Units within that Parcel, and expenses declared to be Parcel Expenses pursuant to this Declaration. The share of Parcel Expenses of each Unit within a Parcel is calculated by dividing the approximate square footage of such Unit by the total approximate square footage of all Units within that Parcel.

**c. Supplemental Assessments.** If the Executive Board determines, at any time or from time to time, that the amount of the Periodic Assessments is not adequate to pay for the costs and expenses of fulfilling the Association's obligations, one or more supplemental assessments may be made to provide the additional funds. In which case, the Executive Board shall follow the requirements of Section 9.2 to adopt and ratify the revised budget. Upon request, the Executive Board will deliver the revised budget summary to any Mortgagee. The Executive Board may levy supplemental assessments for such fiscal year against each Unit based on the

revised budget.

**Section 9.6. Specific Assessments.** Common Expenses for maintenance, repair or replacement of a Limited Common Element benefitting one or more, but less than all, Units may be assessed against the Unit(s) to which such Limited Common Element is assigned, or against the affected Unit(s) as determined by the Executive Board. Specific assessments that may be levied against a Unit include, without limitation, the following:

**a. Parking Area Expenses.** All Units shall be responsible for a share of the Common Expenses related to management, cleaning, snow removal, maintenance, repair and replacement of the Parking Area. Each Unit's share of such Common Expenses is based on the number of parking spaces the Unit actually uses divided by the total number of spaces within the Parking Area. As more particularly addressed in the Bylaws, each Unit's parking space use has been initially estimated in good faith by Declarant and consistently applied to all Units based on the Unit's anticipated use and the off-street parking standards provided for in the Salida Code § 16-8-80, as amended.

**i.** Each Owner shall have a continuing obligation to notify the Board of their Units current use, and a fine may be imposed for an Owners failure to do so. The Board may adopt policy and procedure as to the standards for Owner compliance with and Board enforcement of this obligation.

**ii.** The Declarant, or the Board after expiration of the Declarant Control Period, shall evaluate the actual use of the Parking Area by each Unit to adjust the use based allocation of Parking Area Expenses as set forth in the Bylaws. The first such evaluation shall occur one year after the date that this Declaration is recorded.

**b. Extraordinary Insurance.** Any extraordinary insurance cost incurred as a result of the value of a particular Owner's Unit shall be borne by that Owner.

**c. Resulting Expense.** Any extraordinary Common Expense related to the actions of any Owner, or their Guest, shall be assessed solely against such Owner's Unit.

**Section 9.7. Special Assessments.** The Association may levy in any fiscal year one or more Special Assessments payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense but shall be construed to prescribe the manner of assessing expenses authorized in this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners as provided in this Article. Written notice of the Special Assessment amount and payment schedule shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after the date of such notice.

**Section 9.8. Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any Association expense which is an Owner's obligation or which the Association incurs on an Owner's behalf pursuant to the Association

Documents, shall be a Default Assessment. Such a Default Assessment shall be a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to that due date.

**Section 9.9 Commencement of Assessments.** Assessments shall begin on the first day of the month following the first conveyance of a Unit to an Owner other than the Declarant occurs. Assessments shall be levied against all Units that are subject to this Declaration and payable by the Owners of all Units, including Units still owned by Declarant that are subject to this Declaration. Declarant shall be responsible for all Common Expenses until Assessments commence.

**Section 9.10. Assessment Lien.**

**a.** The Association is hereby granted, and shall have, a lien on a Unit for an Assessment levied against the Unit or fines imposed against its Unit Owner. Fees, charges, late charges, attorneys' fees, fines, and interest charged pursuant to the Act and the Association Documents are enforceable as Assessments. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

**b.** A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first Security Interest on the Unit recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. A lien under this Section is also prior to all Security Interests described in subdivision (2) of this subsection to the extent that the Common Expense Assessments (not including fees, charges, late charges, attorneys' fees, fines, and interest pursuant to C.R.S. §§ 38-33.3-302(1)(j), (k), and (l), C.R.S. § 38-33.3-313(6), C.R.S. § 38-33.3-315(2), are based on the periodic budget adopted by the Association pursuant to this Declaration and would have become due in the absence of acceleration, during the six months immediately preceding an action or a non-judicial foreclosure either to enforce or extinguish either the Association's lien or a Security Interest described in subdivision (2) of this subsection. The Assessment lien shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Colorado. Transfer of any Unit shall not affect the Association's lien except that sale or transfer of any Unit pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, or cancellation or forfeiture shall only extinguish the Association's lien as provided in the Act. The amount of such extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

**c.** Recording of the Declaration constitutes record notice and perfection of the lien. Further recording of a statement or claim of lien is not required.

**d.** This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. A judgment or decree in any action brought under this Section shall include costs and reasonable attorneys' fees for the prevailing party, which shall be additional Assessments, and enforceable by

execution under Colorado law.

**e.** The Association's lien may be foreclosed by the same judicial procedure by which a mortgage on real estate is foreclosed under Colorado law.

**f.** In any action by the Association to collect Assessments or to foreclose a lien for Assessments, the court may appoint a receiver for the Unit who shall collect all sums due from that Unit Owner or a tenant of the Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Assessments based on a periodic budget adopted by the Association pursuant to this Declaration.

**Section 9.11. Reserve Fund.** The Association shall establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements that the Association is obligated to maintain. This reserve fund shall be a line item in the periodic budget and shall be collected from and as part of the Periodic Assessments for Common Expenses.

**Section 9.12. Effect of Nonpayment.**

**a.** Any Assessment, or an installment thereof, shall be delinquent if not paid within thirty (30) days of its due date. If an Assessment, or installment, becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

**i.** Assess a late charge for each delinquency in such amount as the Executive Board may determine.

**ii.** Assess interest on the delinquent amount at a rate the Executive Board determines is appropriate, but not to exceed twenty-one percent (21%) per annum (Default Rate), accruing from the due date until paid in full;

**iii.** Suspend the Owner's voting rights or the right to use any Common Element during any period of delinquency;

**iv.** Accelerate any portion or all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be immediately due and payable;

**v.** Disconnect any utility services to the Unit that are paid as a Common Expense;

**vi.** Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

**vii.** File a statement of lien with respect to the Unit and proceed with foreclosure as set forth below.

**b.** Upon payment of delinquent Assessments, the Association may forego any collections remedies, decelerate any Assessment installments that were accelerated and restore any

rights to the previously delinquent Owner.

**Section 9.13. Successor's Liability for Assessment.** In addition to each Owner's personal obligation to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to ownership of a Unit, except as otherwise provide in this Article, shall be jointly and severally liable with the prior Unit Owner(s) for any and all unpaid Assessments, interest, late charges, costs, expenses and attorney's fees against such Unit without prejudice to such successor's right to recover from any prior Owner any amounts paid by such successor. The successor's liability shall not be personal and shall terminate upon termination of such successor's ownership of the Unit. In addition, the successor shall be entitled to rely on the Association's statement of status of assessments as set forth below.

**Section 9.14. Notice to Mortgagee.** The Association may report to any Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same shall have become due, if such Mortgagee first shall have furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

**Section 9.15. Statement of Assessments.** The Association shall furnish to an Owner, their designee, or to a holder of a security interest upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit. A reasonable fee, established by the Executive Board, may be charged for such statement.

## **ARTICLE X** **DAMAGE OR DESTRUCTION**

**Section 10.1. The Role of the Executive Board.** Except as otherwise provided in this Article, if damage to or destruction of all or part of any Common Elements, or other property covered by insurance written in the Association's name ("Association-Insured Property"), the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property.

**Section 10.2. Estimate of Damages or Destruction.** As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the cost of repair and reconstruction. As used in this Article "repair and reconstruction" shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board determines to be necessary.

**Section 10.3. Repair and Reconstruction.** As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or

appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments shall not be abated during the period of insurance adjustments and repair and reconstruction.

**Section 10.4. Funds for Repair and Reconstruction.** Proceeds received by the Association from any hazard insurance it carries shall be used to repair, replace and reconstruct the Association-Insured Property. If said proceeds are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

**Section 10.5. Disbursement of Funds for Repair and Reconstruction.** The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. The first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

**Section 10.6. Decision Not to Rebuild Common Elements.** If sixty seven percent (67%) of the Owners, and all directly adversely affected Owners (as determined by the Executive Board), agree in writing not to repair and reconstruct improvements within the Common Elements and if no alternative improvements are authorized, then the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Elements by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with applicable law.

## **ARTICLE XI** **CONDEMNATION**

**Section 11.1. Rights of Owners.** If any authority having power of condemnation or eminent domain takes all or any part of the Common Elements, or whenever the Executive Board, acting as attorney-in-fact for all Owners under instruction from such authority, conveys all or any part of the Common Elements in lieu of such taking, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

**Section 11.2. Partial Condemnation, Distribution of Award; Reconstruction.** The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Elements was conveyed, and the award shall be disbursed as follows: If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and at least four Owners shall otherwise agree, the Association shall restore or replace such improvements so taken

on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions above regarding the disbursement of funds in respect to repair of casualty damage or destruction shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such replacement is completed, then such award or net funds shall be distributed in equal shares per Unit among the Owners, first to the Mortgagees, if any, and then to the Owners, as their interests appear.

**Section 11.3. Complete Condemnation.** If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Section 10.5 above.

## **ARTICLE XII** **DURATION OF COVENANTS AND AMENDMENT**

**Section 12.1. Covenants Binding.** Each provision of this Declaration and a promise, covenant and undertaking to comply with each such provision (i) shall be incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed; (ii) shall, by virtue of an Owner's acceptance of any right, title or interest in any of the Property, be accepted, ratified, adopted and declared as such Owner's personal covenant and shall be binding on such Owner or his or her respective heirs, personal representatives, successors or assigns, to, with and for the benefit of the Declarant and all Owners within the Project; (iii) shall be a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to all of such Owner's right, title and interest to any of the Property, which lien shall be deemed a lien in favor of the Declarant, as its interest may appear, and all Owners within the Project; and (iv) shall run with the land.

### **Section 12.2. Amendment.**

**a.** Except as otherwise specifically provided in this Declaration, any provision of this Declaration may be amended at any time by the affirmative vote or written consent, or any combination thereof, of at least 67% of the Owners. Any amendment must be executed by the President and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary to the recorded instrument certifying that signatures of a sufficient number of Owners approving the amendment are on file in the office of the Association. In addition, the approval requirements set forth in that Article entitled Mortgagee's Rights shall be met, if appropriate.

**b.** Notwithstanding anything to the contrary contained in this Declaration:

**i.** The Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, the Articles and Bylaws, at any time for the purpose of correcting spelling, grammar, dates, typographical errors or as may otherwise be necessary to clarify the meaning of any provision without the consent of the Owners or First Mortgagees.



ii. The Declarant hereby reserves and is granted the right and power to record special amendments to the Declaration, the Articles and Bylaws at any time in order to comply with any requirement of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages, to comply with the Act, or to conform with any amendments, modifications, revisions or revocations of the Salida Code, without the consent of the Owners or any First Mortgagees.

**Section 12.3. When Modifications Permitted.** Notwithstanding any provisions in this Declaration to the contrary, no termination, extension, modification, or amendment of this Declaration made prior to the termination of Declarant's control shall be effective unless the prior written approval of Declarant is first obtained.

**Section 12.4. Termination.** This Project may be terminated as provided in the Act upon agreement of all Owners evidenced by a written instrument duly recorded.

### **ARTICLE XIII** **INITIAL PROTECTIVE COVENANTS**

**Section 13.1. Plan of Development, Applicability, Effect.** Declarant has established a general plan of development for the Property in order to protect the Owners' collective interests and the aesthetics and environment within the Project. In furtherance of that general plan, this Declaration and the Association Documents establish affirmative and negative covenants, easements, and restrictions on the Property, subject to certain rights vested in the Executive Board and the Owners to enable them to respond to changes in circumstances, conditions, needs and desires within the Project.

**Section 13.2. Authority to Promulgate Use Restrictions.** Initial use restrictions applicable to the Project are set forth below. Amendment of these use restrictions requires a vote of at least 67% of the Owners. Provided, however, in accordance with the duty to exercise reasonable business judgment, the Executive Board, with the consent of the Declarant during the Declarant Control Period, may adopt rules and regulations that modify, limit, create exceptions to, or expand the initial use restrictions set forth in this Article.

**Section 13.3. Owners Acknowledgment.** All Owners and Guests are given notice that use of their Unit is limited by the Association Document provisions as they may be amended, expanded and otherwise modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of their Unit can be affected by this provision and that all restrictions upon the use and occupancy of a Unit may change from time to time.

**Section 13.4. Rights of Owners.** The Executive Board shall not adopt any Rule or Regulation in violation of the following provisions:

a. Equal Treatment. Similarly situated Owners and Guests shall be treated similarly.

b. Speech. An Owners right to display political signs and symbols in or on their Unit of the kinds normally displayed in Units located in a residential project shall not be

abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and Guests.

c. Religious and Holiday Displays. An Owners right to display religious and holiday signs, symbols, and decorations on Units of the kinds normally displayed in Units located in a residential project shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage or disturbance to other Owners and Guests.

d. Activities within Units. No rule shall interfere with the activities carried on within the confines of a Unit, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of Owners or Guests, that generate excessive noise, odors or traffic, that create unsightly conditions visible outside the Unit, or that create an unreasonable source of annoyance.

e. Reasonable Rights to Develop. No rule shall impede the Declarant's right to develop in accordance with the provisions of this Declaration.

f. Abridging Existing Rights. If any rule would otherwise require Owners or Guests to dispose of personal property that they owned at the time they acquired their interest in the Unit, and such ownership was in compliance with all rules and regulations in force at that time, the rule shall not apply to any such Owners or Guests without their written consent. However, all subsequent Unit Owners or Guests shall comply with such rule.

**Section 13.5. Initial Use Restrictions.** No Unit may be used for any purpose that is not permitted for C-2 zoning under the Salida Code. Additionally, the following restrictions apply within the Project:

a. Mixed Use, Restrictions. Each Unit may be used for the residential or commercial purposes permitted under the Property's C-2 zoning designation as provided in the Salida Code § 16-4-150, Table 16-D Schedule of Uses, as amended. Notwithstanding the forgoing, use of any Unit, or portion thereof, which is at street level and is a part of a Building's frontage is limited to commercial uses that are open to the public for the sale of goods or services, and uses that close the storefront off to public access are prohibited. However, residential use is permitted within any street level Unit or portion thereof situated within the rear 50% of any Building that abuts the alley immediately to the east of Parcel 5. Regardless of the Salida Code, no Unit shall be used as or for hospitals, drive-in facilities, drive-in food or beverage facilities, automobile sales, service or repairs, or veterinary clinics, and such uses are expressly prohibited.

b. Pets. Raising, breeding, or keeping animals, livestock, or poultry of any kind is prohibited, except as permitted by the Salida Code. Owners may keep a reasonable number of dogs, cats, or other usual and common domestic pets in their Unit. However, pets that make objectionable noise, endanger the health or safety of, or constitute a nuisance or unreasonable inconvenience to, other Owners or Guests may be removed from the Property. Pets must be voice or leash controlled at all times and shall not be permitted to roam free or run loose on the Common Elements. Pet owners shall be responsible for cleaning up after their pets.

c. Subdivision. Lots or Units may be subdivided into two or more Units, or the boundary lines of any Unit altered, pursuant to requirements in this Declaration, or applicable law.

d. Leases. The term “lease,” as used herein, shall include any agreement for the lease or rental of a Unit and shall specifically include, without limitation, term or month to month rental. Owners shall have the right to lease their Units only under the following conditions:

i. All long-term leases shall be in writing.

ii. All leases shall provide that the lease terms and the tenant’s occupancy of the Unit is subject to the Association Documents, as the same may be amended from time to time, and that the tenant’s failure to comply with the Association Documents, in any respect, shall be a default of the lease, which may be enforced by the Executive Board, the Owner, or both.

e. Timeshare Restriction. No Unit Owner shall offer or sell any interest in their Unit under a “timesharing” or “interval ownership” plan, or any similar plan.

f. Compliance with Laws. Each Owner shall comply with all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

g. No Hazardous Use. No Owner shall dispose or allow any person under the Owner’s control or direction to release, discharge or emit from the Property or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation. Furthermore, any and all uses or activities that may increase the rate of insurance for a Building, or any portion of the Property, are prohibited.

h. Nuisances. Any use, activity, or practice which is the source of disturbance to or unreasonably interferes with the peaceful enjoyment or possession of a Unit or any portion of the Common Elements or any portion of the Project, is a nuisance. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project shall be observed and may be enforced by the Association as if the same were contained in the Association Documents.

i. Decks, Balconies or Patios. Lawn furniture may be used and stored on a Unit’s deck, balcony or patio. Charcoal and propane grills and other open fires are prohibited. Owners understand their use of the exterior Limited Common Elements can detrimentally affect other Owners. The Executive Board may adopt rules governing appropriate use and appearance of the decks, balconies, patios and other Limited Common Elements. Subject to restrictions of applicable law, the Board may adopt rules permitting Owners to use and store natural gas barbecue grills on a Unit’s deck, balcony or patio.

**Section 13.6. Restrictions on Parking and Vehicles.** Except as limited in this Section, Owners and their Guests are permitted to use the Parking Area depicted on the Plat on a first come first serve basis. Parking or storing of vehicles within the Property shall be subject to

rules and regulations enacted by the Executive Board and provisions of this Declaration including, but not limited to, the following:

**a. Use of Shared Parking.** The shared Parking Area as depicted on the Plat is a Limited Common Element for the use of the Owners and Guests of Units within all Parcels subject to this Declaration, except Parcel 5. The Owners of Units within Parcel 5 shall not be entitled to use the shared Parking Area.

**b. Use of Parcel 5 Parking Area.** The Owners of Units within Parcel 5 shall have exclusive use of the Parcel 5 Parking Area located on the north side of Parcel 5 as depicted on the Plat. Owners of Units outside of Parcel 5 shall not be entitled to use the Parcel 5 Parking Area.

**c. Parking Area Restrictions.** The following restrictions apply to all of the Parking Area and any private parking located within the Property:

**i.** No portion of the Property shall be used as a parking, storage, display or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, motor home, running gear, boat or accessories thereto.

**ii.** No abandoned or inoperable vehicles of any kind shall be stored or parked on the Property. An “abandoned or inoperable vehicle” shall be defined as any automobile, truck, motorcycle, van, recreational vehicle or other device for carrying passengers, goods or equipment which has not been driven under its own propulsion for a period of two weeks or longer.

**iii.** Unlicensed motor vehicles shall not be operated on the Common Elements. The definition of unlicensed motor vehicles shall include, but is not limited to, go-carts, mini-bikes, unlicensed motor bikes, motorized scooters, snow mobiles and all-terrain vehicles.

## **ARTICLE XIV** **ARCHITECTURE AND LANDSCAPING, DESIGN REVIEW**

**Section 14.1. General.** No structure or thing shall be placed, erected, or installed upon any Lot including, without limitation, construction of a Building, and no Improvements or other work including, without limitation staking, clearing, excavation, grading and other site work, exterior alterations of existing Improvements shall occur, except in compliance with this Article and the Design Guidelines, or as otherwise permitted by this Declaration.

**a.** All Buildings or Improvements constructed on any portion of the Property shall be designed by and built in accordance with the Salida Code, and as approved by the Chaffee County Building Department. All structures requiring a building permit shall have a foundation designed by a Colorado licensed engineer.

**b.** This Article shall not apply to Declarant’s activities during the Declarant Control Period.

**Section 14.2. Alterations or Modifications by Owners.** Subject to forgoing, no

approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Owners may remodel, paint, or redecorate the interior of their Unit without approval. Owners may make alterations or modifications to the interior of their Units that do not impair the structural integrity or affect the electrical or mechanical systems or lessen the support of any portion of the Property. However, Owners may not alter or modify the Common Elements, a Unit's exterior appearance including any portion of the Unit's interior that affects the Building's exterior appearance, or the exterior appearance of any other portion of the Property, without prior authorization.

**Section 14.3. Declarant's Design Review.** Each Owner, by virtue of their ownership of any interest in any portion of the Property, acknowledges that, as the developer of Two Rivers Commons and as an Owner of portions of the Property, Declarant has a substantial interest in ensuring that the Improvements within Two Rivers enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Lot unless and until the Declarant, or its designee(s), has given its prior written approval for such activity, which approval may be granted or withheld in Declarant's sole discretion.

**a.** Declarant shall be acting solely in Declarant's interest and shall owe no duty to any other Person in reviewing and acting upon any request for approval. Declarant's rights under this Article shall continue so long as Declarant may exercise Development Rights or Special Declarant Rights.

**b.** Declarant may delegate all or a portion of the rights reserved in this Article to a Design Review Committee ("DRC"), which may consist of Declarant, Persons appointed by the Executive Board, or Persons appointed by Declarant. Any such delegation shall be in writing, specify the scope of responsibilities delegated, and shall be subject to Declarant's right to: revoke the delegation; and Declarant's right to veto any decision that Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason.

**Section 14.4. Design Review Committee.** Upon Declarant's delegation, or the expiration or termination of Declarant's rights under this Article XIV, the Association, acting through the DRC, shall assume jurisdiction over design review matters. The DRC, when appointed by the Board, shall consist of at least three (3), but not more than five (5), Persons who may or may not be Members. Exercise of the Board appointed DRC's authority shall require the affirmative vote of a majority of its members. The Association shall have no jurisdiction or design review matters until Declarant delegation.

**Section 14.5. Fees; Assistance.** The DRC may establish and charge reasonable fees for application review and may require such fees to be paid in full prior to review. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other Persons as deemed necessary to perform the review. The Board may include the compensation of such Persons in the Association's annual operating budget.

**Section 14.6. Design Guidelines.** Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of Two Rivers Commons as well as specific provisions which vary between Parcels or between Lots. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matter of particular concern to the DRC in considering applications.

**a.** Declarant shall have sole and full authority to amend the Design Guidelines as long as it may exercise Expansion Rights pursuant to this Declaration.

**b.** Any Design Guideline amendments shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of Design Guideline amendments, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

**c.** The DRC shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Property. Such Design Guidelines may be recorded, in which event the recorded version, as it may 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.

**Section 14.7. Procedures.** Except for Declarant's activities during the Declarant Control Period, or as otherwise specifically provided in the Design Guidelines, no activities shall commence on the Property until an application for approval has been submitted to and approved by the DRC. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction as applicable. The Design Guidelines and the DRC may require the submission of such additional information as may be reasonably necessary to consider any application.

**a.** In reviewing each application, the DRC may consider any factors that it determines are relevant including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and opinions may vary as to the desirability, or attractiveness, of particular Improvements. The DRC shall have the sole discretion to make determinations on matters of aesthetic judgment, which determinations shall not be subject to review if made in good faith and in accordance with the procedures set forth herein.

**b.** The DRC shall make a determination on each application within a reasonable time after receipt of the completed application and all required information. The DRC may: approve the application with or without conditions; approve a portion of the application and disapprove other portions; or disapprove the application.

**c.** Until Declarant's rights under this Article expire or terminate, the DRC shall give Declarant written notice within three (3) business days after the DRC has approved an application. The notice shall include a copy of the application and any additional information

Declarant may require. Declarant shall have ten (10) days after receipt of such notice to veto any such action by written notice to the DRC.

**d.** The DRC shall give the applicant written notice of the final determination within five (5) days thereafter or, with respect to any DRC determination subject to Declarant's veto right, within 5 days after the earlier of: receipt of Declarant's notice of veto or waiver thereof; or expiration of the 10 day period for exercise of Declarant's veto. If the application is disapproved, the DRC shall specify the reasons for any objections, or offer suggestions for curing any objections.

**e.** Approval of any application may be conditioned on the Owner's execution of a written agreement setting forth the terms, conditions, and limitations for the authorization of an Improvement including, without limitation, provisions addressing the standards for completion of the work, continuing maintenance, repair or replacement obligations, and indemnification of the Association from all expense, damage or claims that may result from the work.

**f.** An application shall be deemed to have been approved, subject to Declarant's veto right, if the DRC fails to timely respond. However, no approval shall be inconsistent with the Design Guidelines without a written variance pursuant Section 14.8 below.

**g.** Approval of any application shall automatically expire one year after the date of approval if the approved work does not commence within that time-period. In such circumstances, the applicant must resubmit its application before commencing any activities, unless the DRC grants a written extension. Once approved work commences, it shall be diligently pursued to completion. All work shall be completed within twelve (12) months of commencement unless otherwise specified in the DRC's notice of approval, or the DRC grants a written extension. If approved work is not completed within the required time, it shall be considered nonconforming and may be subject to an enforcement action by the Association, Declarant or an aggrieved Owner.

**Section 14.8. Variances.** The DRC may 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. No variance shall: (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the DRC from denying a variance in other circumstances. For purposes of this Section, 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.

#### **Section 14.9. No Waiver, Limitation of Liability.**

**a.** Each Owner acknowledges that the Persons on the DRC will change from time to time and that aesthetic opinions, and interpretation and application of the Design Guidelines, may vary accordingly. Additionally, each Owner acknowledges that identification of objectionable features may not be possible until work is completed, and although it may be unreasonable to require changes to such work, the DRC may refuse to approve similar proposals in the future. Approval of any application shall not constitute a waiver of the right to withhold approval of applications subsequently or additionally submitted.

b. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Two Rivers Commons; they do not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the DRC 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, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

c. Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in Two Rivers Commons; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Association shall defend and indemnify the Board, the DRC, and the members of each as provided in the Association Documents.

## **ARTICLE XV** **MORTGAGEE'S RIGHTS**

The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Units. To the extent permitted under Colorado law and where applicable, necessary or proper, the provisions of this Article apply to all the Association Documents.

**Section 15.1. Title Taken by Mortgagee.** Any Mortgagee holding a First Mortgage of record against a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit is acquired.

**Section 15.2. Distribution of Insurance or Condemnation Proceeds.** In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Unit.

**Section 15.3. Right to Pay Taxes and Charges.** Mortgagees who hold First Mortgages against Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

**Section 15.4. Financial Statement.** Upon written request from any Agency or Mortgagee, which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety days any financial statement of the Association for the



immediately preceding fiscal year at the expense of such Mortgagee.

**Section 15.5. Notice of Action.** Any Eligible Mortgagee and any Agency, which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Unit number), will be entitled to timely written notice of:

a. Any proposed amendment of the Association Documents effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interest in the Common Elements appurtenant to the Unit (excluding changes resulting from the submission of Expansion Property to the Declaration) or the liability of Assessments relating thereto, (iii) the number of votes in the Association relating to any Unit, or (iv) the purposes to which any Unit or the Common Elements are restricted or any amendment set forth in Section 13.6 below;

b. Any proposed termination of the common interest community;

c. Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured or guaranteed by such Agency;

d. Any delinquency in the payment of Assessments owed by the Unit Owner subject to the Mortgage which such delinquency has continued for a period of sixty days;

e. Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article VI.

**Section 15.6. Amendment of Association Documents.** Approval shall first be obtained of fifty-one percent (51%) of Eligible Mortgagees (which percentage is measured by votes allocated to such Units) if the amendment to the Association Documents add or delete any material provisions, which establish, provide for, govern or regulate any of the following:

a. Voting;

b. Assessments, Assessment liens or subordination of such liens;

c. Reserves for maintenance or repair and replacement of the Common Elements;

d. Insurance or fidelity bonds;

e. Responsibility for maintenance and repair of the Project;

f. Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community;

g. Boundaries of any Unit;

- h.** The interests in the Common Elements;
- i.** Imposition of any restrictions on the leasing Units;
- j.** Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his Unit;
- k.** Establishment of self-management by the Association where professional management has been required by any Agency;
- l.** Any provision, which is for the express benefit of an Agency or First Mortgagees, regardless of whether the amendment is material;
- m.** Hazard or fidelity insurance requirements; and
- n.** Restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein.

**Section 15.7. Action by Mortgagee.** If this Declaration or any Association Documents require the approval of any Agency or Mortgage then, if any Mortgagee or Agency fails to respond to any written proposal for such approval within sixty (60) days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

**ARTICLE XVI**  
**DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

**Section 16.1. Agreement to Encourage Resolution of Disputes Without Litigation.**

**a.** Declarant, the Association and its officers, Directors, and committee members, Owners, all persons subject to this Declaration and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “Bound Parties”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 16.2 in good faith effort to resolve such Claim.

**b.** As used in this Article, the term “Claim” shall refer to any claim, grievance, or dispute arising out of or relating to:

**i.** the interpretation, application, or enforcement of the Association Documents;

**ii.** the rights, obligations and duties of any Bound Party under the Association Documents; or

**iii.** the design or construction of improvements within the Project, other than matters of aesthetic judgment, which shall not be subject to review;

**iv.** any claim asserted by the Association on its own behalf, or on behalf of the Owners of two or more Units, for damages or other relief arising out of any alleged defect in the design or construction of improvements within the Project at any time while this Declaration is in force (“Construction Defect Claims”).

**c.** The following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 16.2:

**i.** any suit by the Association to collect assessments or other amounts due from any Owner;

**ii.** any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such 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 this Declaration;

**iii.** any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Association Documents;

**iv.** any suit in which any indispensable party is not a Bound Party; and

**v.** any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 16.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

## **Section 16.2. Dispute Resolution Procedures.**

**a.** Notice. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice to each Respondent and to the Board stating plainly and concisely:

**i.** the nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;

**ii.** the legal basis of the Claim (*i.e.* the specific authority out of which the Claim arises);

**iii.** the Claimant’s proposed resolution or remedy; and

**iv.** the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

**b.** Negotiation. The Claimant and Respondent shall make every reasonable

effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

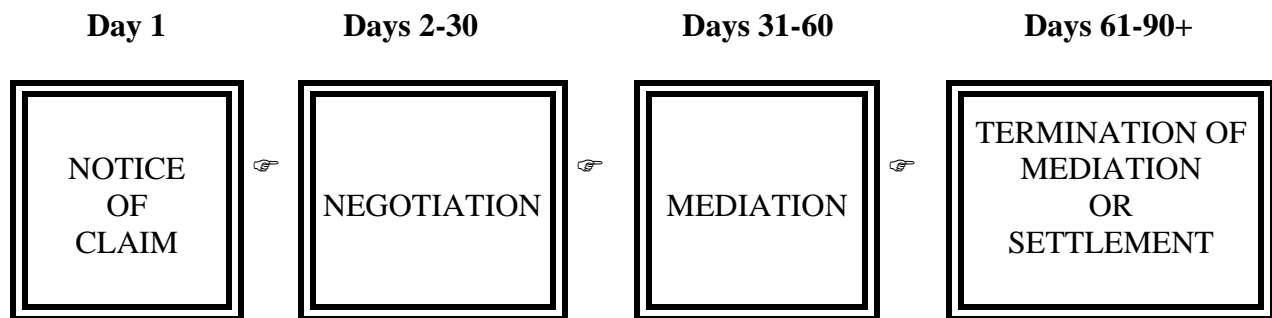
**c. Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 16.2(a)(or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Colorado.

**i.** If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

**ii.** If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

**iii.** Each Party shall bear its own costs of the mediation, including attorneys' fees and each Party shall share equally all fees charged by the mediator.

**ALTERNATIVE DISPUTE RESOLUTION PROCESS**



**d. Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In that event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

**Section 16.3. Construction Defect Claims.** To the extent of any insurance proceeds realized from the Association's property insurance the Association waives its claims for damages against any contractor or subcontractor involved in the construction of the Units or the

Common Elements. In addition to any requirements for initiating judicial proceedings provided in the Association Documents or the Act, the Executive Board shall not initiate a judicial proceeding with respect to a Construction Defect Claim, unless it proposes that the Association act on behalf of at least two Owners, and without first (i) distributing to all Owners a written description of the basis for the Construction Defect Claim, including a good faith estimate of the range of probable costs for legal fees and other expenses that the Association may incur in pursuing the Construction Defect Claim; and (ii) obtaining the written approval of Owners to which 100% of all of the eligible votes in the Association are allocated. In addition, the following procedures shall govern all Construction Defect Claims whether brought by the Association or by any Owner:

**a. Final and Binding Arbitration of Construction Defect Claims.**

**i.** If the parties do not agree in writing to a settlement of the Construction Defect Claim within 15 days of the Termination of Mediation, Claimant shall have 15 additional days to submit the Construction Defect Claim to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. If not timely submitted to arbitration, or if Claimant fails to appear for the arbitration proceeding, the Construction Defect Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Construction Defect Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons other than Claimant.

**ii.** This Section 16.3 is an agreement to arbitrate and is specifically enforceable under the applicable laws of the State of Colorado. Such agreement to arbitrate and all terms relating thereto in this Section 16.3 (including, without limitation, restrictions on Claimants rights to damages) shall apply, without limitation, to any "action" as defined in the Colorado Construction Defect Action Reform Act, C.R.S. § 13-20-802.5(1). The arbitration decision and the award, if any (the "Decision"), 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.

**b. Allocation of Costs of Resolving Construction Defect Claims.** Each party, including, without limitation, any Owner and the Association, shall share equally all fees, expenses and charges payable to the mediator(s) and all fees, expenses and charges payable to the arbitrator(s) and the arbitration firm for conducting the arbitration proceeding. Under no circumstances, however, shall any party be entitled to recover any of its attorneys' fees, expenses or other mediation or arbitration costs (except to the extent specifically provided under C.R.S. § 38-33.3-123), from any other party. **BY TAKING TITLE TO A UNIT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS' FEES OR EXPENSES (EXCEPT AS SPECIFICALLY PROVIDED UNDER C.R.S. § 38-33.3-123) IN CONNECTION WITH THE ARBITRATION OF A CONSTRUCTION DEFECT CLAIM.** The limitation described above on awarding attorneys' fees and expenses shall not apply to enforcement actions undertaken pursuant to Subsection 16.3(d) below.

**c. Limitation on Damages.** Claimant shall not be entitled to receive any

award of damages in connection with the arbitration of a Construction Defect Claim other than such its actual damages, if any, and the Association and any Owner shall be deemed to have waived their respective rights to receive any damages in a Construction Defect Claim other than actual damages including, without limitation, attorneys' fees and expenses (except as specifically provided under C.R.S. § 38-33.3-123), special damages, consequential damages, and punitive or exemplary damages. BY TAKING TITLE TO A UNIT AND AS A MEMBER, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY CONSTRUCTION DEFECT CLAIM UNDER Section 16.3, THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION OR DESIGN DEFECTS, MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.

**d. Enforcement of Resolution.** If any Construction Defect Claim is resolved through arbitration pursuant to Subsection 16.3(a) above, and any Bound Party thereafter fails to abide by the terms of such agreement, or if any Bound Party fails to comply with a Decision, then any other party may file suit or initiate proceedings to enforce such agreement or Decision without the need to again comply with the procedures set forth in this Article. Notwithstanding the terms of Subsection 16.3(b) above, in such event, the party taking action to enforce the agreement or Decision 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 Decision including, without limitation, attorneys' fees and court costs.

**e. Multiple Party Claims.** Multiple party disputes or claims not consolidated or administered as a class action pursuant to the following sentence will be arbitrated individually. Only with the written request of all parties involved, but not otherwise, the arbitrator may: (i) consolidate in a single arbitration proceeding any multiple party claims that are substantially identical, and (ii) arbitrate multiple claims as a class action.

**f. No Amendment; Enforcement by Declarant.** The terms and provisions of this Section 16.3 inure to the benefit of Declarant, are enforceable by Declarant, and shall not ever be amended without the written consent of Declarant and without regard to whether Declarant owns any portion of the Real Estate at the time of such amendment. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS Section 16.3 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS Section 16.3, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS Section 16.3 LIMIT HIS OR HER RIGHTS WITH RESPECT TO THE RIGHT AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A POTENTIAL CONSTRUCTION DEFECT AFFECTING

THE PROJECT OR ANY PORTION THEREOF, INCLUDING ANY UNIT.

**g.** This Section 16.3 is intended to apply to Construction Defects alleged in reference to construction of any portion of the Project under a contract in which Declarant is a party, and shall not be deemed to limit the Association in proceedings against a construction professional for Construction Defects alleged with respect to construction that takes place under a contract between the Association and a construction professional to which Declarant is not a party.

**Section 16.4. Initiation of Litigation by Association.** In addition to compliance with the foregoing alternative dispute resolution procedure, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by 100% of the Owners, except that no such approval shall be required for actions or proceedings by the Association:

- a.** initiated during the period of Declarant control;
- b.** initiated to enforce any of the provisions of the Association Documents, including collection of Assessments and foreclosure of liens;
- c.** initiated to challenge *ad valorem* taxation or condemnation proceedings;
- d.** initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- e.** to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

## **ARTICLE XVII** **GENERAL PROVISIONS**

**Section 17.1. Enforcement.** Except as otherwise provided in this Declaration, the Executive Board, Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Additionally, any such violation shall give the Declarant or the Executive Board the right, in addition to any other rights set forth therein, (i) to enter the Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure or condition that may exist therein in violation of the Declaration or rules adopted by the Executive Board or Manager without being deemed guilty in any manner of trespass or any other civil or legal violation; and (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach, with each Owner and other occupants hereby waiving the posting of a bond upon entry of such injunction. All reasonable attorneys' fees and costs incurred by the Declarant or the Association in a suit to enforce the terms hereof shall, if the Declarant, an Owner or the Association prevails in such action, be recoverable from the losing party.

**Section 17.2. Failure to Enforce.** Failure to enforce any provision of this Declaration

or other Association Documents shall not operate as a waiver of any such provision or of any other provision of this Declaration.

**Section 17.3. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 17.4. Conflicts Between Documents.** In case of conflict between this Declaration and the Articles and the Bylaws, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

**Section 17.5. References to the City Standards.** Any reference in this Declaration to land use regulations, zoning regulations, or other City of Salida standards, any plats approved by the City or any other federal, state or local rule, law or regulation, such references shall automatically be waived, released, modified or amended, as the case may be, to correspond with any subsequent waiver, release, modification or amendment of such regulations, zoning, other City of Salida standards, ordinances, plats or any other rule or law.

**Section 17.6. Notices.** Notices to Owners may be given as provided in the Act or the Colorado Nonprofit Corporation Act, C.R.S. § 7-121-402.

**Section 17.7. General.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders; similarly, capitalization of letters in a word shall not be construed to affect the meaning of such word. Except for annual, special and default assessment liens obtainable as provided herein, mechanics' liens, tax liens, judgment and execution liens arising by operation of law and liens arising under deeds of trust or mortgages, there shall be no other liens obtainable against the Common Elements or any interest therein of any Unit.

**Section 17.8. Counterparts.** This Declaration and any document or instrument executed pursuant hereto may be executed in any number of counterparts, electronic or otherwise, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

**\*\*\*\* REMAINDER OF PAGE LEFT INTENTIONALLY BLANK \*\*\*\***



**OLD STAGE, LLC, a Colorado limited liability company**

\_\_\_\_\_  
By: Tom Pokorny, Member

\_\_\_\_\_  
By: Dan Thomas, Member

STATE OF COLORADO )  
 ) ss.  
COUNTY OF CHAFFEE )

Subscribed and sworn to before me on \_\_\_\_\_, 2019 by Tom Pokorny and Dan Thomas, Members, Old Stage, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My Commission expires:

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**TO THE**  
**DECLARATION OF COVENANTS, CONDITIONS,**  
**RESTRICTIONS, AND EASEMENTS FOR**  
**TWO RIVER COMMONS**

**LEGAL DESCRIPTION**

Parcel Nos. 2, 3 and 5, TWO RIVER COMMONS, according to the Plat recorded on \_\_\_\_\_, 2019 at Reception No. \_\_\_\_\_ in the records of the Chaffee County Clerk & Recorder, City of Salida, Chaffee County, Colorado, located within Two Rivers Commercial Center Minor Subdivision, according to the Plat recorded on August 4, 2017 at Reception No. 436258 in the records of the Chaffee County Clerk & Recorder, City of Salida, Chaffee County, Colorado.

**EXHIBIT B**  
**TO THE**  
**DECLARATION OF COVENANTS, CONDITIONS,**  
**RESTRICTIONS, AND EASEMENTS FOR**  
**TWO RIVER COMMONS**

**ALLOCATED INTERESTS**

**1. VOTES**

**a. Executive Board Elections and Parcel Votes.**

Parcel 2:

<u>Unit/Lot</u>	<u>SQ. FT.</u>	<u>Percentage Vote</u>
Lot 12	5414	86.3%
<u>Lot 13</u>	<u>860</u>	<u>13.7%</u>
Totals	6274	100%

Parcel 3:

<u>Unit/Lot</u>	<u>SQ. FT.</u>	<u>Percentage Vote</u>
Lot 10	8472	71.0%
<u>Lot 11</u>	<u>3456</u>	<u>29.0%</u>
Totals	11928	100%

Parcel 5:

<u>Unit/Lot</u>	<u>SQ. FT.</u>	<u>Percentage Vote</u>
Lot 1	2750	13.8%
Lot 2	2750	13.8%
Lot 3	2750	13.8%
Lot 4	1750	8.8%
Lot 5	1750	8.8%
Lot 6	2750	13.8%
<u>Lot 7</u>	<u>5500</u>	<u>27.5%</u>
Totals	20000	100%

**b. Common Voting.**

<u>Unit/Lot</u>	<u>SQ. FT.</u>	<u>Percentage Vote</u>
Lot 1	2750	7.2%
Lot 2	2750	7.2%
Lot 3	2750	7.2%
Lot 4	1750	4.6%
Lot 5	1750	4.6%
Lot 6	2750	7.2%
Lot 7	5500	14.4%
Lot 10	8472	22.2%
Lot 11	3456	9.0%
Lot 12	5414	14.2%
<u>Lot 13</u>	<u>860</u>	<u>2.3%</u>
Totals	38202	100%

**2. COMMON EXPENSES**

**a. Shared Expenses.**

<u>Unit/Lot</u>	<u>SQ. FT.</u>	<u>Percentage</u>
Lot 1	2750	7.2%
Lot 2	2750	7.2%
Lot 3	2750	7.2%
Lot 4	1750	4.6%
Lot 5	1750	4.6%
Lot 6	2750	7.2%
Lot 7	5500	14.4%
Lot 10	8472	22.2%
Lot 11	3456	9.0%
Lot 12	5414	14.2%
<u>Lot 13</u>	<u>860</u>	<u>2.3%</u>
Totals	38202	100%

**b. Parcel Expenses.**

Parcel 2:

<u>Unit/Lot</u>	<u>SQ. FT.</u>	<u>Percentage</u>
Lot 12	5414	86.3%
<u>Lot 13</u>	<u>860</u>	<u>13.7%</u>
Totals	6274	100%

Parcel 3:

<u>Unit/Lot</u>	<u>SQ. FT.</u>	<u>Percentage</u>
Lot 10	8472	71.0%
<u>Lot 11</u>	<u>3456</u>	<u>29.0%</u>
Totals	11928	100%

Parcel 5:

<u>Unit/Lot</u>	<u>SQ. FT.</u>	<u>Percentage</u>
Lot 1	2750	13.8%
Lot 2	2750	13.8%
Lot 3	2750	13.8%
Lot 4	1750	8.8%
Lot 5	1750	8.8%
Lot 6	2750	13.8%
<u>Lot 7</u>	<u>5500</u>	<u>27.5%</u>
Totals	20000	100.0%

**EXHIBIT C**  
**TO THE**  
**DECLARATION OF COVENANTS, CONDITIONS,**  
**RESTRICTIONS, AND EASEMENTS FOR**  
**TWO RIVER COMMONS**

**EXPANSION PROPERTY**

Parcel Nos. 1 and 4, TWO RIVER COMMONS, according to the Plat recorded on \_\_\_\_\_, 2019 at Reception No. \_\_\_\_\_ in the records of the Chaffee County Clerk & Recorder, City of Salida, Chaffee County, Colorado, located within Two Rivers Commercial Center Minor Subdivision, according to the Plat recorded on August 4, 2017 at Reception No. 436258 in the records of the Chaffee County Clerk & Recorder, City of Salida, Chaffee County, Colorado.

**EXHIBIT D**  
**TO THE**  
**DECLARATION OF COVENANTS, CONDITIONS,**  
**RESTRICTIONS, AND EASEMENTS FOR**  
**TWO RIVER COMMONS**

**RECORDED EASEMENTS**

1. Reservation of right of proprietor of any penetrating vein or lode to extract his ore, in U.S. Patent recorded September 10, 1888, in Book 63 at Page 504.
2. Perpetual easement to the City of Salida from James L. Treat and Wanda L. Treat, for the construction, maintenance and operation of an underground sewer line located with the Southwest 1/4 of Section 4, being 20 feet wide, dated June 17, 1981, recorded on June 30, 1981 in Book No. 442 at Pat 932.
3. 20 foot wide non-exclusive utility easement to the City of Salida from James L. Treat and Wanda L. Treat, for the purpose of construction, installation, location, operation, maintenance, inspection, repair, replacement, and relocation of an underground water line and any necessary above-ground related facilities, dated November 15, 2012, recorded November 27, 2012 at Reception No. 403610.
4. Easement and right-of-way for Bale Ditch No. 1 crossing subject property as shown in Warranty Deed from James L. Treat and Wanda L. Treat to Little River Properties, LLC, dated December 27, 2017, recorded December 27, 2017 at Reception No. 404331.
5. Terms and conditions located on the Plat of “Little River Properties, LLC, Subdivision, located within the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 4, Township 49 North, Range 9 East of the New Mexico Principal Meridian, in the City of Salida, Chaffee County Colorado” filed on December 12, 2016 at Reception No. 432188. Also subject to the Two Rivers P.D. Development Plan of the Little River Properties, LLC Subdivision filed on December 12, 2016 at Reception No. 431291.