

***SCHOLAR'S WALK TOWNHOMES  
DECLARATION AND PARTY WALL AGREEMENT***

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**SCHOLAR'S WALK DECLARATION  
AND  
PARTY WALL AGREEMENT**

THIS DECLARATION is made by Mile High Banks as "Declarant" and is effective upon recording.

*RECITALS*

A. Declarant is the owner of certain real estate in the City and County of Denver, State of Colorado, which is more particularly described as set forth in *Exhibit A* and which is defined in this Declaration as the Real Estate.

B. Declarant desires to create a Planned Community on all of the Real Estate described in *Exhibit A* under the name of "Scholar's Walk Townhomes."

C. By virtue of this Declaration and a Map (as defined below), the Real Estate described in *Exhibit A* is designated for separate ownership and uses as allowed by local zoning.

D. Portions of the Real Estate described in *Exhibit B* may become owned by "Association" (as defined below).

E. Declarant has caused the "Scholar's Walk Townhomes Association, Inc.," a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado, as an owners' association, for the purpose of exercising the functions as set forth in this Declaration.

**ARTICLE 1  
SUBMISSION/DEFINITIONS/UNIT DESCRIPTIONS**

Section 1.1 Submission of Real Estate. Declarant declares that all of the Real Estate shall be held or sold, and conveyed subject to the easements, restrictions, covenants and conditions of this Declaration. The Declarant submits the Real Estate described in *Exhibit A*, all easements, rights and appurtenances thereto, the buildings and improvements erected or to be erected thereon, to the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as it may be amended from time to time (the "Act") and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Real Estate, that this Declaration shall run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors and assigns and shall inure to the benefit of each Unit Owner.

Section 1.2 Defined Terms. Each capitalized term in this Declaration shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

(a) "Act" shall mean the Colorado Common Interest Ownership Act, *C.R.S. §38-33.3-101 et. seq.*, as it may be amended.

(b) "Agency" or "Agencies" means any generally recognized secondary mortgage market agency or entity, including, but not limited to, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC or Freddie-Mac), the Governmental National Mortgage Association (GNMA), the Federal Department of Housing and Urban Development (HUD or FHA) or the Veterans Administration (VA).

(c) "Architectural Review Committee" or "Committee" shall mean the committee appointed by the Declarant or by the Board of Directors pursuant to this Declaration for the purpose of administering the architectural approval and design review provisions contained in this Declaration.

(d) "Assessment" shall include all Common Expense Assessments, insurance assessments, utility assessments, and any other expense levied to a Parcel pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(e) "Association" shall mean and refer to the "Scholar's Walk Townhomes Association, Inc." a Colorado nonprofit corporation, and its successors and assigns.

(f) "Board" or "Board of Directors" or "Executive Board" shall mean the body designated in the Governing Documents to act on behalf of the Association.

(g) "Common Area" or "Common Elements" shall mean all real property owned by the Association and pedestrian easements, for the common use and enjoyment of the Owners, together with all improvements located thereon and all common property owned by the Association, excluding the portions of the Parcels not subject to easements for the benefit of all Owners. The initial Common Area is described in Exhibit B.

(h) "Common Expenses" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

(i) "Community" or "Scholar's Walk Townhomes Community" shall mean the planned community created by this Declaration, as amended from time to time, consisting of the Real Estate, Common Area, and any improvements constructed on the Real Estate and the Common Area.

(j) "Declarant" means the Declarant named in this Declaration, and any successor and/or assignee designated by written notice of assignment executed by Declarant and by the transferee and recorded, to the extent any rights or powers reserved to Declarant are transferred or assigned to such transferee.

(k) "Declarant Control" means the period of time commencing on the date of recordation of this Declaration and expiring on the earlier of (1) 60 days after conveyance of 75% of the Units that may be created by Declarant, or (2) 2 years after the last conveyance of a Unit by Declarant in the ordinary course of business.

(l) "Development Rights" or "Special Declarant Rights" means those rights set forth in this Declaration and those rights set forth in the Act.

(m) "Map" shall mean and refer to the map(s) of the Real Estate and improvements that are subject to this Declaration and which are designated in the Map recorded in the records of the Office of the Clerk and Recorder of the City and County of Denver. More than one Map or supplement thereto may be recorded, and, if so, then the term "Map" shall collectively mean and refer to all of such maps, plats and supplements thereto.

(n) "Member" shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(o) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Parcel which is a part of the Real Estate, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(p) "Parcel or "Unit" means a physical portion of the Community, designated for separate ownership, shown as a parcel on the recorded Map for the Community, the boundaries of which are defined in the Map and in this Declaration.

(q) "Pet" shall mean and include cats, dogs, birds, reptiles or other household animals, as may be further defined in or supplemented by the Rules and Regulations.

(r) "Real Estate" means the property described in Exhibit A, as that exhibit may be modified by annexation, supplement or amendment of this Declaration, and such additional easements as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon. All easements and licenses which the Community is subject to as of the date of this Declaration are recited in Exhibit A, as that exhibit may be modified by annexation, supplement or amendment, from time to time.

(s) "Rules and Regulations" shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Community, and/or clarification of the Governing Documents, including any amendment to those instruments.

(t) "Townhome" or "Townhouse" shall mean the residential dwelling improvement constructed on a Parcel which is designed and intended for use and occupancy as a residence by a single family.

Section 1.3 Identification of Parcels/Parcel Descriptions.

(a) General Terms Regarding Identification of Units. The identification of each Parcel is shown on the Map. Every contract for sale, deed, lease, security interest, will or other legal instrument shall legally describe a Parcel by its identifying unit number or letter, followed by the name of the Community, with reference to the Map and the Declaration.

(b) Illustrative Description. Illustrative descriptions are as follows for the current type of Parcels in the Community:

Parcel \_\_\_\_\_, Scholar's Walk Townhomes Planned Community Map and Land Survey Plat, according to the Declaration recorded \_\_\_\_\_, 20 \_\_, at Reception No. \_\_\_\_\_, and the Map recorded at Reception No. \_\_\_\_\_ of the records of the Clerk and Recorder of the City and County of Denver, State of Colorado.

(c) Declaration and Map. Reference to the Declaration and Map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration and Map, without specific references thereto.

Section 1.4 Power to Provide Special Services. The Association shall have the power to provide services to one or more but less than all Owners, on an independent negotiated fee basis.

Section 1.5 Limited Common Elements. The following portion of the Common Elements are Limited Common Elements assigned to the Parcels as stated:

(a) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Parcel, the portion serving only the Parcel is a Limited Common Element, allocated solely to the Parcel, the use of which is limited to that Parcel and any portion serving more than one Parcel is a Limited Common Element to those Parcels and any portion serving only the Common Elements is a part of the Common Elements.

(b) Any improvements within the Community designed to serve less than all Parcels, like the air conditioning units, whether located inside or outside the boundaries of the Parcel, are Limited Common Elements allocated exclusively to the Parcel or Parcels that they are designed to serve and their use is limited to that Parcel or Parcels.

(c) Utility boxes or areas, the use of which is limited to a Parcel or Parcels, are Limited Common Elements to that Parcel or Parcels.

**ARTICLE 2**  
**NAMES/DESCRIPTION OF PROPERTY/EASEMENTS**

Section 2.1 Name and Type and Maximum Number of Parcels or Units. The name of the Planned Community is Scholar's Walk Townhomes." The type of Common Interest

Community is a Planned Community. The maximum number of Parcels or Units in the Community is 8.

Section 2.2. Real Estate. The Community is located in City and County of Denver, State of Colorado. The Real Estate of the Community is described in *Exhibit A* and/or as is consistent with the common scheme and plan for the creation and operation of the Community. Easements for utilities and other purposes over and across the Parcels and Common Area may be as shown upon a recorded Map and on any recorded map of the 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 Utility Reservations.

(a) Declarant hereby creates and reserves to itself, until Declarant has sold the last Unit created by Declarant to an Owner other than Declarant, and, thereafter, to the Association, a blanket easement upon, across, over and under the Real Estate, the Community and the Units for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment and effluent irrigation systems, gas, telephone and other telecommunications systems, electricity, heat and cooling systems, and master television and satellite antenna or cable systems, and any other utility systems as may be desired or provided (collectively, "Utility Systems").

(b) By virtue of this blanket easement, it shall be expressly permissible for Declarant or the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Real Estate and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, heat and cooling facilities, telephone and other telecommunications facilities, telephone and television wires, circuits, conduits and meters, and any other improvements or facilities appurtenant or relating to the Utility Systems.

(c) If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Real Estate is reserved, provided the easement granted does not conflict with the terms hereof.

(d) The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Real Estate.

(e) Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

Section 2.4 Easement for Encroachments. Each Townhome and the property included in the Common Area shall be subject to an easement for encroachments created by original

construction, settling and overhangs. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing two or more Townhomes is partially or totally destroyed, and then rebuilt, the owners of the Townhomes so affected agree that minor encroachments of parts of the adjacent Townhome or Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2.5    Blanket Easements.

(a)    Maintenance Easement. An easement is hereby granted to the Association, its officers, agents, and employees to enter in or to cross over the Common Area and any Parcel to perform the duties of operation, installation, maintenance, repair and replacement of the Parcel, Townhome or Common Area provided for in this Declaration.

(b)    Utility Easement. A blanket easement is granted to the Association upon, across, over and under all of the Parcels for ingress, egress, installation, replacing, repairing and maintaining any utilities, including but not limited to water, sewers, gas, telephones, electricity, cable, and a master antenna system, to the extent the Association is responsible for such utilities. By virtue of this easement, the Association shall have the authority to permit a utility company to affix and maintain wires, circuits, conduits, meters and similar equipment on, across and under the Townhomes. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Common Area or Parcels, except as approved by the Board of Directors. The easements provided for in this paragraph shall in no way affect any other prior recorded easements on the premises.

Section 2.6    Utility, Map and Plat Easements. Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat and on the recorded Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document. The Association or Declarant may grant utility easements through Units, or on an equitable basis.

Section 2.7    Utility Reservations.

(a)    Declarant hereby creates and reserves to itself, until Declarant has sold the last Unit created by Declarant to an Owner other than Declarant, and, thereafter, to the Association, a blanket easement upon, across, over and under the Real Estate, the Community and the Units for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment and effluent irrigation systems, gas, telephone and other telecommunications systems, electricity, heat and cooling systems, and master television and satellite antenna or cable systems, and any other utility systems as may be desired or provided (collectively, "Utility Systems").

(b)    By virtue of this blanket easement, it shall be expressly permissible for Declarant or the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Real Estate and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, heat and cooling facilities,

telephone and other telecommunications facilities, telephone and television wires, circuits, conduits and meters, and any other improvements or facilities appurtenant or relating to the Utility Systems.

(c) If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Real Estate is reserved, provided the easement granted does not conflict with the terms hereof.

(d) The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Real Estate.

(e) Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

Section 2.8 Easements for the Association and Unit Owners. Each Unit shall be subject to an easement in favor of the Association (including its agents, employees and contractors) and to each Unit Owner to allow for their performance of obligations in this Declaration. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages, and a lien therefore is authorized and established against that party's property, pursuant to this Declaration.

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 Easement for Common and Party Walls. Each Owner, his agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon adjacent Parcels and in and upon adjacent Townhomes for purposes of common or party wall maintenance and repair, in accordance with the party wall provisions contained in this Declaration, upon reasonable notice to the Owners of the common wall. Any damage occasioned to the adjacent Parcel or improvements, including the dwelling thereon, in exercising this easement, shall be the responsibility of the Owner whose negligent or wrongful acts or omissions caused the damage. See additional provisions in this Declaration relating to other aspects of party walls.

Section 2.11 Access. For the purpose of performing the maintenance referred to in this Article, and inspections related thereto, the Association, through its duly authorized agents, contractors, employees or the Architectural Review Committee, shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Parcel and improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Association or its agents, contractors or employees, may enter without

notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its actions, except on account of its willful misconduct.

Section 2.12 Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated into any Parcel with the consent or at the request of the Owner thereof, his agent, contractor, or subcontractor, shall be the basis for the filing of a lien against a Parcel of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Area. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Parcel of any other Owner, the Common Area, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Parcel. The Association may pay any sums necessary to eliminate any lien filed against Common Area not benefitting from the labor and/or materials furnished and all sums paid shall be an Assessment against the Owner or Owners for whom the labor and/or materials were furnished.

Section 2.13 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and any driveways and such easement shall be appurtenant to and shall pass with the title to every assessed Parcel, 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 Area;
- (c) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Area;
- (d) the right of the Association to transfer or convey ownership of the Common Area, or any portion thereof, subject to the prior approval of 67% of the total Association vote;
- (e) the right of the Association to suspend the voting rights during any period of violation of any provision of the Governing Documents, whichever is greater; provided that suspension of voting and use rights shall be automatic during any period that an Owner is in default in payment of any Common Expense Assessment;
- (f) the right of the Association to close portions of the Common Area for maintenance, repair, replacement, and improvement; and
- (g) the right of the Association to change use of, add or remove improvements to the Common Area.

Section 2.14 Delegation of Use. Owners may delegate, in accordance with the Bylaws and Rules and Regulations adopted by the Board of Directors, their right of enjoyment to the

Common Area to the members of their family, their tenants, or contract purchasers who reside on the Property. If the Owner delegates rights to use the Common Area and facilities to tenants or contract purchasers who reside on their Parcel, the Owner shall not be entitled to use the Common Area and any related facilities.

### **ARTICLE 3 THE ASSOCIATION**

Section 3.1 Membership. Every person who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Parcel. Ownership of a Parcel shall be the sole qualification for membership.

Section 3.2 Allocated Interests. The Common Expense liability and votes in the Association allocated to each Parcel are set as follows:

- (a) the percentage of liability for Common Expenses, 8 allocated equally; and
- (b) the number of votes in the Association, 8 allocated based on one vote per parcel.

Section 3.3 General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Community as provided in the Recitals section of this Declaration. All Owners and any purchaser of a Parcel shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.4 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of 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 final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to affect such right or privilege or to satisfy such duty or obligation.

Section 3.5 Managing Agent. The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.6 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

Section 3.7 Education and Training As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting facilities use for such purposes. These educational purposes shall be met and complied with as a part of each annual meeting of the Members of the Association. The Association may provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for officers and directors.

Section 3.8 Square Footage of Townhomes.

(a) Declarant has previously disclosed, and hereby discloses again, that there are a number of methods of calculating the square footage of a Townhome, and that the basis used, if any, to determine the purchase price of a Townhome, or the lease terms of the rental of a Townhome, may be based on a method different than the formula for the allocation of interests as set forth in this Declaration.

(b) The Owner of the Townhome, or the tenant of that Townhome, acknowledges the Declarant's prior disclosure, and also acknowledges this disclosure and agrees to and consents to the method, if any, so utilized to determine the purchase price of a Townhome or the lease terms for the rental of a Townhome.

(c) Declarant does not warrant the accuracy of any prior estimate or calculation of the square footage of a Townhome, regardless of method utilized.

(d) Each Owner and tenant acknowledges that the actual square footage of a Townhome, upon completion, will vary from prior estimates and calculations.

Section 3.9 Indemnification. To the full extent permitted by law, each Officer and member of the Executive Board of the Association shall be and hereby is indemnified by the Unit Owners and the Association against all expenses and liabilities, including attorneys' fees

and expenses, 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 member of the Executive Board of the Association, or any settlements thereof, whether or not they are an Officer or member of the Executive Board of the Association at the time such expenses are incurred; except in such cases wherein such Officer or member of the Executive Board is adjudged guilty of willful misfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Executive Board approves such settlement and reimbursement, which approval shall not be unreasonably withheld.

Section 3.10 Declarant Control. During Declarant Control, Declarant shall have the reserved power, pursuant to Section 303(5) of the Act, to appoint and remove Officers and members of the Executive Board.

#### **ARTICLE 4 MAINTENANCE AND SERVICE RESPONSIBILITIES**

Section 4.1 Association Maintenance and Service Responsibilities. The Board of Directors of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance responsibilities.

Section 4.2 By the Owner Each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit, including the Townhome or residence and all improvements made by the Owner to the Unit, except any portion of a Unit which is expressly made the maintenance obligation of the Association as set forth in Section 4.3 below (Area of Common Responsibility). This maintenance responsibility shall include, but not be limited to the following:

- (a) all glass surfaces (including exterior cleaning);
- (b) windows, window frames (except for periodic painting of the exterior window frames), casings and locks (including caulking of windows) and screens;
- (c) all doors, doorways, door frames, and hardware that are part of the entry system to the residence on the Parcel (except for periodic painting of the exterior surface of entry doors and door frames);
- (d) all pipes, lines, ducts, conduits, or other apparatus serving only the Parcel, whether located within or outside the boundaries of the Parcel (including all electricity, water, or sewer pipes, lines, ducts, conduits, or other apparatus serving only the Parcel) due to the Owner's fault, negligence, and/or improper use;
- (e) yard and landscaping within any enclosed or designated area on their Parcel;
- (f) any fireplace (including the chimney, flue and firebox, but excluding chimney caps) that serves only their Parcel or Townhome;

(g) all communications, television, telephone, cable and electrical lines, receptacles and boxes serving only the Parcel, whether located within or outside the boundaries of the Parcel due to the Owner's fault, negligence, and/or proper use;

(h) garages, garage doors (except painting the exterior surface of garage doors) and garage door openers;

(i) any light fixtures and light bulbs in the front porch area or the rear patio area with ARC approval required if changing fixtures;

(j) any portion of the heating and air conditioning systems including the air conditioning compressor and fan coil serving the Parcel, whether located within or outside the boundaries of a Parcel;

(k) any exterior improvements made to the Parcel by an Owner (even if the improvement extends into Common Area), including but not limited to patio extensions and modifications to the concrete patios originally installed;

(l) any interior or attached storage areas located on the Parcel or used exclusively by the Parcel; and

(m) foundation of the residences or Townhome on the Parcel.

In addition, each Owner shall have the responsibility:

(n) To keep their Parcel and Townhome in a neat, clean and sanitary condition, including keeping the steps, on the Parcel free and clear of snow, ice, and any accumulation of water or other debris.

(o) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Parcels/Townhomes.

(p) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Areas by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

Section 4.3 By the Association The Association shall maintain and keep in good repair as a Common Expense all Common Areas and the portions of the Parcel as identified below (collectively, the Areas of Common Responsibility):

- (a) Paint, maintain, repair and replace siding on the exterior of the residences/Townhomes;
- (b) Maintain, repair and replace roofs and roof decking, gutters, and downspouts of the residences/Townhomes;
- (c) Repair and replace concrete patios, steps/stoops and iron railings as installed originally on the Parcels;
- (d) Repair and replace balconies and balcony railings as installed originally on the Parcels;
- (e) Repair and replace fences, whether located on a Parcel or on Common Area;
- (f) Repair and replace chimney caps;
- (g) Paint the exterior surface of window frames (if applicable), doors and door frames and garage doors;
- (h) Repair and replace walkways and sidewalks, including reasonable snow removal;
- (i) Provide for reasonable snow removal on Common Area, as needed, and for weekly trash removal;
- (j) Trees, shrubs, grass and other Association installed landscaping on the Parcels outside of any enclosed area; and
- (k) Existing drainage systems installed by the Association on the Parcels; provided, however, the Association shall have no obligation to install new or additional drainage systems on the Parcels. The Association is not responsible for drainage on the Parcels unless the Association alters drainage patterns on the Parcels.

The foregoing maintenance shall be performed consistent with the "Community-Wide Standards" as determined by the Board of Directors of the Association.

If, during the course of performing its maintenance responsibilities hereunder, the Association discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at the Owner's sole expense, without prior notice to the Owner, such being deemed an emergency situation hereunder.

If the Board determines that the need for maintenance or repair of the Area of Common Responsibility is caused through the willful or negligent act of any Owner, or Occupant

or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or Occupant's Parcel, and such cost shall become the personal obligation of the Owner, a lien against the Parcel, and shall be collected as provided herein for the collection of assessments.

The Association shall repair incidental damage to any Parcel resulting from performance of work that is the responsibility of the Association. The Association shall not be liable for injury or damage to person or property caused by the Areas of Common Responsibility or by the Owner of any Parcel, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Areas or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner of a Parcel has put the Association on notice of a specific leak or flow from any portion of the Areas of Common Responsibility and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Article where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 4.4     Mold. Each Owner shall be required to take necessary measures to retard and prevent mold from accumulating in the Townhome, and the Common Area, including but not limited to appropriate climate control, removal of visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces and cleaning of the same. No Owner shall block or cover any heating, ventilation or air conditioning ducts. Owners shall immediately notify the Board in writing of the following: (a) any evidence of water leaks, water infiltration or excessive moisture in a Townhome; (b) any evidence of mold that cannot be removed by the Owner with a common household cleaner; (c) any failure or malfunction in heating, ventilation or air conditioning; (d) any inoperable doors, windows, heating, ventilation or air conditioning ducts. The receipt of notice by the Association shall not create any additional Association maintenance responsibility other than those set forth in this Declaration. Owners shall be responsible for any damage to his or her Parcel and personal property, to any other Parcel or the Common Area, as well as any injury to the Owner or occupants resulting from the Owner's failure to comply with this section. Owners shall be responsible for all costs and expenses incurred by the Board to remove mold and/or damage within his or her Parcel, to any other Parcel or to the Common Area if the Owner fails to meet the requirements of this Section.

Section 4.5     Inspection, Repair and Replacement of Designated Owner Maintenance Components. The Association shall have the right, but not the obligation, to conduct a periodic inspection, on a schedule to be determined by the Board of Directors, of designated Owner maintenance components as may be set forth in the Rules and Regulations. If, in the Board of

Directors' sole discretion, the component needs to be maintained, repaired or replaced, the Association may provide such maintenance, repair or replacement (even though such component may be the Owner's responsibility) and the cost of such periodic inspection, maintenance, repair or replacement may be assessed against the Owner of the Townhome served by such component pursuant to this Declaration.

Section 4.6 Failure to Maintain. If the Association determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, except in the case of an emergency, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Association.

Unless the Association determines that an emergency exists, the Owner shall have 10 days within which to complete maintenance or repair, or, if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within 10 days. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as provided in this Section; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the Assessment to which such Owner is subject, shall become and be a lien against the Parcel, and shall be collected as provided in this Declaration for the collection of Assessments.

If the Board determines that the need for maintenance or repair is a Common Expense and is caused through the willful or negligent act of any Owner, or occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or occupant's Parcel, shall become a lien against the Parcel, and shall be collected as provided in this Declaration for the collection of Assessments.

## **ARTICLE 5 PARTY WALLS**

Section 5.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of a Townhome upon the Property and placed on the dividing line between Parcels shall constitute a common or party wall. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

Section 5.2 Sharing of Repair and Maintenance. The cost of reasonable repair, replacement and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

Section 5.3 Destruction by Fire or Other Casualty. If a party wall 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 same, any Owner who has used the wall may

restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, subject to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5.4     Liability for Negligence. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for in this Declaration, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and damages as a result of failure to do so.

Section 5.5     Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 5.6     Dispute Resolution. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the parties shall submit the dispute to mediation. If the dispute cannot be resolved through mediation, the parties may pursue the dispute in arbitration or through a legal proceeding before a court.

## ARTICLE 6 COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 6.1     Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments. Each Owner, by acceptance of a deed for a Parcel, 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, insurance Assessments (assessed in proportion to risk); utility Assessments, if levied, (assessed in proportion to usage), and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late fees, attorney fees, fines and interest charged by the Association and additional fees charged by the managing agent, including but not limited to, administration and witness fees, shall be the personal obligation of the Owner of such Parcel at the time when the Assessment or other charges became or fell due. The Association annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, shall be a charge on each Parcel and shall be a continuing lien upon the Parcel 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. 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. No 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 Parcel against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, 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 6.2 Basis of Assessments. The Common Expense Assessment may be made on an annual basis against all Parcels 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.

Section 6.3 Computation of Budget and Assessment The Board shall cause a summary of the budget to be delivered to each member within 90 days after the Board adopts the budget and shall set a date for a meeting of the Owners to consider the budget, which meeting shall occur within a reasonable time after delivery of the budget summary. The budget and the assessment shall become effective unless disapproved at a duly called Association meeting by a vote of a majority of the total Association membership; provided, however, if a quorum is not obtained at the annual or other meeting called to ratify the budget, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year. The approval procedure set forth in this Section for budgets shall also apply to a new budget proposed by the Board.

The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of Common Expenses on which the Board may base the annual assessments.

Section 6.4 Supplemental Assessments. The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

- (a) those amounts expended by the Association for the benefit of any individual Parcel or any occupant thereof, including but not limited to: Parcel insurance; improvement, repair, replacement and maintenance specific to a Parcel; improvement, repair, replacement and maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;
- (b) any extraordinary maintenance, repair, improvement and replacement costs of any area which the Association maintains required on fewer than all the Parcels;
- (c) any extraordinary insurance costs incurred as a result of the value of a particular Owner's Townhome or the actions of an Owner (or his agents, guests, licensees, invitees or lessees);
- (d) All fines and costs assessed against an Owner pursuant to the Governing Documents; and

(e) Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Parcel and are reasonably determined to be allocable to a particular Parcel.

Section 6.5 Application of Payments. All sums collected on a delinquent account referred to an attorney shall be remitted to the Association's attorney until the account is brought current. All payments received on an account of any Owner or the Owner's Parcel shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner.

Section 6.6 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 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 fee thereon as determined by the Board of Directors.

(b) Failure to make payment within 60 days of the due date thereof shall cause the total amount of such Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. The Board may, in its discretion, decelerate the Member's annual Assessment.

(c) Further, the Association may bring an action at law or in equity, or both, against any 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 Owner's Parcel. An action at law or in equity by the Association against a 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 be deemed to estop or otherwise 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. The Association shall have the power and right to bid on or purchase any Parcel at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Parcel, the Board may take possession and rent said Parcel or apply for the appointment of a receiver for the Parcel without prior notice to the Owner. 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.

Section 6.7      Assignment of Rents. If a Parcel is rented by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments due by that Owner to the Association. If the Assessments owed by the Owner of a rented Parcel are more than 30 days delinquent, the Board may collect, and the occupant or lessee shall pay to the Board, the rent for any Parcel owned by the delinquent Owner, or that portion of the rent equal to the amount due to the Association; provided, however, the lessee need not make such payments to the Association in excess of or prior to the due date for monthly rental payments unpaid at the time of the Board's request. The Association shall send notice to the Owner by any reasonable means at least 10 days prior to initiating the collection of rent from the Owner's occupant or lessee. The occupant and/or lessee shall not have the right to question the Board's demand for payment. Payment by the occupant or lessee to the Association will satisfy and discharge the occupant or lessee's duty of payment to the Owner for rent, to the extent of the amount paid to the Association. No demand or acceptance of rent under this Section shall be deemed to be a consent or approval of the Parcel rental or a waiver of the Owner's obligations as provided in the Declaration. The Board shall not exercise this power where a receiver has been appointed neither with respect to a Parcel or Owner, nor in derogation of the exercise of any rights to rents by the holder of a first lien security interest of a Parcel. If an occupant or lessee fails or refuses to pay rent to the Association as provided for in this Section, the Association shall have the right to bring an action for unlawful detainer for non-payment of rent under Colorado statutes, and the costs and attorney fees incurred by the Association in connection with that action shall be collectable from the occupant or lessee in that action, and from the Owner of the Parcel in the same manner as any other Assessment under this Declaration.

Section 6.8      Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Parcel except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Parcel (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 Parcel. This Section does not affect the priority of mechanics' or materialmen's liens. 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. The acceptance of a deed to a Parcel subject to this Declaration shall constitute a waiver of the homestead exemption as against said Assessment lien. Sale or transfer of any Parcel shall not affect the lien for said Assessments or charges except that sale or transfer of any Parcel 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 Parcel from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 6.9      Borrowing. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Owners present and voting, in person or by proxy, at a duly constituted meeting called for that purpose.

## ARTICLE 7 USE RESTRICTIONS

Section 7.1 Flexible Application of the Subsequent Covenants and Restrictions. All Parcels within the Scholar's Walk Townhomes 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.

Section 7.2 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 Parcel, acknowledge that they have been given notice, and that:

- (a) The ability of Owners to use their Parcels may be limited by the provisions in the Governing Documents.
- (b) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.
- (c) 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.
- (d) All fines imposed are collectable as Assessments.

Section 7.3 Use/Occupancy.

- (a) All Parcels within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation, and permitted by this Declaration, subject to any Rules and Regulations adopted by the Association.
- (b) Parcels shall not be used for any purpose other than a residential dwelling except as set forth in this Section.
- (c) Home occupations shall be allowed so long as the home occupations are incidental and secondary to the use of the Parcel and does not change the residential character thereof, comply with local zoning ordinances and regulations, and comply with this Declaration.
- (d) External advertising of any kind is prohibited.
- (e) In no instance shall a home occupation be visible externally, nor shall any home occupation employ more than one person.

(f) Uses which have one or more of the following characteristics are not permitted:

- (i) manufacturing or fabrication of any kind;
- (ii) storage of hazardous materials;
- (iii) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use;
- (iv) permanent or long term parking of heavy equipment, including semi trailers;
- (v) the use or rental of any structure on a Parcel for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes.

Section 7.4 Leasing and Occupancy. The Scholar's Walk Townhomes planned community is intended to be an owner-occupied community. However, any Parcel Owner shall have the right to lease or allow occupancy of a Parcel upon such terms and conditions as the Parcel Lot Owner may deem advisable, subject to restrictions of this Declaration, subject to restrictions of record, and subject to the following:

(a) "Leasing" or "Renting" for the purposes of this Declaration is defined as regular, exclusive occupancy of a Parcel by any person other than the Owner. For the purposes of this Declaration, occupancy by a roommate of an Owner who occupies the Parcel as such Owner's primary residence shall not constitute leasing under this Declaration.

(b) Short term occupancies and rentals (of less than three months) of Parcels shall be prohibited, without prior written consent of the Board.

(c) All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents. The Association shall have the authority to require a particular lease form or addendum to implement the provisions of this Section. Owners are required to provide tenants with copies of the current Declaration and any rules and regulations of the Association.

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

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

(f) All occupancies, leases and rental agreements of Parcels shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Governing Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

(g) All occupancies of Parcels shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Declaration, the Bylaws of the Association, the Articles of Incorporation or the rules and regulations of the Association. If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, following notice and an opportunity for a hearing and the Owner fails to commence such action within 30 days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Parcel.

(h) Leases shall be for or of the entire Parcel.

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

(j) The Association shall have the authority to adopt rules and regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

#### Section 7.5 Use of Porches, Sidewalks, Patios, Balconies and Garages.

(a) Porches and Sidewalks. Front porches and sidewalks shall remain clean and unobstructed.

(b) Patios and Balconies. Objects over 42 inches in height, laundry garments and objects other than potted plants and patio furniture, except as may be authorized by the Board, shall not be placed on a patio or balcony. Objects shall not be permitted to hang over or be attached to any patio fence or otherwise protrude outside the vertical plane formed by the exterior surface of the patio fence. Penetration of the surface of the patio or balcony is prohibited.

(c) Garages. Garages shall be used solely for the purpose of storing vehicles and any other any personal property belonging to the Owner or Occupant of the Lot to which such garage is appurtenant. Garage doors are to remain closed except when entering or leaving, or during light maintenance of vehicles. No Owner or Occupant shall store any explosives, or any flammable, odorous, noxious, corrosive, and hazardous or pollutant materials or any other goods in the garage that would cause danger or nuisance to the Community. The garages shall not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code. If hazardous substances are stored, used, generated or disposed of on or in the garage, or if the garage becomes contaminated in any manner for which the Owner or Occupant thereof is legally liable, Owner or Occupant shall indemnify and hold harmless the Association and Board of Directors

from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses and any and all sums paid from settlement of claims, attorney's fees, consultant and expert fees, arising as a result of that contamination by Owner or Occupant.

Section 7.6     Restrictions on Pets.

- (a)     Pets may be kept on a Parcel, if the Pet is not a nuisance to other residents.
- (b)     No resident shall maintain or keep any Pet which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or residents in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations.
- (c)     If a Pet is deemed a nuisance by the Association, the resident having control of the Pet shall be given a written notice to correct the problem and if not corrected, that resident will be required to remove the Pet from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any.
- (d)     Pets may not be kept for any commercial purposes.
- (e)     Feces left by Pets upon the Common Area must be removed promptly by the owner of the Pet or the person responsible for the Pet.
- (f)     Pets shall not be allowed to defecate or urinate on any patio or balcony in the Community.
- (g)     Owners shall hold the Association harmless from any claim resulting from any action of their Pets or the Pets of their tenants, guests or other invitees.

Section 7.7     Antennae. "Permitted Antennas" are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on a Parcel which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules

regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Parcel.

Section 7.8     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 Parcel or any Common Area, or any portion of the Community by residents. 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 7.9     Vehicular Parking, Storage, and Repairs.

(a)     Parking upon any Common Area and driveways shall be regulated by the Association.

(b)     The following may not be parked or stored within the Community, unless wholly within a garage of a Townhome, authorized in writing by the Association or allowed by Colorado law: oversized vehicles, trucks or pickup trucks over 3/4 ton, commercial vehicles, vehicles with commercial writing on their exteriors, 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.

(c)     The foregoing may be parked as a temporary expedience for loading or delivery of goods or services. Overnight parking is prohibited.

(d)     The above 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, Parcels, or any improvement located thereon.

(e)     No abandoned, unlicensed or inoperable automobiles or vehicles of any kind shall be stored or parked on a Parcel or within garages of a Townhome. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable, unlicensed or abandoned vehicles on public streets, or as defined by rule or regulation adopted by 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 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.

(f) No motor vehicle may impede the safe and efficient use of driveways or private streets within the Community by residents, obstruct emergency access to/from the Community or interfere with the reasonable needs of other residents for access to the alley.

(g) 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, except within the garage of a Townhome. This provision shall not be deemed to prevent washing and polishing of a vehicle, together with those activities normally incident and necessary to such washing and polishing, provided washing is done with a hose with a shut off valve to prevent waste of water. Minor repairs may be performed, provided they may be completed the day commenced, there is no damage (e.g., oil, residue) to paved areas, and all equipment and parts are removed upon completion of the work. No vehicles may be left unattended on jacks or jack stands.

(h) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

(i) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 72 hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If 72 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user.

(j) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Parcel or Townhome, is obstructing the flow of traffic, is parked on any grassy area, is parked in a space which has been assigned as exclusively serving another Parcel, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(k) If a vehicle is towed or booted in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 7.10 Use of Common Area. There shall be no obstruction of any Common Area or driveway, 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.

Section 7.11 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the 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 Association.

Section 7.12 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. No open fires shall be lighted or permitted on any Property within the Community except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent dispersal of burning embers unless otherwise prohibited by governmental ordinances. No Owner or Owners shall permit any condition on his Parcel or Parcels which creates a fire hazard or is in violation of applicable fire prevention regulations

Section 7.13 Restrictions on Storage. No drying areas or yards, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted on any Parcel unless the same, in each instance, is expressly permitted in writing by the Association. Owners shall deem to hold the Association harmless from any claim resulting from any drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Parcel.

Section 7.14 Restriction on Signs and Advertising Devices Except as provided in this Section, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere on a Parcel except such sign or signs as may be approved in writing by the Association. Signs intended to impact the outcome of an election must be displayed in accordance with the Association's Rules and Regulations. One professionally lettered "For Sale" or "For Rent" sign not to exceed three feet by two feet and one professionally lettered security or alarm system sign not exceeding six inches by six inches may be displayed inside a window of a Parcel.

Section 7.15 Trash Removal Restriction. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Parcel, 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. If trash removal is a service ever offered by the Association to Owners, then the Association shall have the exclusive right to engage a trash removal contractor on behalf of the Owners.

Section 7.16 Restrictions on Exterior Building Changes, Structural Alterations, Improvements, Penetrations and Cut-Outs. No change to the exterior of the building, structural alterations to any Unit or to any Common or Limited Common Elements shall be done by any

Owner, without the prior written approval of the Association through the Executive Board. This restriction extends to and includes a restriction on penetrations or cut-outs into Common Element walls or portions of the Community. No improvement to any Unit or to the Common or Limited Common Elements or to any landscaping shall be constructed, erected, placed or installed within the Community, unless complete plans and specifications therefore shall have been first submitted to and approved in writing by the Association (as provided for above) acting through the Executive Board. The process for seeking approval from the Executive Board shall be set forth in the Rules and Regulations of the Association.

Section 7.17 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof.

Section 7.18 Compliance with Governing Documents. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended.

Section 7.19 Use of the Words Scholar's Walk and "Scholar's Walk Townhomes". No resident or Owner shall use the words "Scholar's Walk" or "Scholar's Walk Townhomes" or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

## ARTICLE 8 ARCHITECTURAL APPROVAL/DESIGN REVIEW

Section 8.1 Required Approval. No structures, including residences, accessory buildings, tennis courts, swimming pools, antennas (except as otherwise permitted under this Declaration), flag poles (except as otherwise permitted by the Act), fences, walls, exterior lighting, landscaping, or any other improvements shall be constructed, erected, relocated, removed or installed on a Parcel, nor shall any alteration or change to the exterior of the improvements, the exterior of a Townhome, to a Parcel or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced unless complete plans and specifications shall have been first submitted to and approved in writing by the Architectural Review Committee ("Committee" or "AR") as may be outlined in the Rules and Regulations. 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 (horizontally and vertically), as well as such other materials and information as may be required by the Committee.

Section 8.2 Acknowledgment of Owners. Owners acknowledge, accept and agree to the following:

- (a) Owners will not commence construction or installation of an improvement until they have submitted improvement plans and specifications and received written approval from the Committee;
- (b) Owners shall immediately comply with any request by the Association for additional information relating to an improvement prior to the Committee's approval of a request and/or prior to the completion of an improvement. Failure to comply with such a request by an Owner shall result in the withdrawal of Committee approval, if previously granted;
- (c) Committee approval does not constitute approval of the local building or zoning department, drainage design or structural soundness;
- (d) Owners shall notify the Committee of completion of the improvement's installation or construction within five days of such completion;
- (e) Upon completion of an improvement, Owners authorize the Committee or its representative(s) to enter onto the Parcel for exterior inspection;
- (f) Failure of an Owner to notify the Committee of completion of an approved improvement, or refusal to allow inspection, shall result in the withdrawal of the Committee's approval;
- (g) If the improvement as built does not conform to the improvement as approved by the Committee, the Committee's approval will be deemed withdrawn, and upon written request of the Committee, Owners shall, at their own expense and cost, promptly bring the improvement into compliance with the submitted and approved plans and specifications;
- (h) In the event of withdrawal of Committee approval for any reason(s) cited in this Section, and upon written request from the Committee, the Owner, at his or her expense and cost, shall promptly restore the Parcel to substantially the same condition as it existed prior to commencement of the improvement's installation or construction, and such withdrawal will be deemed to toll the statute of limitations as it pertains to the improvement until such time as the improvement is brought into compliance.

Section 8.3 Architectural Criteria. The Committee shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to improvements on a Parcel or landscaping of a Parcel shall comply with the requirements set forth in this Declaration. The approval or consent of the 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, harmony with the other Townhomes, aesthetics consistent with and complimentary to the Community and such other criteria as may be set forth in adopted guidelines, and conformity with the specifications and purposes generally set forth in this Declaration. Upon its review of such plans, specifications and submittals, the Committee may require that the applicant(s) reimburse the Board for actual expense incurred by it in its review and approval process.

Section 8.4     Establishment of the Committee. The Committee shall consist of a minimum of three members appointed by Declarant, until December 31, 2015, unless earlier released by the Declarant. Once released, appointments shall be by the Board of Directors. If no Committee is appointed, the Board of Directors shall act as the Committee. The Board shall have the authority to remove any members of the Committee at their sole discretion.

Section 8.5     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 8.6     Reply and Communication. The Committee shall reply to all submittal of plans made in accordance herewith in writing within 60 days after receipt. In the event the Committee fails to take any action on submitted plans and specifications within 60 days after the Committee has received the plans and specifications, approval shall be deemed to be Granted, provided, however, nothing in this Section shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of this Declaration, the Rules and Regulations or any architectural guidelines adopted by the Board. All communications and submittals shall be addressed to the Committee in care of the Association.

Section 8.7     Condition of Approval. In the discretion of the Board or the Committee, an Owner may be required to enter into a written agreement establishing the approval of an application in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest. As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest affirms and shall assume, unless otherwise agreed in writing, all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration.

Section 8.8     Commencement and Completion of Construction. All improvements approved by the Committee must be commenced within 6 months from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the Committee, unless the Committee gives a written extension for commencing the work. Additionally, except with written Committee approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the Committee shall be completed within one year of commencement.

Section 8.9     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 this Declaration or in architectural guidelines.

Section 8.10    Right to Appeal. If the Board of Directors is not acting as the Committee, an Owner whose plans have been disapproved or conditionally approved may appeal any decision of the Committee to the Board of Directors. The Board of Directors shall review the decision of the Committee pursuant to the criteria set forth in this Article and the

architectural guidelines. Any decision of the 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 Committee's decision was inconsistent with the criteria set forth in this Article and/or the guidelines.

Section 8.11 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 8.12 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. The Committee shall not bear any responsibility for ensuring structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements.

Section 8.13 Records. The Association 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 according to any policy adopted by the Board.

Section 8.14 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 may be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Additionally or in the alternative, the Association may levy fines after notice and an opportunity for a hearing. Failure of the Association to enforce any covenant or restriction in this Section shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE 9 INSURANCE

Section 9.1     Insurance to be 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 in this Declaration, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. All insurance purchased by the Association shall be purchased from companies with ratings of "A" or better, to the extent that insurance is available at reasonable cost to the Association through such companies.

Section 9.2     Property/Hazard/Casualty Insurance on the Townhomes and Common Areas – Carried by the Association.

(a)     The Association shall obtain insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements located on the Common Areas, the Townhomes, and the other property of the Association.

(b)     The Association's insurance policy shall cover any of the following types of property contained within a Townhome, regardless of ownership:

(i)     fixtures, improvements and alterations that are a part of the original construction of the building or structure; and

(ii)    appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping. In the alternative, the Association's insurance policy may exclude improvements and betterments made by the Owner and may exclude the finished surfaces of perimeter and partition walls, floors and ceilings within the Parcels (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet and any floor covering; provided, however, floor covering does not mean unfinished hardwood or unfinished parquet flooring), personal property of the Owners, or liability for incidents occurring within the Parcels or through the Owners' personal actions.

(c)     If the Board of Directors changes policies so that a lesser level of coverage is provided, the Board shall notify all Owners in writing at least 10 days prior to the commencement of the policy with reduced coverage.

(d)     All policies shall contain a standard non-contributory mortgage clause in favor of each first mortgagee, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such first mortgagee, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of the City and County of Denver.

(e) The Association may also obtain any additional endorsements which it deems advisable and in the best interests of the Community by the Board of Directors.

(f) The insurance described in this Section shall be inflation coverage insurance, if such insurance is available, which shall at all times represent 100% of the replacement value of all facilities in the Common Area except land, foundation, excavation and other items normally excluded from coverage and except for any deductible provisions as permitted under this Article.

(g) At least every three years, the Association may consider obtaining an appraisal for insurance purposes which shall be maintained as a permanent record showing that the insurance in any year represents 100% of the replacement value of each Parcel and the facilities in the Common Area.

(h) The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

Section 9.3 Liability Insurance of the Association. The Association shall obtain a comprehensive policy of public liability and property damage liability insurance covering all of the Townhomes (excluding liability within each Townhome) and the Common Areas, including structural coverage of the Townhomes, in such limits as the Board may from time to time determine, but not in any amount less than a combined single limit of \$1,000,000.00, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Parcels and the Common Area. The foregoing liability insurance shall name the Association as the insured.

Section 9.4 Fidelity Insurance of the Association. The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees, volunteers 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 clause "officers, directors, trustees and employees" shall not include any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. 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. If the Association retains a Managing Agent, the Managing Agent shall be required to provide such fidelity insurance covering itself and its employees and naming the Association as the loss payee.

Section 9.5 Workers Compensation of the Association. The Association shall obtain and maintain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in forms now or hereafter required by law.

Section 9.6 Director and Officer Liability Insurance of the Association. The Association shall purchase directors' and officers' insurance in an amount reasonably necessary to protect the directors and officers.

Section 9.7 Other Insurance of the Association. The Association may obtain insurance against such other risks, of similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 9.8 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available and necessary, policies with the following terms or provisions:

(a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.

(b) All policies of insurance shall contain waivers of subrogation against any Owner or member of his or her household.

(c) All policies of insurance shall contain waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least 45 days prior written notice to all of the Owners, holders of First Mortgages and the Association.

(d) If requested, certificates of insurance and renewals thereof, together with proof of payments of premiums, shall be delivered to all First Mortgagees at least 10 days prior to expiration of the then current policies.

(e) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, and the officers of the Association, as insureds.

(f) Prior to renewing casualty insurance and not less than every three years, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement cost of the Townhomes and the Common Area, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause.

(g) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(h) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner, only in respect to the interest of any particular Owner guilty of a breach

of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 9.9 Insurance Obtained by Owners. Each Owner shall be responsible for maintaining insurance which covers his Parcel to the extent not covered by policies maintained by the Association. Such insurance shall include, but may not be limited to, betterments and improvements from the original construction, furnishings and personal or other property in the Townhome and liability insurance for injury, death or damage in the Townhome or upon the Parcel. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

Section 9.10 Insurance Premium for Insurance Carried by the Association. Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 9.11 Managing Agent Insurance. The manager or managing agent, if any, shall be insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage.

Section 9.12 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another and the Board, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by these persons.

Section 9.13 Adjustments by the Association. For any loss covered by an insurance policy carried by the Association, the Association shall have the first right to adjust and handle the loss, and the insurance proceeds for that loss shall be payable to the Association, and not to any first mortgagee. The Association shall hold any insurance proceeds in trust for the Association, Owners and first mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners and first mortgagees are 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. If the insurance proceeds are insufficient to cover the cost of repair or reconstruction, the Association may levy a Special Assessment to cover the short fall (or deductible) pursuant to this Declaration.

Section 9.14 Duty to Repair. Any portion of the Property and Common Area for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Owner.

Section 9.15 Condemnation and Casualty Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be to the parties as their interests and rights are determined or allocated by record or as set forth in the Act.

Section 9.16 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 Area unless the damage is the liability of an Owner, his family, guests, or invitees, as set forth in this Declaration, in which case the Association shall seek reimbursement of the deductible amount as an Assessment in compliance with and under the terms of this Declaration.

(b) Owners of a Parcel shall be responsible to pay or absorb the deductible related to damage to their Parcel/Townhome.

(c) The Association may adopt guidelines to further specify and address responsibilities for deductibles.

Section 9.17 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense.

Section 9.18 Association as Attorney-in-Fact. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to this Article upon their damage or destruction as provided in this Declaration, or a complete or partial taking or condemnation as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.

Section 9.19 Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary in this Declaration, the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in payment of Assessments owed to the Association under this Declaration hereof, then the Association may retain and apply such proceeds recovered to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

## **ARTICLE 10 DEVELOPMENT RIGHTS**

Section 10.1 Development Rights and Special Declarant Rights. Declarant reserves, through 7 years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

(a) Except for Units not then owned by Declarant (for which the consent of that Owner would be required), to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements and the Limited Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements and the Limited Common Elements, assign areas designated as Common Elements to a Unit as a Limited Common Elements, subdivide Units or complete or make improvements, as the same may be indicated on the Map or on plats filed of record or filed with the Declaration;

(b) The right to create or construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements or to convert Common Elements into Units;

(c) The right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions; and

(d) The right to merge or consolidate the Community with another planned community.

Section 10.2 Additional Reserved Rights. In addition to the rights set forth above, Declarant also reserves the following additional rights:

(a) Sales. The right to maintain mobile and other sales offices, parking, management offices and models in Units or on the Common Area.

(b) Signs. The right to maintain signs and advertising at the Community and to advertise the Community or other communities developed or managed by or affiliated with Declarant.

(c) Dedications. The right to establish, from time to time, by dedication or otherwise, public streets, utility and other easements for purposes including, but not limited to,

public access, access paths, walkways, plazas, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and utility service, and to create other reservations, exceptions and exclusions.

(d) Use Agreements. The rights to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance and regulation of parking and/or recreational facilities and/or Common Elements, which may or may not be a part of the Community.

(e) Construction Easement. Declarant and its assignees expressly reserve the right to perform construction, warranty work and repairs, and to store materials in secure areas, in Units and in Common Elements, and the right to control such construction, work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Unit Owner or holder of a security interest. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for such construction, warranty work and repairs and for exercising any other reserved rights in this Declaration. Such easement includes, but is not limited to, the right to excavate and to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Real Estate.

(f) Access Easement. Declarant and its successors and assigns shall have an access easement to and from any real property accessible through the Community.

(g) Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration or by the Act.

Section 10.3 Rights Transferable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of County of Jefferson. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Unit Owners or any holders of a security interest in a Unit. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of County of Jefferson. Such instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) with the consent of the appropriate Unit Owner(s) or any holders of security interests in the Unit(s).

Section 10.4 No Further Authorizations Needed. The consent of Unit Owners or holders of security interests shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at its or their sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted.

Section 10.5 Amendment of the Declaration or Map. If Declarant or its assignees elect to exercise any reserved rights, that party shall comply with the Act.

Section 10.6 Interpretation. Recording of amendments to the Declaration and the Map or plat pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically (a) vest in each existing Unit Owner the reallocated Allocated Interests appurtenant to their Unit, and (b) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any additional improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any amendment of the Declaration or the Map. Reference to the Declaration and Map in any instrument shall be deemed to include all amendments to the Declaration and the Map without specific reference thereto.

Section 10.7 Termination of Reserved Rights. The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by Declarant, recorded in the records of the Clerk and Recorder of County of Jefferson, State of Colorado.

## ARTICLE 11 MISCELLANEOUS AND GENERAL PROVISIONS

### Section 11.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Parcel shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

- (i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Parcel;
- (ii) suspending the right to vote;
- (iii) exercising self-help or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Parcel in violation of the Governing Documents and to restore the Parcel to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration;

(v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Parcel into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Parcel and the Owner as a specific Assessment. The Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action.

Section 11.2 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 11.3 Covenants to Run. All of the covenants, easements, servitudes and provisions contained in this Declaration shall be a burden on the title to all of the lands within the Property, and the benefits thereof shall inure to the owners of all of the lands within the Property.

Section 11.4 Attorney Fees. If an Owner fails to pay any Assessment or any other amount due to the Association as provided in this Declaration, the Association may require

reimbursement for reasonable attorney fees and costs, without the necessity of commencing a legal proceeding. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner, shall be charged as an Assessment and shall constitute a lien against the Parcel.

Section 11.5 Termination. Termination of this Common Interest Community shall be in accordance with the Act.

Section 11.6 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of at least 67% of all votes in the Association. Said votes may be obtained in any method allowed by the Governing Documents of the Association. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the City and County of Denver 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 11.7 Amendment of Declaration by the Association. The Association shall have the authority to amend, revise, remove, repeal or add any provision to this Declaration, without Owner or mortgagee approval, in order to conform with any applicable state, city or federal law, and/or to bring the Declaration into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") pursuant to federal law.

Section 11.8 Interpretation. The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration.

Section 11.9 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 11.10 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 11.11 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 11.12 Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

Section 11.13 Challenge to this Amendment. All challenges to the validity of this amendment must be made within one year after the date of recording of this document.

Section 11.14 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.

IN WITNESS THEREOF, Declarant has caused this Declaration and Party Wall Agreement of Scholar's Walk Townhomes to be executed by its duly authorized agents.

Mile High Banks

By:   
Title: Assistant U.P.

STATE OF COLORADO )  
COUNTY OF Boulder ) ss.

The foregoing was acknowledged before me this 26<sup>th</sup> day of April,  
2010, by Danell Skorupski, as Assistant Vice President of  
Mile High Banks.

Witness my hand and official seal.

My commission expires: 3-20-14.

Janetta K. Smith  
Notary Public

JANETTA K. SMITH  
NOTARY PUBLIC  
STATE OF COLORADO

My Commission Expires March 20, 2014

**EXHIBIT A**

Lots 3-6, inclusive, Block 7,  
ILLIFFS UNIVERSITY ADDITION  
City and County of Denver,  
State of Colorado,

Aka 2304-2318 S. University Boulevard, Denver, Colorado

Te above described Real Estate is made or is to be made subject to that SCHOLAR'S WALK TOWNHOMES PLANNED COMMUNITY MAP AND LAND SURVEY PLAT, as recorded or to be recorded in the records of the Clerk and Recorder of the City and County of Denver, State of Colorado, creating 8 Parcels and Common Elements. The descriptions of the Parcels shall be as set forth in the SCHOLAR'S WALK TOWNHOMES PLANNED COMMUNITY MAP AND LAND SURVEY PLAT.

1. Sanitary Sewer Easement and Indemnity Agreement recorded October 9, 2006 at Reception NO. 2006161164.
2. Scholar's Walk – PD recorded August 18, 2006 at Reception No. 2006133476.
3. Public Service Company of Colorado Easement recorded July 25, 2008 at Reception No. 2008103306.
4. Notes and easements as shown on the recorded plat of Iliff's University Addition .

**Exhibit B**

TRACT A,  
SCHOLAR'S WALK TOWNHOMES  
PLANNED COMMUNITY MAP AND LAND SURVEY PLAT,  
as recorded or to be recorded in the records of the Clerk and  
Recorder of the City and County of Denver, State of Colorado