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**AFTER RECORDING, RETURN TO:**

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***AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS  
FOR  
ARAPAHOE ESTATES***

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**AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ARAPAHOE ESTATES**

THIS AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by the Arapahoe Estates Owners Association, Inc., a Colorado nonprofit corporation.

*RECITALS:*

- A. On March 10, 1981, Arapahoe Development Company, Ltd., a Colorado limited partnership, and Nu-West Colorado, Inc., a Colorado corporation, collectively as the Declarant, recorded a Declaration of Covenants, Conditions, and Restrictions for Arapahoe Estates Subdivision in the real property records of Arapahoe County in Book 3378 at Page 2 (“Original Declaration”);
- B. A Supplemental Declaration of Covenants, Conditions, and Restrictions for Arapahoe Estates Subdivision was recorded on February 25, 1983, in Book 3803 at Page 310, and re-recorded on March 29, 1983, in Book 3825 at Page 360, in the real property records of Arapahoe County (“First Supplement”);
- C. An Amendment to Supplemental Declaration of Covenants, Conditions, and Restrictions was recorded on February 29, 1984, in Book 4098 at Page 375, in the real property records of Arapahoe County (“Second Supplement”);
- D. An Amendment and Supplement to Declaration was recorded on June 26, 1984, in Book 4193 at Page 794 in the real property records of Arapahoe County (“Third Supplement”);
- E. Together, the Original Declaration, First Supplement, Second Supplement and Third Supplement subjected the property described on **Exhibit A**, attached hereto and incorporated by reference, to their covenants, conditions and restrictions; and
- F. An Agreement was recorded on May 29, 1984, in Book 4169 at Page 457 in the real property records of Arapahoe County granting certain easements to Lots 61 through 70, inclusive, Block 1, Arapahoe Estates Subdivision Filing No. 3;
- G. An Acknowledgment of Restrictions was recorded on August 13, 1991, in Book 6229 at Page 003 in the real property records of Arapahoe County affirming the applicability of the covenants, conditions and restrictions to certain property identified therein;
- H. Maintenance Agreements were recorded on June 16, 1994, in Book 7597 at Page 298, on June 16, 1994, in Book 7597 at Page 302, on June 16, 1994, in Book 7597 at Page 306, and on

June 16, 1994, in Book 7597 at Page 310, affecting Lots 2, 1, 8, and 9, Block 1, Arapahoe Estates Subdivision Filing No. 8;

I. Fence Agreements were recorded on November 8, 2004, at Reception No. B4196219, on November 17, 2004, at Reception No. B4200520, on November 17, 2004, at Reception No. B4200748, all in the real property records of Arapahoe County creating certain easements and obligations affecting Lots 1 through 13, inclusive, Block 1 Arapahoe Estates Subdivision Filing No. 8.

J. The owners of Lots 1 through 6, inclusive, Block 2, Arapahoe Estates Subdivision Filing No. 4 have requested and desire to be Members of the Association and subject to the Declaration and have attached their written consents hereto as **Exhibits B-1 through B-2** to evidence such agreement and consent.

K. Owners representing at least sixty-seven percent (67%) of the votes in the Association and one hundred percent (100%) of the First Mortgages, pursuant to the procedures contained in C.R.S. §38-33.3-217(1)(b), have approved this Declaration, or alternatively, a court order entered by the District Court for Arapahoe County, Colorado, pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

NOW THEREFORE, the Original Declaration, Supplements, Agreements, and Acknowledgment are replaced and superseded by the covenants, servitudes, easements and restrictions set forth below:

## **ARTICLE 1 DEFINED TERMS**

Section 1.1 Defined Terms. Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration or as set forth below:

- (a) Act means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et. seq.*, as it may be amended.
- (b) Architectural Review Committee or Committee means the committee appointed by the Board of Directors for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate improvement, and harmonious additions, alterations and Improvements within the Community.
- (c) Assessment shall include all Common Expenses, insurance assessments, utility assessments, and any other expense levied to Lots pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

- (d) Association means Arapahoe Estates Owners Association, Inc., a Colorado nonprofit corporation.
- (e) Board, Board of Directors or Executive Board shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.
- (f) Common Areas shall mean all real and personal property owned by the Association, and any property maintained by the Association, for the common use and enjoyment of the Owners.
- (g) Common Expenses shall mean and refer to all expenditures made and liabilities incurred by or on behalf of the Association, together with any allocation by the Association to reserves.
- (h) Community or Arapahoe Estates Community or Planned Community shall mean the planned community known as “Arapahoe Estates,” the Arapahoe Estates Owners Association, Inc., and the real property subject to this Declaration and as further defined by the recorded plats and the legal descriptions contained therein, and the Members of the Association.
- (i) Declaration shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Arapahoe Estates, recorded in the office of the Clerk and Recorder of Arapahoe County, Colorado.
- (j) Duplexes shall mean and refer to Lots 1-16, inclusive, Block 2, Filing 3, Arapahoe Estates Subdivision, Arapahoe County, Colorado.
- (k) Eligible Holder shall mean a holder, insurer or guarantor of a first lien security interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a security interest.
- (l) Governing Documents shall mean this Declaration, the Map, the Articles of Incorporation, the Bylaws, and any rules and regulations of the Association, as all of the foregoing may be amended from time to time.
- (m) Improvement(s) shall mean all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, all landscaping features, and all exterior modifications, alterations or additions of any type or kind.
- (n) Lot shall mean and refer to any numbered plot of land shown upon any recorded Subdivision Map of the Property with the exception of Common Areas.
- (o) Map shall mean and refer to the map(s) and/or plat(s) of the Property and

Improvements that are subject to this Declaration and which are designated in the maps for Arapahoe Estates Subdivision recorded in the records of the Office of the Clerk and Recorder of Arapahoe County. More than one Map or supplement thereto have been recorded, and the term “Map” shall collectively mean and refer to all of such maps, plats and supplements thereto.

(p) Member shall mean any Owner. The terms “Member” and “Owner” may be used interchangeably.

(q) Owner shall mean the owner of record title, whether one or more persons or entities, to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(r) Property shall mean the property described on **Exhibit A** together with all easements, rights, and appurtenances thereto and the buildings and Improvements erected or to be erected thereon.

(s) Residence shall mean and refer to a residential dwelling unit constructed upon any of the Lots within the Property.

(t) Rules and Regulations shall mean any instruments, however denominated, which are adopted by the Association for the regulation and management of the Community, including any amendment to those instruments.

(u) Townhomes shall mean and refer to Lots 1 through 6, inclusive, Block 2, Arapahoe Estates Subdivision Filing No. 4, and Lots 61-68, inclusive, Block 1, Arapahoe Estates Subdivision Filing No. 3 as said Lots 66, 67, and 68 are affected by document recorded in Book 3755 at Page 289, Ratification of Plat, Lot 66, Block 1.

(v) Yard shall mean and refer to any portion of a Lot which is not occupied by a Residence.

## **ARTICLE 2 NAMES & DESCRIPTION OF REAL ESTATE/EASEMENTS**

Section 2.1 Name and Type. The type of Common Interest Community is a Planned Community. The name of the Planned Community is “Arapahoe Estates .” The name of the Association is the “Arapahoe Estates Owners Association, Inc.”

Section 2.2 Property. The Planned Community is located in Arapahoe County, Colorado. The Property of the Planned Community is described on **Exhibit A**. Easements for utilities and other purposes over and across the Lots and any Common Area may be as shown upon a recorded plat and on any recorded map of the Planned Community, and as may be established pursuant to the

provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.3 Number of Lots. The number of Lots included in the Arapahoe Estates Community is one hundred sixty-two (162).

Section 2.4 Identification of Lots/Lot Descriptions. The identification of each Lot is shown on the plat. Every contract for sale, deed, lease, security interest, will or other legal instrument shall legally describe a Lot by its identifying lot, block and filing number, followed by the name of the Community, with reference to the plat, any map and the Declaration. Reference to the Declaration, plats and map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration, plats or map, without specific references thereto.

Section 2.5 Townhome Fence Easements.

(a) Lots 61 through 70, inclusive, Arapahoe Estates Subdivision Filing No. 3, have a license, permit, and easement to run with the ownership of each Lot as a dominant estate, the right to use those portions of Tract E lying north of Lots 61 through 70, inclusive, and between Lots 68 and 69, for purposes of erecting and maintaining fences not to exceed six feet in height, maintaining lawns and planting, and recreational use, but without the right to construct permanent improvements, exclusively for, and in connection with the use and occupancy of, each Lot as follows:

As to Lots 61, 62, 63, 64, 65, 66, 67, 68, 69, and 70: The portions of Tract E lying north of the north lot line of each Lot, between the east and west lot lines extended of each Lot;

As to Lot 69: That portion of Tract E lying between Lots 68 and 69 and that portion of Tract E lying north of the portion immediately described above.

(b) Owners of these Lots shall maintain each such portion of Tract E in the manner required for maintenance, repair, restrictions and uses as if the same were part of the Lot.

Section 2.6 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and enjoyment in, to, and over the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of Owners;
- (b) the right of the Association to adopt Rules and Regulations governing the use of the Common Areas;
- (c) the right, power and authority of the Association to grant any easement,

right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Areas.

(d) the right of the Association to suspend the Owner's voting rights and right to use of the recreational facilities, if any, for any period during which any Assessment against a Lot remains unpaid, and, after notice and the opportunity for a hearing, for any infraction of the Governing Documents;

(e) the right of the Association to close or limit access to the Common Areas for maintenance, repair, replacement, and improvement;

(f) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and to mortgage such property or assign an interest in future assessments as security for such loan as provided in Section 3.4 below.

Section 2.7 Delegation of Use. Any Owner shall delegate their right of enjoyment to any Common Areas to the members of their family, their tenants, guests, or contract purchasers who reside at their Lot.

Section 2.8 Easements for the Board of Directors. Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) to allow for their performance of obligations in this Declaration, provided that the easement granted and the use thereof shall not unreasonably interfere with or impair the use of any Improvements constructed on a Lot and shall be exercised only after reasonable notice to the Owner of the Lot.

Section 2.9 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

Section 2.10 Easements for Drainage and Utilities.

(a) Easements for the installation and maintenance of utilities, drainage facilities, public or private improvements and access thereto are reserved as shown on the recorded plats affecting the Lots and any amendments to such plats or as established by any other instrument of record.

(b) There is a blanket easement upon, across, over and under the Property for utilities and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity, master television antenna systems, and cable television, provided that this blanket easement shall not extend upon, across, over or under any structure located on any Lot.

Section 2.11 Easements for Encroachments. A valid easement shall exist for encroachments and overhangs and for their maintenance, repair and replacement. If any structure is partially or totally destroyed, and then rebuilt, the Owners of Lots agree that minor encroachments of parts of construction onto adjacent Lots or the Common Area due to the reconstruction shall be permitted and that a valid easement for such overhangs and encroachments and the maintenance thereof shall exist.

### **ARTICLE 3 THE ASSOCIATION**

Section 3.1 Membership. Every person who is a record Owner of any Lot which is subject to this Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Each Lot shall be allocated one (1) vote which shall be cast as a single vote and shall not be subject to fractional voting.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Arapahoe Estates Community as provided in this Declaration so as to protect the value and desirability of the Arapahoe Estates Community and the Lots. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association. The business affairs of the Arapahoe Estates Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the plats, any map, its Articles of Incorporation and Bylaws, and any rules and regulations adopted by the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of its final responsibilities.

Section 3.4 Specific Powers. The Association shall have the powers, authority and duties as necessary and proper to manage the business and affairs of the Arapahoe Estates Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act. The Association shall have the power to assign its right to future income, including the right to assign its right to receive assessments for Common Expenses, subject to approval by a majority of the Members voting in person or by proxy at a properly noticed meeting of the Members. The Association shall be responsible for the maintenance, repair, replacement and improvement of any Common Area.

Section 3.5 Association Fences. In addition to Common Area, the Association shall maintain, repair, replace and improve all fences deemed Association fencing regardless of whether located upon Common Area or upon a Lot. Notwithstanding the foregoing, Association fencing includes a six foot boundary fence erected at or near the southern boundary line of Lots 1 through 13,

inclusive, Block 1, Arapahoe Estates Subdivision Filing No. 8.

Section 3.6 Allocated Interests. The ownership interest, Common Expense liability and votes in the Association allocated to each Lot are set as follows:

- (a) the percentage of liability for Common Expenses, equally;
- (b) the number of votes in the Association, equally.

If Lots are added to or withdrawn from the Arapahoe Estates Community, pursuant to the provisions of this Declaration and the Act, the formulas set forth above shall be used to reallocate the Allocated Interests.

Section 3.7 Association Management Agreements. Any agreement for professional management of the Arapahoe Estates Community may not exceed three (3) years. Any such agreement must provide for termination by either party with or without cause and without payment of a termination fee or penalty upon thirty (30) days' written notice.

Section 3.8 Indemnification. To the full extent permitted by law, each officer and director of the Association shall be and hereby are indemnified by the Owners and the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not they are an officer or director of the Association at the time such expenses are incurred, pursuant to the indemnification provisions set forth in the Bylaws; except in such cases where such officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association.

#### **ARTICLE 4 COVENANT FOR ASSESSMENTS FOR COMMON EXPENSES**

Section 4.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments.

- (a) The Association annual Common Expense Assessments and such other assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made. If any assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

(b) Each Lot, and each Lot Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments and such other assessments as imposed by the Association.

(c) Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Lot Owner of such Lot at the time when the assessment or other charges became or fell due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them.

(d) No Lot Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot against which the Common Expense Assessments are made.

(e) All assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

#### Section 4.2 Levy of Annual Assessments.

(a) The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year, provided that the annual Common Expense Assessment may not be increased more than ten percent (10%) over the Common Expense Assessment for the prior year without a vote of two-thirds of the Owners who are voting in person or by proxy, at a meeting duly called for this purpose.

(b) The Association shall adopt two budgets:

1) Common Area Expenses, to be allocated among all Owners, consisting of An Annual Operating Budget - to manage the ongoing expenses incurred by the Association to maintain and manage the Common Areas, and an Annual Reserve Budget - to manage the expenses associated with any capital expenditures associated with the Common Areas; and

2) Duplex and Townhome expenses, to be allocated only to Owners of Duplexes and Townhomes, consisting of An Annual Operating Budget - to manage the ongoing expenses incurred by the Association to maintain and manage the Duplexes and Townhomes, and an Annual Reserve Budget - to manage the expenses associated with any capital expenditures associated with

the Duplexes and Townhomes.

(c) The Board of Directors will be required to report to the Owners on the status and expenditures to date for any capital project funded by either Reserve Budget in the Association's financial statements.

(d) The budgets shall be adopted by the Board of Directors, and in the event of a proposed increase over a prior year's budget, those Owners to whom such expenses are allocated shall vote on such increase as stated in subparagraph (a) above.

(e) Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors.

(f) The omission or failure of the Board of Directors to levy the assessment for any period shall not be deemed a waiver, modification or a release of the Lot Owners from their obligation to pay.

Section 4.3 Apportionment of Common Expenses. Except as provided in this Declaration, all assessments for Common Expenses shall be assessed against all Lots in accordance with formula for liability for the Common Expenses as set forth in this Declaration. Assessments for Common Expenses are currently allocated among the Lot Owners equally. Notwithstanding the foregoing, Common Expenses for Common Areas shall be allocated equally among all Owners, including Owners of Duplexes, and Common Expenses for Duplexes shall additionally be allocated equally among Owners of Duplexes.

Section 4.4 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be retained by the Association as unallocated reserves and need not be paid to the Owners or credited to them to reduce their future Common Expense Assessments.

Section 4.5 Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas, including fixtures and personal property related thereto, or for any other purpose deemed necessary and appropriate by the Board of Directors; provided that any such assessment shall be adopted based upon a budget submitted to the Lot Owners as provided in Section 4.2(b) above.

Section 4.6 Default Assessments. All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents shall be a Default Assessment and shall become a lien against such Owner's Lot 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 the due date.

Section 4.7 Effect of Non-Payment of Assessments.

(a) Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Board of Directors.

(b) Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Lot Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board.

(c) The Association may bring an action at law or in equity, or both, against any Lot Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Lot Owner's Lot. An action at law or in equity by the Association against a Lot Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due.

(e) If a foreclosure action is filed to foreclose any assessment lien, and a Lot Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent the Lot or apply for the appointment of a receiver for the Lot without prior notice to the Lot Owner.

(f) The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

(g) The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same.

Section 4.8 Lien Priority.

(a) The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except:

- 1) liens and encumbrances recorded before the recordation of the Declaration;
- 2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and
- 3) liens for real estate taxes and other governmental assessments or charges against the Lot.

(b) This Section does not affect the priority of mechanics' or materialmen's liens.

(c) The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law.

(d) Sale or transfer of any Lot shall not affect the lien for assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture, shall only extinguish the lien of assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture, shall relieve any Lot from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 4.9 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Property, or any portion thereof for which the Association has a duty to insure, repair, maintain or replace is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If such expenses costs and fees incurred by the Association are not repaid to the Association within thirty (30) days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration. Such expenses, costs, and fees shall automatically become a Default Assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of this Article.

Section 4.10 Real Estate Transfer Assessments.

(a) Each Owner, upon the transfer of a Lot, shall pay to the Association at the time of the closing of such transfer, an amount equal to one-sixth (1/6) the then current annual assessment.

(b) The statement of assessments which shall be prepared in accordance with the Act shall include the amount of this Real Estate Transfer Assessment to be due and payable to the Association at the time of the closing of the transfer of a Lot.

(c) This Real Estate Transfer Assessment is separate from and in addition to any and all other assessments which are levied against the Lots by the Association and shall be deposited into the operating or reserve accounts of the Association as the Board determines best benefits the Association's needs at the time of the transfer.

(d) This Real Estate Transfer Assessment shall be an Association lien on the Lot as provided in this Declaration if not paid at the time of closing of the transfer of the Lot.

## **ARTICLE 5 DUPLEXES AND TOWNHOMES**

Section 5.1 Exterior Maintenance In addition to the maintenance upon the Common Areas, the Association shall provide exterior maintenance and exterior repair upon each Residence constructed on a Lot within the Duplexes and Townhomes as follows:

- (a) exterior paint and/or stain;
- (b) private drives; and
- (c) planting and maintaining trees, shrubs, grass, walks, and other exterior improvements located within the property line and not enclosed by fence.
- (d) The Association shall not be responsible for the planting and maintaining of trees, shrubs, grass, gardens or ornamental landscaping within the fenced rear Yard areas of any Lot.
- (e) Such exterior maintenance shall not include the maintenance and repair of roofs, garage and entry doors and frames or glass in sliding glass doors and windows, which shall be the sole responsibility of the Owner.
- (f) Determination of whether such repair or maintenance is the obligation of the Association shall rest solely with the Association, which shall have sole responsibility for determining the kind and type of materials used in such repair and maintenance.

Section 5.2 Common Area Sidewalks and Driveways. Exterior maintenance performed specifically for the Duplexes and Townhomes shall include snow removal from the sidewalks and driveways adjacent to these residences.

Section 5.3 Assessments for Duplexes and Townhomes. Notwithstanding anything to the contrary contained in the Declaration, any expenses incurred by the Association solely with respect to the maintenance of the Duplexes and Townhomes, including snow removal from the Common Area sidewalks and driveways serving the Duplexes and Townhomes, and insurance premiums for insurance coverage on the Duplex and Townhome structures as required within this Declaration,

shall be assessed only to the Owners of Lots within the Duplexes and the Townhomes. Such assessment shall be allocated equally among the Owners of all such Lots within the Duplexes and the Townhomes. Such assessments relating to the Duplexes and the Townhomes are in addition to the Common Expense assessments for maintenance of the Common Areas.

#### Section 5.4 Party Walls

(a) Definition. For purposes of this Section 5.3, "Party Wall" shall mean and refer to any wall which is part of the original construction of the structures located on Lots within the Duplexes and Townhomes, is placed on or immediately adjacent to a Lot line, and which separates two (2) or more structures.

(b) General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply.

(c) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of a Party Wall in proportion to such use.

(d) Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, the Owners who make use of such Party Wall are solely responsible for insurance coverage for such events.

(e) Weatherproofing. Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

(g) Arbitration. In the event of any dispute arising concerning a Party Wall, under the provisions of this Section, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so by an Owner, the Board of Directors of the Association shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs of the arbitration, but each party shall pay its own attorneys' fees.

**ARTICLE 6**  
**COVENANTS AND RESTRICTIONS ON USE,**  
**ALIENATION AND OCCUPANCY**

Section 6.1 Flexible Application of the Subsequent Covenants and Restrictions. All Property within the Arapahoe Estates Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules.

Section 6.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

- (a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.
- (b) The Board may add, delete, modify, create exceptions to, or amend use guidelines and restrictions, or Rules and Regulations, in accordance with this Declaration and established legal principles.
- (c) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.
- (d) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.
- (e) All penalties imposed are collectible as Assessments.

Section 6.3 Use/Occupancy.

- (a) Lots shall not be used for any purpose other than a residential dwelling. Commercial and business uses with any adverse external effect on the nature, perception, operation or ambiance of the Arapahoe Estates Community as a first class residential Community, as reasonably determined by the Board of Directors of the Association, are prohibited.
- (b) Notwithstanding the foregoing, Lots 69 and 70, Block 1, Arapahoe Estates Subdivision Filing No. 3, are approved for use as a parking lot and remain so until such time as plans and specifications are presented for architectural approval for Residences. No use

other than a parking lot or Residences shall be approved for these two Lots.

Section 6.4 Home Occupations. Home occupations shall be allowed so long as such use is incidental and secondary to the use of the Lot, does not change the residential character thereof and complies with local zoning ordinances and regulations. Home occupations may include, but are not limited to, home offices or a studio for arts and crafts or photography. In no event shall external advertising, of any kind, be permitted. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment, including semi trailers; (e) the use or rental of any structure on a Lot for any transient, hotel, motel, Bed and Breakfast, restaurant, bar or other commercial purposes. In no instance shall a home occupation be visible externally, nor shall any home occupation employ any person other than the Owner.

Section 6.5 Leasing and Occupancy. Any Lot Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Lot Owner may deem advisable, subject to restrictions of this Declaration, subject to restrictions of record and subject to the following:

(a) No Lot shall be occupied or leased except under the terms and conditions set forth in the Declaration and these Rules and Regulations. Each Lot shall be occupied and used by Owners, their guests, occupants or lessees for residential purposes only, except as provided by the Declaration.

(b) Owners shall be responsible for the actions and/or violations of their guests and lessees, and the lessee's guests. Owners shall provide a copy of the Declaration and any rules and regulations to each lessee at the time the lease is executed.

(c) Each Owner is strongly encouraged to conduct full background checks, including credit and criminal reports, for each lease applicant.

(d) All leases must be in writing, for a term of not less than six (6) months and must be signed by all occupants over the age of eighteen (18). No lease may be for less than the entire Lot. Every lease must include the following:

(i) A statement that the lessee has received a copy of the Declaration, the Bylaws and any rules and regulations, that the lease is subordinate to the Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations, and that lessee agrees to comply with same.

(ii) An affirmative covenant of the lessee providing that failure by the lessee or the lessee's guest to comply with the terms of the Lease, the Declaration, the Bylaws, the rules and regulations or Colorado statute shall constitute a default by Lessee under the lease and provides authority to the Association to evict such

tenant(s) pursuant to subparagraph (g) below.

(e) Each Owner who leases his Lot shall provide the Association, upon request, a copy of the current lease and tenant information including names of all occupants, vehicle descriptions including license plate numbers, and any other information reasonably requested by the Association or its agents.

(f) All Owners who reside at a place other than the Lot shall provide to the Association an address and phone number(s) where the Owner can be reached in case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(g) An Owner may be requested by the Board to evict any lessee who has committed more than two (2) violations of any of the provisions of the Declaration or any rules and regulations. Notwithstanding this provision, an Owner shall immediately evict any lessee who commits, or whose guest commits, any act, or series of acts, which endanger the life of any person, or who willfully and substantially endangers any Common Areas or other property pursuant to the provisions of Colorado Revised Statute § 13-40-107.5. If an Owner does not enforce the terms of this subsection (g), the Board shall have the authority to do so.

(h) Notice of violation may be sent to the lessee in addition to the Owner of the Lot. The Owner will be held solely responsible for all fines incurred for violations by lessees.

Section 6.6 Lots to be Maintained. Owners are responsible for the maintenance, repair and replacement of the property and Improvements located within their Lot boundaries, including all fences located on their Lots other than those deemed Association fencing, in a clean, sightly, well maintained and adequately painted condition. The Association, and its agents, shall have the authority, after giving the Owner reasonable written notice as set forth in the Association's Rules and Regulations, to enter, replace, maintain, repair and clean up Lots which do not conform to the provisions of this Section, and to charge and collect from the Owners thereof all reasonable costs related thereto as a Default Assessment hereunder.

Section 6.7 Landscaping Requirements and Restrictions. The landscaping of each Lot shall be maintained by the Owner in a neat, attractive and well-kept condition, which shall include lawns mowed, hedges, shrubs, and trees pruned and trimmed, adequate watering, replacement of dead, diseased or unsightly materials, and removal of weeds and debris.

Section 6.8 Maintenance of Grade and Drainage. Each Owner shall maintain the grading upon his Lot, and the Association shall maintain the grading upon the Common Areas, at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes. In the event that it is necessary or desirable to change the established drainage over any Lot, the Owner of such Lot shall submit a plan to the Architectural Review Committee for its review and approval.

For purposes of this Section, “established drainage” is defined as the drainage which existed at the time of final grading when initial construction of the Residence on a Lot was completed.

Section 6.9 Exterior Equipment. No types of refrigerating, cooling, heating, or electrical generation equipment shall be permitted except when appropriately screened and approved by the Architectural Review Committee.

Section 6.10 Restrictions on Animals and Pets.

(a) Pets, including cats, dogs, birds, reptiles, or other animals, hereinafter for brevity termed "animal," may be kept, maintained or harbored on a Lot, if the animal is not obnoxious to other Owners or occupants and complies with the City of Centennial Municipal Code.

(b) The Lot Owner or person having control of an animal reported to be obnoxious to other Owners or occupants shall be given a written notice to correct the problem. If not corrected, that Lot Owner, upon a second written notice, will be required to remove the animal from the Community.

(c) The written notices provided for herein shall be issued by the authorized representative of the Association or, if there is no authorized representative then by one or more of the members of the Board of Directors of the Association.

(d) Animals may not be kept for any commercial or breeding purposes.

(e) Lot Owners shall hold the Association harmless from any claim resulting from any action of their animals.

Section 6.11 Antennae.

(a) Subject to federal statutes or regulations governing common interest communities, no exterior television or other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on the Common Areas of the Community.

(b) Exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type subject to federal statutes or regulations governing common interest communities, may be erected entirely upon an Owner's Lot.

(c) Any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type erected, installed or maintained by an Owner is subject to reasonable and valid safety restrictions, and reasonable restrictions as to screening of the device from view by neighboring Lots.

(d) All costs associated with the installation or maintenance of any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type by an Owner, including costs of repair, replacement, improvement and maintenance of the structure to which such exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type is affixed, erected and/or installed upon, shall be the sole responsibility of that Owner.

Section 6.12 Nuisances. No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Community by Owners. Further, no improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

Section 6.13 Vehicular Parking, Storage, and Repairs.

(a) The following vehicles may not be parked or stored within the Community, unless such parking or storage is within a garage on a Lot, or unless authorized in writing by the Board of Directors of the Association: oversized vehicles, trucks, pickup trucks over 3/4 ton, commercial vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. Any such oversized vehicle may be parked as a temporary expedience (for up to twelve hours) for loading, delivery of goods or services, or emergency. Overnight parking of these vehicles is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of any Common Area, Lots, or any Improvement located thereon.

(b) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Board of Directors of the Association. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner thereof or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within seventy-two (72) hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges.

(c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed

or conducted outside of garages.

Section 6.14 Use of Common Areas. There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of any Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Association. The Association shall be responsible to maintain, repair, replace and improve any Common Area and any Improvements located thereon.

Section 6.15 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Arapahoe Estates Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Board of Directors.

Section 6.16 No Hazardous Activities. No activity shall be conducted on and no Improvement shall be constructed on any Property within the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property within the Community and no open fires shall be lighted or permitted on any Property within the Community except in a contained barbeque unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent dispersal of burning embers.

Section 6.17 Restrictions on Clotheslines and Storage. No clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted in the Community unless the same, in each instance, is expressly permitted in writing by the Board of Directors of the Association. Where such written permission is granted, such permission is revocable if the item or condition becomes obnoxious to other Owners, in which event the Owner or person having the item or condition complained of shall be given a written notice to correct the problem or, if not corrected, the Owner upon written notice will be required to remove the item/condition from their Lot and from the Community. The written notices provided for herein shall be issued by the Board of Directors of the Association. Owners shall deem to hold the Association harmless from any claim resulting from any clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Lot.

Section 6.18 Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community other than a name plate for the occupant and a street number, a sign advising of security services, "For Sale," "Open House," or "For Rent" sign, and except for patriotic and political signs as permitted in the Act or the Rules and Regulations of the Association.

Section 6.19 Outbuildings. An “outbuilding” as the word is used herein, is intended to mean an enclosed covered structure not directly attached to the dwelling it serves. No outbuilding or temporary structure, including sheds, trailers, mobile homes, basements, tents, shacks, barns, or garages, shall be used on any Lot at any time for residential purposes, either temporarily or permanently, or for any other purpose unless approved in writing by the Board of Directors or the Architectural Review Committee.

Section 6.20 Trash Removal Restriction. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Lot, unless placed in a suitable container suitably located. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or receptacles shall be maintained in an exposed or unsightly manner and must be stored out of sight except during the twenty-four (24) hour period immediately before or after scheduled trash pickup.

## **ARTICLE 7 ARCHITECTURAL REVIEW**

Section 7.1 Required Approval. No structures, including residences, outbuildings, tennis courts, swimming pools, flag poles, fences, walls, exterior lighting, landscaping, or any other Improvement shall be constructed erected or installed on a Lot, nor shall any alteration or change to the exterior of the Improvements, the exterior of a residence, to a Lot or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced within the Community unless complete plans and specifications shall have been first submitted to and approved in writing by the Architectural Review Committee (“Committee”) as outlined in Architectural Guidelines and Rules and Regulations, as may be adopted and/or amended from time to time. The Committee may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed Improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee.

Section 7.2 Architectural Criteria. The Committee shall exercise its reasonable judgment to the end that all attachments, Improvements, construction, landscaping and alterations to Improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth herein. The approval or consent of the Architectural Review Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of Improvements on nearby Lots, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration. Upon its review of such plans, specifications and submittals, the Architectural Review Committee may require that the applicant(s) reimburse the Board for actual expense incurred by it in its review and approval process.

Section 7.3 Establishment of the Architectural Review Committee. The Architectural Review Committee serves under the direction of the Board of Directors. The Architectural Review Committee shall consist of a minimum of three (3) members appointed to serve by the Board of Directors. Members of the Architectural Review Committee may be members of the Board of Directors in the event that non-Board members are not available to serve. In that event, members of the Board of Directors may fill vacancies on the Architectural Review Committee until such time as three non-Board members can be appointed to serve. Committee members serve for a term of two (2) years.

Section 7.4 Architectural Guidelines. The Committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board of Directors and included in or with any Rules and Regulations of the Association.

Section 7.5 Reply and Communication. The Committee shall reply to all submittal of plans made in accordance herewith in writing within thirty (30) days after receipt. In the event the Architectural Review Committee fails to take any action on submitted plans and specifications within thirty (30) days after the Committee has received the complete plans and specifications, approval shall be deemed to be approved. All communications and submittals shall be addressed to the Committee at such address as the chairman of the Committee shall hereafter designate in writing addressed and mailed to the Owners.

Section 7.6 Variances. The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in architectural guidelines. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Lots or Common Area nor deviate substantially from the general intent and purpose of this Declaration.

Section 7.7 Right to Appeal. An Owner may appeal any decision of the Architectural Review Committee to the Board of Directors. The Board of Directors shall review the decision of the Architectural Review Committee pursuant to the criteria set forth in Section 6.2 above and the Architectural Guidelines, if any. Any decision of the Architectural Review Committee may be overruled and reversed by a majority of the Directors by a written decision setting forth the reasons for the reversal when the Directors conclude that the Architectural Review Committee's decision was inconsistent with the criteria set forth in this Article and the guidelines.

Section 7.8 Waivers. The approval or consent of the Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 7.9 Liability. The Committee and the members thereof, as well as any

representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants.

Section 7.10 Records. The Architectural Review Committee shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day.

Section 7.11 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

## **ARTICLE 8 INSURANCE/CONDEMNATION**

Section 8.1 Insurance on the Lots. Each Owner shall obtain adequate hazard and liability insurance covering loss, damage or destruction by fire or other casualty to the Improvements, installed or made to their Lot, the other property of that Owner, and any injuries occurring to the persons while on a Lot, except to the extent otherwise specifically provided for Duplexes and Townhomes.

Section 8.2 Insurance on Duplexes and Townhomes.

(a) The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to any structures on Lots identified as Duplexes and Townhomes for the full replacement value without deduction for depreciation.

(b) Hazard insurance covering the structure(s) located on each such Lot shall not include coverage for land, foundation, excavation and other items normally excluded from coverage, and shall include coverage for replacement of value of the structure(s) excluding all items in the interior - all fixtures; cabinets; built-in appliances; paint; paper, or paneling on the walls and ceilings; the tile or carpet on the floor.

Section 8.3 Insurance Carried by the Association. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado:

(a) If requested, certificates of the insurance policies and renewals thereof shall be distributed to Owners and first mortgagees.

(b) All liability insurance shall include the Association, the Board, the manager or managing agent, if any, the officers of the Association and Owners as insureds.

(c) Prior to the Association obtaining any blanket policy of casualty insurance on any Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of any Common Areas and any Improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof.

Section 8.4 Hazard Insurance on Common Area. The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to any Improvements, installed or made to any Common Area and the other property of the Association.

Section 8.5 Association Liability Insurance. The Association shall obtain adequate public liability and property damage liability insurance covering any Common Area, in such limits as the Board may determine from time to time, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

Section 8.6 Association Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 8.7 Association Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 8.8 Directors and Officers Liability Insurance. The Association shall obtain directors and officers liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 8.9 Other Association Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem

appropriate with respect to the Association responsibilities and duties.

Section 8.10 Insurance Premium. Insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 8.11 Managing Agent Insurance. The manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association.

Section 8.12 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 8.13 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 8.14 Duty to Repair. Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

Section 8.15 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 8.16 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Areas unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under the terms of the Declaration.

(b) Any loss falling within the deductible portion of the Association policies

to property for which Owners have repair and maintenance responsibility shall be paid or absorbed by the Owners of the Lots involved in the same proportion as each Owner's claim bears to the total amount of insurance proceeds paid for the occurrence.

## **ARTICLE 9 GENERAL PROVISIONS**

Section 9.1 Enforcement. Except with regard to architectural approvals and architectural review, the Association or an Owner may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for such violation, including reasonable attorneys' fees incurred in enforcing these covenants, or to restrain such violation or attempted violation. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.2 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 9.3 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 9.4 Amendment of Declaration by Owners. Any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least sixty-seven percent (67%) of the votes in the Association and with the written consent of the Association. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Arapahoe County of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 9.5 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 9.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Lots and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 9.7 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 9.8 Challenge to this Amendment. All challenges to the validity of the amendments must be made within one (1) year after the date or recording of this document. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 9.9 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

Section 9.10 Conflict of Provisions. In case of conflict between this Declaration and the Articles or Bylaws, this Declaration shall control. In the case of conflict between the Articles and Bylaws, the Articles shall control.

**IN WITNESS WHEREOF**, the undersigned, being the President and the Secretary of Arapahoe Estates Owners Association, Inc., hereby certify that the Association has obtained written approval of this Amended and Restated Declaration from Owners representing at least sixty-seven percent (67%) of the votes in the Association and one hundred percent (100%) of the First Mortgages, pursuant to the procedures contained in C.R.S. §38-33.3-217(1)(b), or alternatively, a court order entered by the District Court for Arapahoe County, Colorado, pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

**ARAPAHOE ESTATES  
OWNERS ASSOCIATION, INC.**

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF \_\_\_\_\_        )

The foregoing Declaration was acknowledged before me by \_\_\_\_\_, as President and by \_\_\_\_\_, as Secretary, of Arapahoe Estates Owners Association, Inc., a Colorado nonprofit corporation, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

## **EXHIBIT A**

Lots 1-8, inclusive, Lots 11-30, inclusive, and Lots 34-56, inclusive, Block 1, Lots 17-27, inclusive, and Lots 58-73, inclusive, Block 2, Arapahoe Estates Subdivision, Arapahoe County, Colorado

Lots 1-4, inclusive, Arapahoe Estates Subdivision Filing No. 4 (Administrative Re-subdivision No. 1 for Lots 57-60, inclusive, Block 1, Arapahoe Estates Subdivision).

Lots 1-24, inclusive, Block 1, and Lots 1-7, inclusive, Block 2, Arapahoe Estates Subdivision Filing No. 5.

Lots 3 and 4, Arapahoe Estates Subdivision Filing No. 6.

Lots 1-13, inclusive, Arapahoe Estates Subdivision Filing No. 8.

Lots 69 and 70, Block 1, Arapahoe Estates Subdivision, Filing No. 3

### **DUPLEXES:**

Lots 1-16, inclusive, Block 2, Filing 3, Arapahoe Estates Subdivision, Arapahoe County, Colorado

### **TOWNHOMES**

Lots 1 through 6, inclusive, Block 2, Arapahoe Estates Subdivision Filing No. 4; and Lots 61-68, inclusive, Block 1, Arapahoe Estates Subdivision Filing No. 3 and as said Lots 66, 67, and 68 are affected by document recorded in Book 3755 at Page 289, Ratification of Plat, Lot 66, Block 1.

### **COMMON AREAS:**

Those portions of Tracts A, B, C, D, E, and F, Arapahoe Estates Subdivision, all filings, as have been conveyed to and are owned by the Arapahoe Estates Owners Association, Inc.