

After Recording Return To:  
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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
CINNIMON DOWN THE STREET**

**(a Planned Community)**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CINNIMON DOWN THE STREET  
(a Planned Community)**

THIS AMENDED AND RESTATED DECLARATION is made effective upon recording.

**RECITALS**

A. Declarant, Creative Shelters, Inc., a Colorado corporation, recorded that certain Declaration of Covenants, Conditions and Restrictions for Cinnimon Down the Street in the real property records of Arapahoe County, Colorado on November 19, 1975, at Reception No. 1519892 in Book 2393 at Page 618, as amended and supplemented by the following:

(1) First Supplement to the Declaration of Covenants, Conditions and Restrictions for Cinnimon Down the Street recorded in the real property records of Arapahoe County, Colorado on March 16, 1976, at Reception No. 1541155 in Book 2428 at Page 7;

(collectively, the "Original Declaration") subjecting the real estate described therein to the terms and conditions set forth in the Original Declaration;

B. The Owners and the Association desire to amend and restate all provisions of the Original Declaration, as amended and supplemented, by virtue of this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Cinnimon Down the Street ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto shall be superseded and replaced by this Declaration.

C. The Original Declaration provides for and allows for this Declaration in Article XIII, Section 4, which provides as follows:

This Declaration may be amended only by an instrument signed by not less than seventy-five percent (75%) of the first mortgagees of each lot within the Properties;

D. Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217, more than 50% of the votes in the Association must approve any amendments to the Declaration.

E. All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means;

F. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

G. The purposes of the amendments in this Declaration are to remove unreasonable restrictions on the community, remove developer "boilerplate" language that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions.

H. The purpose of the Association as provided in the Declaration is to preserve the value and desirability of the Community and the Lots and to further the interests of the residents of the Community and Members of the Association; and

I. Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217, Owners representing more than 50% of the votes in the Association and 75% of the first mortgagees have approved this Declaration, or alternatively, a Court Order entered by the District Court for Arapahoe County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

NOW THEREFORE, the Original Declaration is amended and restated as follows:

## **ARTICLE 1 DEFINITIONS**

Section 1.1 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) "Assessment" shall include all Common Expense Assessments, insurance Assessments, utility Assessments, and any other expense levied to a Lot pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(c) "Association" shall mean and refer to C.D.S. Homeowners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

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

(e) “Common Area” or “Common Elements” shall mean all real property owned by the Association for the common use and enjoyment of the Owners, including Limited Common Area, together with all improvements located thereon and all common property owned by the Association, but excluding the Lots, and shall include any Common Area located upon any real property which is annexed to the Property.

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

(g) “Community” or “Cinnamon Down the Street Community” shall mean the planned community created by the Original Declaration, as amended and restated by this Declaration, consisting of the Property, Common Area, and any improvements constructed on the Property and the Common Area.

(h) “Design Review Committee” or “Committee” shall mean the committee appointed by the Board of Directors pursuant to this Declaration for the purpose of administering the design approval and design review provisions contained in this Declaration.

(i) “Governing Documents” shall mean this Declaration, the Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as they may be amended from time to time.

(j) “Limited Common Area” shall mean those portions of the Common Area, if any, which are limited to and reserved for the exclusive use of one or more, but fewer than all of the Owners.

(k) “Lot” or “Unit” shall mean and refer to any of the Lots shown upon any recorded subdivision map or plat of the Property, together with all appurtenances thereto and improvements now or hereafter located thereon, with the exception of the Common Area.

(l) “Map” or “Plat” shall mean and refer to the map(s) and/or plat(s) of the Property and improvements that are subject to this Declaration and which are designated in the Map or Plat recorded in the records of the Office of the Clerk and Recorder of Arapahoe County. 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.

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



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

(o) “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.

(p) “Property” shall mean the property described in or which is subject to the Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(q) “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.

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

## **ARTICLE 2**

### **NAMES/DESCRIPTION OF PROPERTY/EASEMENTS**

Section 2.1 Name and Type. The type of Common Interest Community is a Planned Community. The name of the Planned Community is Cinnamon Down the Street.” The name of the Association is the “C.D.S. Homeowners Association, Inc.”

Section 2.2 Property. The Community is located in Arapahoe County, State of Colorado. The Property of the Community is described in Exhibit A of this Declaration and/or as is consistent with the common scheme and plan for the creation and operation of the Community. The Property currently consists of 100 Lots. Easements for utilities and other purposes over and across the Lots 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 Limited Common Area.

(a) The following portions of the Common Area are Limited Common Area assigned to the Lots as stated:

(i) Garages which have been assigned by the Association to Owners.

(b) The Association may modify and reassign Limited Common Area without a membership vote, but only with consent of the Owner to whose Unit the Limited Common Area is currently assigned and with Board approval. The Association may also upon Board approval, without a membership vote, assign or reassign Limited Common Area not previously assigned with the consent of the affected Owner(s) and the Association, provided that any such assignment or reassignment shall be made in accordance with the Act.

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 the 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 multi-family 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 Easement.

(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 Lot to perform the duties of operation, installation, maintenance, repair and replacement of the Lot, 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 Lots 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 Lots, 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 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 Lots and in and upon adjacent Townhomes for purposes of common 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 Lot 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.

Section 2.7 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 Design Review Committee, shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Lot 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 2.8 Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated into any Lot 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 Lot 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 Lot 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 Lot. 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 2.9 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of Owners;
- (b) the right of the Association to adopt Rules and Regulations governing the use of the Common Area;
- (c) the right of the Association, upon approval of at least 67% of the total Association vote, to mortgage the Common Area as security for that purpose, provided, that the rights of such mortgage shall be subordinate to the rights of the homeowners;
- (d) 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;

(e) 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;

(f) the right of the Association to suspend the voting rights and the right to use of any Common Area for a period not to exceed 60 days or during any period of violation of any other 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;

(g) the right of the Association to close portions of the Common Area for maintenance, repair, replacement, and improvement; and

(h) the right of the Association to change use of, add or remove improvements to the Common Area.

Section 2.10 Delegation of Use. Owners may delegate, in accordance with the Bylaws and Rules and Regulations adopted by the Board of Directors, his right of enjoyment to the Common Area to the members of his family, his 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 Lot, the Owner shall not be entitled to use the Common Area and 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 Lot. Ownership of a Lot shall be the sole qualification for membership. Each Lot shall be entitled to cast one vote. Fractional and cumulative voting are prohibited.

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

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

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 Lot 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, to the extent it applies to communities created prior to July 1, 1992, 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 effect 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 agreement shall be by written contract having a term of no more than three years and shall be subject to cancellation by the Association on 30 days notice, with or without cause, and without a cancellation fee. 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 Indemnification. To the full extent permitted by law, each officer, director, committee member and volunteer of the Association shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member, or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member, or volunteer at the time such expenses are incurred, pursuant to the indemnification provisions set forth in the Bylaws and by Colorado law.

Section 3.7 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 3.8 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. The Association shall 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.

#### **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.

(a) The Association shall maintain and keep in good repair as a Common Expense the following:

- (i) all Common Areas as defined by the site and plat maps filed with the Clerk and Recorder for Arapahoe County, Colorado;
- (ii) all portions of the Townhome roof(s) and the roof(s) support systems, including the roof(s) joists and cross braces, provided that if the Association replaces a Townhome roof, the Association must also replace the skylights within or attached to such roof, and provided further, the Association shall have the authority to assess the Townhome Owner for any costs related to the replacement of such skylight;
- (iii) periodic painting, staining, cleaning, repair and/or replacement of siding and fascia of exterior surfaces of the Townhomes, exterior window frames, and entry doors and door frames, on a schedule to be determined by the Association;
- (iv) maintenance, replacement, repair, and/or painting or staining of the exterior patio and perimeter fences;
- (v) all exterior light fixtures and light bulbs, except for lights within gated areas on the Lots, which shall be the Lot Owner's responsibility;
- (vi) all chimney caps;

(vii) all sewer lines, pipes and other utility lines up to the point such pipes and lines enter the Lot;

(viii) any sprinkler/irrigation system located in the Community;

(ix) main water shut-off valve to each four common Townhomes within the same building;

(x) trash removal; and

(xi) snow clearing; provided that the Board shall have the discretion to determine the amount of snow on sidewalks and roads that will require removal.

(b) Association Discretion. The Association may, in its sole discretion, assume the obligation for maintenance or repair of additional property, either real or personal, that lies within or outside the Community. The Association shall have the right to assume such obligation even if the obligation currently lies with Owners or other entities, provided however, the Association shall provide Owners a minimum of 30 days prior written notice of any such change. The Association, in its sole discretion, shall determine the time and manner in which any maintenance, whether required or assumed, shall be performed as well as the color or type of materials used.

(c) Maintenance of Common Area by Owner. Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Area or any portion of the Lot that is Association maintenance responsibility by an Owner or occupant 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.

(d) Damage to Lot by Association. The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

(e) Liability of Association.

(i) The Association shall not be liable for injury or damage to person or property caused by or resulting from any water, rain, snow or ice which may leak or flow from any portion of the Common Area or from any device, pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except:

(A) for injuries or damages arising after the Owner of a Lot has put the Association on written notice of a specific leak or flow from any portion of the Common Area or device, pipe, drain, conduit, appliance or equipment for which the Association has a maintenance responsibility; and

(B) only if the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter.

(ii) The Association shall not be liable to the Owner of any Lot or such Owner's tenant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Area.

(iii) The Association shall not be liable to any Owner, or any Owner's tenant, 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 Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

(iv) 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 4.2 Owner's Maintenance Responsibility. Except as otherwise provided in this Declaration, each Owner shall have the obligation to maintain, repair and replace all portions of the Owner's Lot. Such maintenance shall include, but not be limited to the following:

(a) all glass surfaces, windows, window frames (except for periodic painting and/or staining of the exterior window frames), window screens, casings and locks (provided, however, no changes that affect the exterior appearance of the windows may be made unless prior written approval is obtained from the Board) and window wells;

(b) all doors, door screens, doorways, door frames, hardware and locks and door chimes that are part of the entry system of the Lot (except for periodic painting and/or staining of exterior doors);



(c) any fireplace serving the Townhome and all components of the fireplace, including the chimney box and flue, but specifically excluding the chimney cap, which shall be the Association's obligation;

(d) any skylight serving the Townhome, including but not limited to repair or leaking, condensation, and cracking; provided, however, the Association shall be responsible for any repair or replacement of skylights which is a direct result of roof replacement as set forth in this Declaration, the cost of which may be assessed to the Unit Owner;

(e) any patio, balcony, yard or deck;

(f) any portion of the heating and air conditioning system, including the air conditioning compressor and the fan coil serving the Townhome, whether located on the Lot or on the Common Area;

(g) any pipes, lines, ducts, conduits or other apparatus which serve only the Lot, from the point where the utilities enter the Lot, including wiring and other apparatus contained within a party wall;

(h) all utility meters, breaker boxes, or other apparatus serving only the Lot whether located within or without the boundaries of the Lot, including but not limited to the water shut-off valve (including pressure) to a Townhome;

(i) all communications, television, telephone and electrical lines, receptacles and boxes serving any Lot whether located within or without the boundaries of the Lot;

(j) any lights, light fixtures or light bulbs located within the fenced area on a Lot;

(k) the maintenance, repair, improvement, and replacement of any garage door(s) serving a Townhome, including but not limited to garage door openers and tracks and all parts thereto;

(l) maintenance, repair, replacement, and improvement of all interior portions of the garage appurtenant to a Townhome, including but not limited to drywall, paint, and any upgrades of any type;

(m) all portions of an Owner's Townhome not required to be maintained by the Association pursuant to this Declaration, including but not limited to the repair of any penetrations, holes, and cracks to the interior walls;

(n) the individual water shut-off valve serving only the individual Townhome (including pressure);

(o) any Association approved additions or alterations made by the Owner to a Lot;

The Association, upon written resolution of the Board, shall have the authority to require all Owners to do any act or perform any work involving portions of the Community which are the Owner's maintenance responsibility, which will, in the Association's sole discretion, conserve common utilities.

The Association shall have right, but not the obligation, to install water, electricity or other commonly provided utility conservation devices (including, but not limited to, toilets and shower heads) as a Common Expense of the Association. If the Association installs such equipment as a Common Expense and the utility provider has a rebate program, the Association shall be entitled to the rebate.

Section 4.3 Owner Responsibilities. Each Owner shall have the responsibility to:

(a) perform his or her maintenance responsibility in such manner so as not to unreasonably disturb other persons in Townhomes;

(b) promptly report in writing to the Association or its agent any defect or need for repairs, for which the Association is responsible;

(c) pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants, guests, with the cost thereof to be added to and become part of the Owner's next chargeable Assessment; and

(d) An Owner shall not be liable for injury or damage to person or property caused by or resulting from the Owner's maintenance or lack of maintenance of the Lot except if the Owner has failed to exercise due care in performing said maintenance. An Owner shall not be liable to any other Owner, or any Owner's occupant, guest or family or the Association for any damage or injury caused in whole or in part by the Owner's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Owner's failure to discharge its responsibilities.

Section 4.4 Window Replacement. Notwithstanding the responsibility of the Owners for windows, as part of a building renovation project, the Association may replace all Townhome windows in the Community, subject to the approval of a majority of the Owners present and voting in person or by proxy at a duly called meeting, notice of which shall state the purpose of the meeting. Any expense associated with such window replacement shall be a Common Expense of the Association allocated among the Lots

based on the number of windows in each Townhome replaced and the cost of such replacement.

Section 4.5 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 Lot and personal property, to any other Lot 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 Lot, to any other Lot or to the Common Area if the Owner fails to meet the requirements of this Section.

Section 4.6 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 4.7 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 be given a reasonable number of days commensurate with the situation, as determined in the sole discretion of the Board, 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 a reasonable number of days commensurate with the situation, as determined in the sole discretion of the Board. 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 Lot, 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 Lot, shall become a lien against the Lot, and shall be collected as provided in this Declaration for the collection of Assessments.

Section 4.8 Maintenance and Insurance Chart. As a Common Expense, the Association may periodically cause to be prepared a chart summarizing the repair, replacement, maintenance and insurance obligations of Owners and the Association, as outlined in this Declaration. Such repair, replacement, maintenance and insurance chart shall be made available to Owners upon written request.

## **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 Lots shall constitute a 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 ASSESSMENTS**

Section 6.1 Creation of Association Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed for a Lot, 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 Lot 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 Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. 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 Assessments by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot against which the 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. Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Lots equally.

Section 6.2 Basis of Assessments. The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year.

Section 6.3 Annual Assessment. The budget for annual Assessments shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by votes of Owners representing a majority of the total Association vote. Assessments for Common Expenses shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 6.4 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. The proposed Special Assessment shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The proposed Special Assessment may be vetoed by a majority of the total Association vote. A proposed Special Assessment will be ratified unless Owners representing more than a majority of the votes allocated to the Lots that will be subject to the special Assessment vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

Section 6.5 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 Lot or any occupant thereof, including but not limited to: insurance deductibles; Lot insurance; improvement, repair, replacement and maintenance specific to a Lot; 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 Lots;

(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 Lot and are reasonably determined to be allocable to a particular Lot.

Section 6.6 Assessment Reserves/Working Capital. Each Owner, at the time of closing of the sale of a Lot, shall make a non-refundable contribution to the Association in an amount of three month's worth of the current amount of the Common Expense Assessment, or such other amount as determined in the sole discretion of the Board provided such amount is at least one month's worth of the current amount of the Common Expense Assessment. Such contribution shall, until used, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the transfer of his or her Lot, an Owner shall be entitled to a credit from his or her transferee (but not from the Association) for the aforesaid contribution to the working capital fund.

Section 6.7 Application of Payments. Based upon Board policy, when an Owner's account is turned over to the Association's attorney for collection, all sums collected on such delinquent account 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 Lot 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 6.8 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, may 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 may 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 Lot. 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 Lot 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 a Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot 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 6.9 Assignment of Rents. If a Lot 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 Lot are more than 30 days delinquent, the Board may collect, and the occupant or lessee shall pay to the Board, the rent for any Lot 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 Lot 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 with respect to a Lot or Owner, nor in derogation of the exercise of any rights to rents by the holder of a first lien security interest of a Lot. 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 Lot in the same manner as any other Assessment under this Declaration.

Section 6.10 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. 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 Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said Assessment lien. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 6.11 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 Lots within the Cinnamon Down the Street Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

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 Lot, acknowledge that they have been given notice, and that:

(a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.

(b) The Board may, 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. All Lots 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. Lots shall not be used for any purpose other than a residential dwelling except as set forth in this Section. Home occupations shall be allowed so long as the home occupations are incidental and secondary to the use of the Lot and does not change the residential character thereof, comply with local zoning ordinances and regulations, and comply with this Declaration. External advertising of any kind is prohibited. In no instance shall a home occupation be visible externally, nor shall any home occupation employ any person other than the Owner. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment, including semi trailers; (e) the use or rental of any structure on a Lot for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes.

If the Owner of a Lot is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing the name(s) of the person(s) who will occupy the Lot, and any such change must be designated in writing within 10 days of the change.

Section 7.4 Leasing and Occupancy. Any Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the 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 Lot by any person other than the Owner. For the purposes of this Declaration, occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall not constitute leasing.

(b) Short term occupancies and rentals (of less than six months) of Lots shall be prohibited, without prior written permission from the Association.

(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. Owners are required to provide tenants with copies of the current Declaration and any Rules and Regulations of the Association, and may also provide the Articles of Incorporation and Bylaws to the tenant if the Owner so desires.

(d) Each Owner who leases his or her Lot shall provide the Association, prior to tenant occupancy, 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 encouraged to conduct full background checks, including credit and criminal reports, for each lease applicant; provided, however, the Association shall have no duty or obligation to ensure background checks have been conducted on lease applicants.

(f) All occupancies, leases and rental agreements of Lots 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 Lots 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, 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 Lot.

(h) Leases shall be for or of the entire Lot. Garages may not be leased separate from the Townhome.

(i) All Owners who reside at a place other than the Lot shall provide to the Association an address and phone number(s) where the Owner can be reached in 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 Landscaping Requirements and Restrictions.

(a) The landscaping of each Lot within enclosed fence areas shall be maintained by the Owner in a good, neat, attractive and well-kept condition, whether xeriscaped or turf, which shall include lawns mowed, if any, and hedges, shrubs, and trees pruned and trimmed and removal of weeds and debris.

(b) No uncontrolled and/or deliberate plant growth on the exterior walls of Townhomes shall be permitted on any Lot.

(c) No plant growth on either side of a Lot's fence and/or any Owner landscaping that has elevated the interior ground where such landscaping meets the fence shall be permitted. Plant life or trees may not displace a fence, the ground, or any fence supports;

(d) Trellises must be placed at a reasonable distance from the outside walls of the Townhomes and/or outside fence to allow for maintenance, as determined in the sole discretion of the Board of Directors. Owners shall also place trellises at a reasonable distance when inside the fence so that the trellises do not fall against the fence.

(e) Owners shall be responsible for tree roots from trees which are located within the enclosed, fenced portion of the Lot, including for any damages caused by such tree roots to the sprinkler system and pipes.

(f) Damage(s) caused by any Owner in violation of the provisions of this Section shall be the responsibility of the Owner and Assessments may be charged to such Owner pursuant to this Declaration.

Section 7.6 Use of Patios and Balconies. Nothing shall be hung from or placed outside the Townhome, including patios and balconies, unless allowed in the Rules and Regulations.

Section 7.7 Restrictions on Pets. Pets may be kept on a Lot, if the Pet is not a nuisance to other residents. Pursuant to local ordinances, no more than three dogs over the age of 180 days may be kept on a Lot. 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. 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. Pets may not be kept for any commercial purposes. When on Common Area, Pets must be on a leash or in a pet carrier and under control. Pet waste(s) left by Pets upon the Common Area and/or any balcony or patio must be removed promptly by the owner of the Pet or the person responsible for the Pet. 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. The Association shall have the authority to adopt Rules and Regulations further restricting Pets in the Community, including fines for violations of this Declaration and such Rules and Regulations.

Section 7.8 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 Lot 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 Lot.

Section 7.9 Tanks. No tanks of any kind (either elevated or buried), except for small portable tanks associated with an outdoor gas grill, shall be erected, placed or permitted upon any Lot without the prior written approval of the Association.

Section 7.10 Nuisances. No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Community by residents. Further, no improper, offensive or unlawful use shall be permitted within the Cinnimon Down the Street 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 7.11 Vehicular Parking, Storage, and Repairs.

(a) Parking upon any Common Area shall be regulated by the Association. The Association shall have the authority to adopt Rules and Regulations further restricting parking in the Community in its sole discretion.

(b) No more than three vehicles per Lot may be parked in the Community.

(c) Garages are Limited Common Areas, as set forth in this Declaration, and shall be used solely for the parking and storage of an Owner's vehicle. At no time shall garages be used for any commercial purpose. Further, garages are appurtenant to the Townhome and the Lot and may not be sold separate from the Lot nor be subletted at any time.

(d) The following may not be parked or stored within the Community, unless such parking or storage is within a garage on a Lot, or unless authorized in writing by the Association or allowed by Colorado law: oversized vehicles, trucks or pickup trucks over one ton, trailers, hauling trailers, or other oversized types of vehicles or equipment as prohibited by rule or regulation. The foregoing may be parked as a temporary expedience for loading or delivery of goods or services. Overnight parking is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of any Common Area, Lots, or any improvement located thereon.

(e) No abandoned, unlicensed or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable, 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 parked vehicle may impede the safe and efficient use of the streets by residents, obstruct emergency access to/from the Community or interfere with the reasonable needs of other residents to use Community streets.

(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 outside of garages. 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) Parking or driving on lawns breaks sprinklers. In order to prevent sprinkler system damage, no driving or parking of vehicles off of paved areas in the Community shall be permitted at any time.

(j) 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.

(k) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot or Townhome (including the stairs to a 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 Lot, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(l) 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 7.12 Use of Common Area.** There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of any Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Association.

Section 7.13 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 7.14 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 barbeque 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 Lot or Lots (including within the garage and Townhome) which creates a fire hazard or is in violation of applicable fire prevention regulations

Section 7.15 Restrictions on Clotheslines and Storage. No clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted on any Lot unless the same, in each instance, is within the enclosed courtyard on a Lot and is concealed from view, or unless expressly permitted in writing by the Association. Owners shall deem to hold the Association harmless from any claim resulting from any clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Lot.

Section 7.16 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 Lot except such sign or signs as may be approved in writing by the Association. Political signs may be displayed without Board approval no earlier than 45 days prior to an election/vote, and no later than seven days after an election/vote. Political signs must be displayed in accordance with the Association's Rules and Regulations. Up to two professionally lettered "For Sale" or "For Rent" signs 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 Townhome.

Section 7.17 Outbuildings. An "outbuilding" shall mean an enclosed or covered structure not directly attached to the dwelling it serves. No outbuilding or temporary structure, including sheds, trailers, mobile homes, tents, shacks, barns, or detached garages or carports, shall be allowed on any Lot unless approved in writing by the Board of Directors or the Design Review Committee. Further, no outbuilding or temporary



structure shall be used on any Lot at any time for residential purposes, either temporarily or permanently.

Section 7.18 Trash Removal Restriction. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Lot, unless placed in a suitable container suitably located. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or receptacles shall be maintained in an exposed or unsightly manner. 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 7.19 Restrictions on Structural Alterations and Exterior Improvements. No structural alterations to any Townhome or any Common Area shall be done by any Owner, without the prior written approval of the Association. No improvement to the exterior of a building which includes a Townhome or to the Common Area shall be constructed, erected, placed or installed within the Community unless complete plans and specifications thereto shall have been first submitted to and approved in writing by the Association.

Section 7.20 Restriction Heating and Cooling Apparatus. No types of refrigerating, cooling, or heating apparatus (e.g. swamp coolers, air conditioning units, etc.) shall be placed, mounted, or installed in windows.

Section 7.21 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 7.22 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 7.23 Compliance With Other Laws. 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 7.24 Use of the Words Cinnimon Down the Street and C.D.S. Homeowners Association, Inc. No resident or Owner shall use the words Cinnimon Down the Street or C.D.S. Homeowners Association, Inc. 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**

### **DESIGN REVIEW AND APPROVAL**

Section 8.1 Required Approval. No structures, including residences, outbuildings, 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 Lot, nor shall any alteration or change to the exterior of the improvements, the exterior of a Townhome, to a Lot or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced unless complete plans and specifications shall have been first submitted to and approved in writing by the Design Review Committee (“Committee”) 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 (plotted 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 Lot 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 Lot 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 Design Criteria. The Committee shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth 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, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of improvements on nearby Lots, preservation of aesthetic beauty and conformity with the specifications and purposes generally set 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 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 Design Guidelines. The Committee may propose design 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 denied; 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 design 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 six 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 six months 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 design 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 design 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 design 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 Real Property Insurance on the Townhomes and Common Area**

(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 Area, the Townhomes, and the other property of the Association.

(b) The Association shall provide insurance on the Townhomes that shall exclude the finished surfaces of perimeter and partition walls, finished surfaces of floors and ceilings within a Townhome (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet and any floor covering). The insurance obtained by the Association on the Units is not required to include improvements and betterments installed by Owners, personal property of the Owners, or liability for incidents occurring within the Units or through the Owners' personal actions. 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 Arapahoe County.

(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 Arapahoe County.

(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, including, but not limited to ordinance or law coverage, demolition cost coverage and increased cost of construction.

(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 obtain 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 Lot and the facilities in the Common Area. (Refer to Section 9.9(e) of this Declaration.)

(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.

(i) The Board of Directors shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs. Each Owner shall have the right to obtain additional coverage at his or her own expense.

**Section 9.3 Liability Insurance.** 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 Lots and the Common Area. The foregoing liability insurance shall name the Association as the insured.

Section 9.4 Employee Dishonesty Insurance. The Association shall obtain employee dishonesty coverage or employee dishonesty bonds (previously or also known as “fidelity coverage” and “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 employee dishonesty 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 employee dishonesty insurance covering itself and its employees and naming the Association as the loss payee.

Section 9.5 Association Flood Insurance. The Association shall obtain flood insurance to the extent required by the Federal Emergency Management Agency (FEMA) or any other governmental agency.

Section 9.6 Workers Compensation. The Association shall obtain and maintain workers’ compensation and employer’s liability insurance and all other similar insurance in the event there are employees of the Association in the amounts and in forms now or hereafter required by law.

Section 9.7 Director and Officer Liability Insurance. The Association shall purchase directors’ and officers’ insurance in an amount reasonably necessary to protect the directors and officers.

Section 9.8 Other Insurance. 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 9.9 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) 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.

(e) 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.

(f) 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.

(g) 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 9.10 Insurance Obtained by Owners. Each Owner shall be responsible for maintaining insurance covering his or her Lot to the extent not covered by policies maintained by the Association. Such insurance shall include, but may not be limited to, furnishings and personal or other property in the Townhome and liability insurance for injury, death, or damage in the Townhome or upon the Lot. 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 9.11 Insurance Premium. 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 9.12 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 9.13 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 9.14 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any 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 9.15 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 9.16 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 9.17 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 results from the negligence or wilful act 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. Any Owner who receives the proceeds of any Association insurance shall be responsible for the payment of the deductible in proportion to the percentage of insurance proceeds received. Such deductible shall be due within 30 days of notification and shall be considered a Common Expense Assessment allocated directly to the Lot and shall be collected as provided in this Declaration.

(b) Any loss falling within the deductible portion of the Association policies to property for which Owners have repair and maintenance responsibility shall be paid or absorbed by the Owners of the Lots involved in the same proportion as each Owner's claim bears to the total amount of insurance proceeds paid for the occurrence.

(c) If a Lot or Party Wall is damaged, then the Owner of that Lot or the Owners sharing the Party Wall shall have primary responsibility, either directly or through his insurance company, for handling and paying for, any work, repairs, reconstruction or replacement pursuant to the maintenance requirements set forth in this Declaration (see Article 4).

Section 9.18 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. This Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners.

Section 9.19 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 9.20 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 OF THE ASSOCIATION**

Section 10.1 Development Rights. The Association shall have and reserves, for itself, the following Development Rights:

- (a) the right to create Lots from or to convert Common Areas into Lots, convey any Lot created from the Common Areas, subdivide the Common Areas, separately or jointly, with any party as may be jointly granted Development Rights from all Owners with the Association; provided, further, that if not expressly assigned to the Association or any other person, the net proceeds from any conveyance of a Lot created by the Association, shall be held by the Association on behalf of Owners, pursuant to their Allocated Interests prior to the new Lot;
- (b) the right to relocate boundaries between adjoining Lots (as allowed in the Act); enlarge Lots; enlarge the Common Areas; eliminate, reduce or diminish the size of Lots owned by it or as applied for by an Owner; reduce or diminish the size of areas of the Common Areas; subdivide Lots; or complete or make improvements, as the same may be indicated on Maps filed of record or filed with the Declaration;
- (c) the right to construct additional Lots, Common Areas as part of the exercise of any Development Rights;
- (d) the right to exercise any Development Rights reserved or allowed in the Act;
- (e) the right to amend the Declaration in connection with the exercise of any development right;
- (f) the right to amend the Maps in connection with the exercise of any development right; and
- (g) the right to exercise any additional reserved right created by any other provision of this Declaration.

Section 10.2 Construction and Access Easement. In addition to the rights set forth above, Association shall have and also reserves the right to perform warranty work, repairs and construction work and to store materials in secure areas in Common Areas, and the future right to control such work and repairs, and the right of access thereto. All work may be performed without the consent or approval of any Owner or holder of a security interest. The Association and its assignees have such an access easement through the Common Areas and an access easement through the Community as may be reasonably necessary for exercising reserved rights in this Declaration.

Section 10.3 Utility Reservations. The Association hereby creates and reserves to itself, a blanket easement upon, across, over and under the Property, the Community and the Lots for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment, effluent irrigation systems, gas, telephone, electricity and master television antenna or cable systems or subsequent utility as may be desired or provided. By virtue of this blanket easement, it shall be expressly permissible for the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Property and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, telephone and television wires, circuits, conduits and meters, and such other improvements or facilities. 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 Property is reserved, provided the easement granted does not conflict with the terms hereof. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property. Any damage to any improvement caused by 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 liable for any damage caused by any third party, including, without limitation, any utility company.

Section 10.4 Development of the Community — Supplemental Declarations. Before another Lot is created and conveyed by the Association to an Owner, and before any Lot owned by the Association is eliminated or withdrawn, a Supplemental Declaration must be authorized by the Board of Directors and recorded, which may supplement the covenants, conditions and restrictions contained in this Declaration. Upon recordation of a Supplemental Declaration, all of the Property shall be subject to or no longer bound by all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, as amended or supplemented by a Supplemental Declaration, as applicable.

Supplemental Declarations may include the following: (a) the Supplemental Declaration may be executed and acknowledged by the Association (acting through the Board of Directors) or by the Owner or Owners of a Lot covered by the Supplemental Declaration; (b) the Supplemental Declaration must contain the executed and acknowledged written consent of authorized officers of the Association; (c) the Supplemental Declaration may contain a legal description of the property subject thereto;

(d) the Supplemental Declaration may contain a reference to this Declaration; and (e) Supplemental Declarations may impose, on the portion of the Property effected thereby, or any existing portion of the Community, covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions in addition to those set forth in this Declaration, taking into account the unique and particular aspects of the property covered thereby.

Section 10.5 Restrictions on Subordinate Covenants and Maps. The prior written consent of the Association shall be required by any Owner or with regard to any Lot (a) before junior or subordinate covenants may be filed of record against all or any portion of a Lot, and (b) before any map, plat or re-subdivision may be filed of record against all or any portion of a Lot.

In the event an Owner records covenants against all or any part of a Lot without the written consent required by the provisions of this Section, or in the event an Owner records any map, plat or re-subdivision against all or any part of any Lot without the written consent required by the provisions of this Section, the instruments recorded shall be voidable and shall be deemed void by the Association upon the Association recording a notice to that effect.

Section 10.6 Rights Transferable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of the Association may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the County of Arapahoe, State of Colorado. Such instrument shall be executed by the Association 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 Owners or any holders of security interest on a Lot. Any rights created or reserved under this Article or the Act for the benefit of the Association may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of the County of Arapahoe, State of Colorado. Such instrument shall be executed by the transferor and the Association. 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 Owner(s) or any holders of a security interest on a Lot.

Section 10.7 No Further Authorizations Needed. The consent of Owners or holders of Security Interests shall not be required for exercise of any reserved rights set forth in this Declaration, and the Association (acting through its Board of Directors) or its assignees may proceed without limitation at their sole option. The Association or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. The Association or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Lots initially submitted.

Section 10.8 Amendment of the Declaration or Map. If the Association or any assignee elects to exercise any reserved rights, such party shall comply with the Act.

Section 10.9 Interpretation. Recording of amendments to the Declaration and the Map 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 Owner the reallocated Allocated Interests appurtenant to their Lot; and (b) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot. 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 Lots after such amendment is recorded shall be effective to transfer rights in all Common Areas, whether or not reference is made to any Amendment of the Declaration Map. Reference to the Declaration or Map in any instrument shall be deemed to include all Amendments to the Declaration or Map without specific reference thereto.

## **ARTICLE 11 MISCELLANEOUS AND GENERAL PROVISIONS**

### **Section 11.1 Compliance and Enforcement.**

(a) Every Owner and occupant of a Lot 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 Lot;
- (ii) suspending the right to vote or use Common Area;
- (iii) exercising self-help or taking any reasonable 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 Lot in violation of the Governing Documents and to restore the Lot 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 Lot 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, unless prohibited by law.

(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 Lot 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 Termination. Termination of this Common Interest Community shall be in accordance with the Act.

Section 11.5 Attorney Fees. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to pay any Assessment 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 or an Owner's family member, guest, tenant, invitee or licensee, shall be charged as an Assessment and shall constitute a lien against the Lot.

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 51% of the 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 Arapahoe County, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 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. This Declaration shall be construed and governed under the laws of the State of Colorado.

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.

The undersigned, being the president and the Secretary of C.D.S. Homeowners Association, Inc., hereby certify that the Association has obtained written approval of this Amended and Restated Declaration from more than 50% of the votes in the Association of the Owners, and from at least 75% of the first mortgagees, as evidenced by written instruments filed with the records of the Association. Approvals obtained shall remain in effect until this Declaration is approved unless approval is expressly revoked in writing.

**C.D.S. Homeowners Association, Inc.,**  
a Colorado nonprofit corporation

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

ATTEST:

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

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

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as President of C.D.S. Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

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

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

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

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as Secretary of C.D.S. Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

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

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

## **EXHIBIT A**

### **PROPERTY**

Lots 1 through 48, inclusive, Block 1 and Tract A, Block 1 Amendment to CINNIMON DOWN THE STREET, in accordance with the Plat thereof, recorded in Book 28 at Page 95, Arapahoe County Records, State of Colorado; and

Lots 49 through 100, inclusive, and Tract B, Block 1, Amendment to CINNIMON DOWN THE STREET, in accordance with the Plat thereof recorded at Reception No. 1540946 in Book 29 at Page 25, Arapahoe County.