

**PARTY WALL COVENANT
FOR
THE VILLAS AT DEER CREEK-LOTS 48-49**

County of Jefferson, State of Colorado

**PARTY WALL COVENANT
FOR
THE VILLAS AT DEER CREEK-BUILDING 1**

JEFFERSON County, State of Colorado

THIS PARTY WALL COVENANT FOR THE VILLAS AT DEER CREEK (this “**Covenant**”) is made this 2nd day of March, 2023, by Cardel Ken Caryl, LLC, a Colorado limited liability company (“**CARDEL**”).

RECITALS

A. CARDEL is the owner of:

**Lots 48 and 49, inclusive, Block 1,
Deer Creek Golf Club PA-1A
County of Jefferson,
State of Colorado (the “**Property**”).**

The Property is comprised of two (2) “**Homes**.” The Homes are a duplex and are all of the real property that comprise The Villas at Deer Creek-Building 1 project (“**Project**”); there are no common elements, areas or facilities. The Homes are located in the subdivision known as Villas at Deer Creek (the “**Subdivision**”).

B. There lie along and over the shared boundaries of the Homes one shared wall that, in conjunction with the footings and foundation walls underlying, form a structural part of and physically join the Homes (“**Party Walls**”).

C. CARDEL desires to subject the Homes to the covenants, conditions and restrictions as set forth herein.

NOW, THEREFORE, CARDEL does hereby publish and declare the following covenants, conditions and restrictions.

**ARTICLE I
ESTABLISHMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS**

A. Recitals Incorporated. The Recitals set forth above are hereby incorporated into the terms of this Covenant.

B. Covenants to Run with the Project. CARDEL hereby declares that all of the Homes shall be held, sold and conveyed subject to the following covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of the Homes, and which shall run with title to the Homes and be a burden binding on all parties having any right, title or interest in the

Homes, their heirs, personal representatives, successors and assigns and shall inure to the benefit of all Owners (as defined below), their heirs, personal representatives, successors and assigns.

C. Owners and Subsequent Owners Bound. Each provision of this Covenant and each agreement, promise, covenant or undertaking to comply with or to be bound by the provisions of this Covenant that is contained herein shall: (1) be deemed incorporated in each deed or other instrument by which any right, title or interest in any Home is granted, devised or conveyed, whether or not set forth or referred to in such deed or instrument; and (2) by virtue of acceptance of any right, title or interest in a Home by an Owner, such Owner shall be deemed to have accepted, ratified, and adopted these agreements and promises as personal obligations of such Owner and such Owner's heirs, personal representatives, successors and assigns to, with and for the benefit of all other Owners.

D. Owner Defined. As used herein, "**Owner**" shall mean any record owner, including CARDEL, and including a contract seller, but excluding a contract purchaser who is not subject to a binding installment land contract, whether one or more persons or entities, having an ownership interest in or to any Home, but excluding any such person or entity having an interest therein merely as a mortgagee or beneficiary under a deed of trust unless such mortgagee or beneficiary under a deed of trust has acquired title thereto in a foreclosure or any conveyance in lieu of foreclosure. A person or entity ceases to be an Owner upon the conveyance of title to their Home by deed or upon entering into a binding installment land contract. Such cessation of ownership shall not extinguish or otherwise void any unsatisfied obligation of such person or entity existing or arising at or before the time of such conveyance.

E. Home Defined. As used herein, "**Home**" shall mean all of the land included within a lot, together with all appurtenances and improvements, including the residence and all hardscaping and landscaping, now or hereafter located thereon.

F. First Mortgagee Defined. As used herein, "**First Mortgagee**" shall mean the holder, insurer or guarantor of a mortgage, deed of trust, deed to secure debt or any other form of security interest encumbering a Home, that is recorded and has priority of record over all other recorded liens except those made superior by statute (e.g., general ad valorem tax liens and special assessments and, where applicable, mechanics' liens).

G. Master Association. As used herein, "**Master Association**" shall mean the master association established pursuant to the Master Declaration, known as the Ken-Caryl Ranch Master Association, a Colorado nonprofit corporation.

H. Master Association Documents. As used herein, "**Master Association Documents**" shall mean the Master Declaration and the articles of incorporation, the bylaws and all rules and regulations of the Master Association, and resolutions of the Master Board.

I. Master Declaration. As used herein, "**Master Declaration**" means the Amended and Restated Master Declaration of Covenants, Conditions and Restrictions of Ken-Caryl Ranch which

was recorded on June 30, 1978 in the official records for Jefferson County at Reception No. 78059201, as it may be amended, modified or supplemented from time to time.

J. Office Park Association. As used herein, “**Office Park Association**” means the Ken-Caryl Office Park Association.

K. Office Park Declaration. As used herein, “**Office Park Declaration**” means the Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Ken-Caryl Office Park, recorded in the official records for Jefferson County, Colorado on February 19, 2019 at Reception No. 2019012623.

L. Office Park Association Documents. As used herein, “**Office Park Association Documents**” means the Office Park Declaration and the articles of incorporation, the bylaws and all rules and regulations of the Office Park Association, and resolutions of the Master Board.

M. Architectural Committee. As used herein, the “**Architectural Committee**” means the architectural committee or committees created pursuant to the Office Park Declaration. If at any time, there is also an architectural committee created pursuant to the Master Declaration that also has jurisdiction over the Project, then Architectural Committee shall mean the architectural committees created pursuant to both the Office Park Declaration and the Master Declaration.

N. Architectural Committee Rules. As used herein, the “**Architectural Committee Rules**” means the rules adopted by the Architectural Committee(s) pursuant to Section 8.03 of the Master Declaration.

O. District. As used herein, the “**District**” means the Deer Creek Villas Metropolitan District.

P. Access Easement Agreement. As used herein, the “**Access Easement Agreement**” means the Access and Maintenance Easement Agreement (Landscape and Hardscape Improvements) dated February 7, 2023, by and between Cardel Ken Caryl, LLC and the District, recorded in the official records of Jefferson County at Reception No. 2023000006844.

Q. Exemption from Act. The Project is not a common interest community and is not subject to the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101 *et seq.* The Project does not have common elements, areas or facilities and will not have common expenses. There are no reserved development rights (as defined in §103(14)) of the Act). There is no homeowners’ association for the Project and none will be formed. As defined above, there is a Master Association and an Office Park Association, which have jurisdiction over areas larger than (and including) the Project.

ARTICLE II MAINTENANCE

A. Maintenance by Owners. Each Owner shall, at his/her sole cost and expense, maintain, repair and replace all exterior and interior components of their Home (including, without limitation, the roof, gutters, and downspouts, exterior walls and siding, any fireplace, chimney box, flue and chimney cap, utility lines and meters, all doors and windows, and any patio or deck and any railings around same) in a safe condition at all times, and in accordance with the terms of this Covenant and all applicable laws, statutes, ordinances, codes, and governmental rules and regulations. Certain portions of the exterior walls and chimney of each Home ("Restricted Access Areas") can only be accessed from another Owner's Home (generally from the roof or patio or deck of such other Owner's Home). Each Owner's obligation to maintain, repair and replace its Home includes the Restricted Access Areas of such Owner's Home, and such Owner has the right, pursuant to the easements granted in Section VII. B. below, to enter the adjacent Home(s), but not any adjacent dwellings, to perform such maintenance, repair and replacement. No Owner shall paint or otherwise modify, alter or improve, or hang or install any item (including, without limitation, any painting, mural, rug, pennant, banner, storage hooks or other devices) on, any exterior wall, siding or chimney of any adjacent Home, even if such areas are visible from, and accessible only from, such Owner's Home. Without limiting the generality of each Owner's obligations pursuant to this Section II. A., each Owner shall maintain in good condition and working order the A/C Unit that serves such Owner's Home, (as defined in Section VII. D.), in the side yard adjacent to the Home. No Owner shall cause any damage to any A/C Unit that serves any other Owner's Home and any such damage caused by an Owner, members of such Owner's family, his/her guests, employees, agents, contractors, invitees and licensees, shall be promptly repaired by such Owner, at his/her expense. If such Owner fails to promptly repair such damage, the Owner whose A/C Unit was damaged shall have the right, after 10 days' written notice (except that no notice shall be required if such A/C Unit has been rendered inoperable), to cause such repairs to be made at the expense of the Owner that failed to repair such damage. The Owner that failed to repair such damage shall reimburse the Owner that caused such damage to be repaired within 10 days after receipt of an invoice or invoices for the costs of such repair. Each Owner is responsible for removal of snow from the driveway on such Owner's lot, as well as for maintenance, repair and replacement of the driveway, as needed.

Each Owner shall be required to take necessary measures to retard and prevent mold from accumulating in their Home, 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 be responsible for any damage to his/her Home and personal property, to any other Home, as well as any injury to the Owner or occupants resulting from the Owner's failure to comply with this Section II. A.

B. Maintenance by CARDEL. If an Owner fails to maintain the exterior of his/her Home (including, without limitation, the roof, gutters, and downspouts, exterior walls and siding, any fireplace, chimney box, flue and chimney cap, utility lines and meters, all doors and windows, and any patio or deck and any railings around same), as required by Section II. A, Cardel shall have the right, but not any obligation, after 20 days' written notice (immediately after written or oral

notice in the case of an emergency) to the Owner, to cause the necessary maintenance, repair or replacement to be made and for such purpose shall be entitled to the benefit of the easement granted by Section II. C. The Owner shall promptly reimburse CARDEL for the costs of such maintenance, repair and replacement, plus a charge equal to ten percent (10%) of the costs of such maintenance, repair and replacement as an administrative fee to cover CARDEL's administrative expenses in arranging and coordinating such maintenance, repair and replacement. If the Owner fails to make such reimbursement within 20 days after the receipt of a written invoice, Cardel shall have, and each Owner by its acceptance of a deed to its Home shall be deemed to have granted, a lien on its Home to secure the payment of such sums, together with interest thereon at the Interest Rate (as defined in Section II. D.), from the date of payment(s) of such costs by CARDEL until full reimbursement is made by the Owner, and together with attorneys' fees incurred by CARDEL in connection with such maintenance, repair and replacement and the collection of the sums due from the Owner. Such lien may be foreclosed in the manner for foreclosure of real estate mortgages under the laws of the State of Colorado.

C. Easement for Maintenance, Repair and Replacement. CARDEL and each of its employees, agents and contractors shall have the right to access each Home, and hereby reserves an easement for such purpose, from time to time during reasonable hours on reasonable notice as may be necessary for the maintenance, repair or replacement of any property required to be maintained, repaired or replaced by the Owner of such Home, and at any hour with little or no notice for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Homes, if CARDEL exercises its rights under Section II. B. In addition, CARDEL and each of its employees, agents and contractors shall have the right to access each Home (but not any dwelling), and hereby reserves an easement for such purpose, from time to time during reasonable hours on reasonable notice as may be necessary for the maintenance, repair or replacement of any Restricted Access Areas on any adjacent Home, and at any hour with little or no notice for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Homes, if CARDEL exercises its rights under Section II. B.

D. Failure to Pay. In the event that an Owner fails to pay any amounts due under this Article II, or any other Article of this Covenant that requires an Owner to pay any sum to another Owner, then such amounts will accrue interest at the rate of eighteen percent (18%) per annum (the "Interest Rate"), until fully paid, which shall begin to accrue ten days after written demand, and the amount due, together with accrued interest and attorneys' fees incurred by the Owner entitled to receive payment, shall be secured by a lien against the Owner's Home in favor of the party(ies) to which such amounts are due. Said lien shall be established, enforced and released in the manner set forth in Article X below.

E. Maintenance of Certain Outside Areas by Metro District. Certain maintenance activities on the front and rear portion of each lot described in Recital A above will be performed by the District, including, without limitation, removal of snow from sidewalks (as described below), and lawn mowing on each lot. For the purposes of performing such maintenance responsibilities, the District holds an easement, as described in Section VII. E. below. The District will be responsible for snow removal from the streets and the sidewalks. The District will impose and collect a fee

from the Owners to pay for the snow removal and lawn mowing provided by the District. The District has the right to change the frequency of collecting such fees to a different scheduled billing period. An Owner may alter, remove, replace, add to or supplement any landscaping initially installed by CARDEL, but only in compliance with this Covenant and the Master Association Documents and the Office Park Association Documents. CARDEL does not control the District and each Owner, by acceptance of a deed to a Home, agrees that CARDEL is not and will not be responsible or liable for the performance or lack of performance or inadequate or defective performance of any maintenance services by the District. The District has the right to terminate, modify or supplement any maintenance services it provides in accordance with applicable law. If the District at any time terminates any maintenance services, each Owner shall be responsible for the maintenance service that the District had previously been providing, with respect to such Owner's Home.

ARTICLE III MODIFICATIONS

A. Prohibited Modifications. No Owner shall undertake any alteration, maintenance or repair to their Home that would violate any zoning or building ordinance or that might impair the structural soundness or safety of any other Home or any Party Wall, significantly reduce the value of any Home, or which might interfere with the use and enjoyment of any easement granted or reserved herein.

If, because of any act or omission of one Owner, any mechanic's or other lien or order for the payment of money shall be filed against the other Owner's Home (whether or not such lien or order is valid and enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall, at his/her own cost and expense, cause the same to be canceled and discharged of record by payment or by bonding by a surety company reasonably acceptable to the other Owner, within 20 days after the date of filing thereof, and further shall indemnify and save the other Owner harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom. If such Owner fails to cause such lien to be discharged of record within such 20-day period, the other Owner may, at his/her option (but with no obligation to do so), pay the amount claimed by the lien claimant without any obligation to inquire into the validity of the claim or the amount properly due, or cause such lien to be released of record by posting a statutory surety bond. In either such event, the amount paid by the other Owner, together with interest thereon at the Interest Rate from the date(s) paid by the other Owner until full reimbursement has been made by the Owner who was obligated to obtain such discharge, and together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due from such Owner to the other Owner.

LABOR PERFORMED AND/OR MATERIALS FURNISHED TO AN OWNER OR SUCH OWNER'S HOME SHALL NOT BE THE BASIS FOR THE FILING OF A MECHANICS LIEN AGAINST ANY OTHER HOME IN THE SUBDIVISION. ANY SUCH LIEN SHALL BE LIMITED TO THE OWNER'S HOME FOR WHICH THE MATERIALS AND/OR WORK WAS FURNISHED.

B. Modifications Requiring Consent of Owners. Except as otherwise provided in Section III. C and Section III. E below:

(1) No improvements shall be constructed, erected, placed, altered, maintained or permitted on any exterior part of a Home, including, but not limited to, an exterior material or color scheme change, either temporary or permanent, or an alteration to exterior windows or doors;

(2) No exterior construction or excavation whatsoever shall be commenced or materials, equipment or construction vehicles be placed on any part of a Home, except only if the same is needed to stabilize the Home from collapse or to repair the Home from damage caused by fire, wind or other casualty; and

(3) No alteration to any sidewalk on a Home or any drainage feature, system or equipment shall be undertaken,

without, in each instance: (a) the written approval of the other Owner; and (b) the written approval of CARDEL if such work is proposed less than 15 years after the date of the recordation of this Covenant (whether or not CARDEL then owns any of the Homes). Prior to requesting approval from the other Owner and CARDEL, the Owner desiring to obtain approval shall furnish to the other Owner and CARDEL plans and specifications showing the proposed improvements, construction plans and material specifications, and exterior elevations, materials and colors, landscaping, grading and drainage, and such other information as may be reasonably requested by such Owner and CARDEL. All improvements shall be constructed only in accordance with approved plans. If the other Owner and/or CARDEL, if applicable, has not responded to an Owner's request for approval within 30 days of delivery by the Owner of a written request for approval, then such Owner's request shall be deemed approved by the Owner or CARDEL failing to respond, subject to requirements as set forth herein. All such improvements shall be insured by and at the cost of the Owner.

An Owner shall exercise reasonable judgment to insure that all modifications to his/her Home conforms to and harmonizes with existing surroundings and structures in the Subdivision. An Owner and/or CARDEL reviewing such proposed changes to a Home shall have the right to deny any requested changes that they reasonably determine do not conform to and harmonize with existing surroundings and structures in the Subdivision. All construction activities shall be planned and carried out with a minimum of disruption, unsightliness and noise.

If any improvements are constructed, reconstructed, refinished, altered, or maintained in violation of this Section III. B the other Owner and/or Cardel may give such Owner written notice of the violation of the provisions of this Section III. B. If such Owner fails to cure such violation within such 45 days after the giving of such notice, the other Owner and/or Cardel may remove such improvements and the Owner of the improvements shall immediately reimburse the other Owner or CARDEL, as may be applicable, for all expenses incurred in connection with such removal. In the event that the Owner of the improvements fails to make reimbursement within ten

days of the written request therefor, then the other Owner and/or CARDEL, if applicable, shall have a lien against the nonpaying Owner's Home to secure the payment of such sums, together with interest thereon at the Interest Rate, from the date of payment(s) of such costs by the other Owner and/or CARDEL, as applicable, until full reimbursement is made by the nonpaying Owner, and together with attorneys' fees incurred by the other Owner and/or CARDEL, as applicable, in connection with removal and the collection of the sums due from the Owner. The lien may be enforced as described in Article X below.

C. Permitted Modifications. Notwithstanding Section III. B above, an Owner may alter, remove or add interior partitions that are not load-bearing and which do not affect any Party Wall without the prior written consent of the other Owner or CARDEL. Other interior modifications, such as repainting and changing floor and wall coverings are not subject to the provisions of this Article III. Notwithstanding any other provision of this Covenant to the contrary, any alteration, maintenance and/or repair of Homes owned by CARDEL shall be exempt from the provisions of this Article III.

D. Compliance with Law. Any alteration, maintenance or repairs conducted on a Home, or any portion thereof, shall conform with and meet all applicable governmental building and safety codes and other rules and regulations.

E. Party Walls.

(1) Each Home shall be deemed to include that portion of the Party Wall extending from the center of the Party Wall to the interior surface of the Party Wall in that Home, together with the necessary easements for perpetual lateral and subjacent support, maintenance, repair and inspection of the Party Wall, and with equal rights of joint use. To the extent not inconsistent with the terms and conditions of this Covenant, the general rules of law of the State of Colorado concerning party walls shall be applicable hereto.

(2) No Owner shall have the right to remove or make any structural changes to a Party Wall that would jeopardize the structural integrity of any Home without complying with the provisions of Section III. B above. No Owner shall subject a Party Wall to the insertion or placement of timbers, beams or other materials in such a way as to adversely affect the Party Wall's structural integrity. No Owner shall cause a Party Wall to be exposed to the elements without furnishing, at such Owner's expense, the necessary protection against the elements. An Owner that causes a Party Wall to be exposed to the elements without necessary protection shall be responsible for all damage to the Party Wall caused by the elements and shall, at such Owner's expense, cause all such damage to be repaired promptly. No Owner shall subject a Party Wall to any use that in any manner whatsoever may interfere with the equal use and enjoyment of the Party Wall by the other Owner(s) that owns a portion of the Party Wall.

(3) If a Party Wall is structurally damaged or destroyed by the intentional act or negligence of an Owner, members of such Owner's family, his/her guests, employees, agents, contractors, invitees and licensees, such Owner shall promptly rebuild and/or repair the Party Wall,

after written notice to the adjacent affected Owner, at his/her own expense and shall compensate the other Owner for any damages sustained to person or property as a result of such intentional or negligent act. If such Owner fails to promptly commence and complete such rebuilding and/or repair, the other Owner shall have the right to commence (if not previously commenced) and complete such rebuilding and/or repair, and the Owner that was obligated to rebuild and/or repair the Party Wall shall reimburse the other Owner for an equal share of the cost of such rebuilding and/or repair, within 20 days after the receipt of an invoice therefor, and the other Owner shall have the right to render invoices periodically during the course of such rebuilding and/or repair.

(4) Should a Party Wall be structurally damaged or destroyed by causes other than the intentional act or negligence of an Owner, members of such Owner's family, his/her guests, employees, agents, contractors, invitees and licensees, the damaged or destroyed Party Wall shall be repaired or rebuilt at the joint expense of all Owners owning any portion of the Party Wall, each such Owner to pay an equal share of the cost thereof.

(5) The right of any Owner to contribution from any other Owner under this Section III. E. shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

ARTICLE IV INSURANCE

A. Property Insurance.

(1) Each Owner, at his/her sole cost and expense, shall obtain and maintain at all times a policy of property/casualty insurance. At a minimum, the property/casualty insurance must insure against risks of direct physical loss for one hundred percent of the estimated full replacement cost (at the time the insurance is purchased and at the renewal date) of the Home. The property/casualty insurance may exclude land, excavations, foundations and other items normally excluded from property/casualty policies. The property/casualty insurance shall be maintained in the name of the Owner. To the extent reasonably available such property/casualty insurance shall also: (1) contain no provisions by which the insurer may impose a so-called "co-insurance" penalty; (2) be written as a primary policy, not contributing with and not supplemental to any coverage that any other Owner carries; (3) provide that no act or omission by a party voids the policy or is a condition to recovery under the policy; (4) provide that it may not be canceled, nor may coverage be reduced, without 30 days' prior notice to the insured and all other Owners; and (5) include a so-called "inflation guard" endorsement. Each Owner shall provide a certificate of the property/casualty insurance described above to any other Owner or such Owner's insurance carrier and/or mortgagees within five days after requested by such Owner or such Owner's insurance carrier and/or mortgagee(s). Nothing provided in this Article IV shall prevent the Owners from jointly obtaining a single insurance policy to cover any or more of the hazards required to be insured pursuant to this Section IV. A(1). Any such joint policy shall name both Owners as named insureds and their respective mortgagees, and all other persons entitled to occupy

either Home, as their interests may appear. Such policy may contain a reasonable deductible, as agreed upon by both Owners, 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. In no event shall such policy contain a co-insurance clause for less than 100% of the full insurable replacement cost. If generally available, at commercially reasonable cost (as agreed upon by both Owners), such policy shall also contain the following: (a) a so-called "inflation guard" endorsement, (b) a construction code endorsement, (c) a demolition cost endorsement, (d) a contingent liability from operation of building laws endorsement, (e) an increased cost of construction endorsement, (f) any special PUD endorsements that may be applicable, (g) waivers of subrogation and waivers of any defense based on invalidity arising from any act or omission of any Owner; if such a provision is not generally available, at commercially reasonable cost, then such policy shall contain a provision that the insurance thereunder shall be invalidated or suspended 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; (h) a provision that such policy may not be canceled or modified without at least 30 days prior written notice to both Owners and their First Mortgagees; and (i) a provision that, if requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all First Mortgagees at least ten (10) days prior to the expiration of the then-current policies.

B. Additional Property Insurance. In addition to, or as a part of, the property insurance set forth in Section IV. A above, each Owner must maintain, at his/her sole cost and expense, property insurance upon the Owner's personal property and fixtures within their Home, and all of the finished interior surfaces of the walls, floors and ceilings of their Home, and any improvements or betterments installed by such Owner within their Home), in such amounts, against such risks, and containing such provisions as the Owner may reasonably determine from time to time.

C. Liability Insurance. Each Owner, at his/her sole cost and expense, shall obtain and maintain at all times a customary homeowner's policy of insurance, which shall provide, at a minimum, general liability coverage against claims for bodily injury and property damage, as well as property insurance as provided in Section IV. A. Such liability coverage shall: (1) be written as a primary policy, not contributing with or supplementing any coverage the other Owner carries; and (2) insure the Owner against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use ownership or maintenance of the Owner's Home.

D. Insurance Carrier Qualifications. All policies of insurance required under this Article IV shall be written by insurance companies licensed to do business in Colorado with a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's

Insurance Reports; an “A” or better general policyholder’s rating and a financial size category of “VIII” or better in Best’s *Insurance Reports - International Edition*; an “A” or better rating in Demotech’s *Hazard Insurance Financial Stability Ratings*; a “BBBq” qualified solvency rating or a “BBB” or better claims-paying ability rating in Standard and Poor’s *Insurance Solvency Review*; or a “BBB” or better claims-paying ability rating in Standard and Poor’s *International Confidential Rating Service*.

E. Prohibited Activities. No Owner shall do anything or cause anything to be kept in or upon a Home that might cause the cancellation of any insurance policy covering any other Home in the Subdivision.

ARTICLE V CASUALTY

A. Duty to Restore Homes. All damaged or destroyed Homes must be repaired and restored, and done so in accordance with either the original plans and specifications, or other plans and specifications which have been approved pursuant to the provisions of Section III. B above. In the event of damage or destruction to any Home which is covered by the property/casualty insurance required in Section IV. A above, the insurance proceeds for such damage or destruction shall be applied to the reconstruction and repair of the damaged or destroyed Home(s). ***If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Home, the Owner of the damaged or destroyed Home shall in any event proceed to make such repairs or reconstruction and shall be responsible for the payment of same.*** In the event of damage or destruction to any Home which is covered by the property/casualty insurance required in Section IV. A above, and to which a deductible applies, the Owner of such Home shall pay or absorb the deductible. In the event of damage or destruction to both Homes, the Owners shall pay or absorb the deductible in equal shares, unless the insurance carrier specifically allocates the deductible among the Homes. If more than one Home is damaged or destroyed and an Owner fails to pay or absorb its share of the deductible, such Owner shall be deemed a Defaulting Owner and the other Owner whose Home was damaged or destroyed may advance the amount of the Defaulting Owner’s share of the deductible and the amounts advanced shall be treated as a loan, in the manner provided in Section IV. A. above, which loan shall accrue interest as provided in Section II. D. and be secured by a lien as provided in Section IV. A. above, and which may be recorded and foreclosed as provided in Section X. B. below. Notwithstanding the foregoing, if any damage or destruction to a Home is caused by the negligent or willful act or omission of another Owner, members of such Owner’s family, his/her guests, employees, agents, contractors, invitees and licensees, such Owner shall be responsible for the deductible or share of the deductible that would otherwise be payable by the Owner whose Home was damaged or destroyed.

B. Negligence by an Owner. Notwithstanding any other provision of this Article V, if due to the negligent or willful act or omission of an Owner or such Owner’s agent or employee loss or damage shall be caused to any person or property or the other Home, such Owner shall be solely liable and responsible therefore. Such Owner shall proceed with due diligence to cause the prompt

repair and restoration of any such property damage, facilitating the restoration of the Home so damaged and shall compensate the person or other Owner for any direct damages sustained as a result of such intentional or negligent act. If such Owner fails to promptly commence and complete such repair and restoration, the other Owner shall have the right to commence (if not previously commenced) and complete such repair and restoration, and the Owner that was obligated to perform such repair and restoration shall reimburse the affected Owner(s) for the cost of repair and restoration, within 20 days after the receipt of an invoice therefor, and the affected Owner(s) shall have the right to render invoices periodically during the course of such repair and restoration.

ARTICLE VI USE RESTRICTIONS

A. Residential Use. Each Home shall be used and occupied primarily as a residence. No industry, business, trade, occupation, or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted in a Home except as hereinafter expressly provided. The foregoing shall not, however, be construed in such a manner as to prohibit an Owner from (1) maintaining their personal professional library in a Home, (2) keeping their personal business or professional records or accounts in a Home, (3) handling their personal business or professional telephone calls or correspondence from a Home, (4) maintaining a computer or other office equipment within a Home, or (5) utilizing administrative help or meeting with business or professional associates, clients or customers in a Home. Any accessory business use of a Home permitted by this Section VI. A must be in compliance with all applicable laws and regulations, must not have any adverse impact on the other Homes and must be conducted in accordance with this Covenant and the Master Association Documents and the Office Park Association Documents. Any lease of a Home is subject to, and must comply with, the applicable provisions, if any, of the Master Association Documents and the Office Park Association Documents.

B. Exterior Alterations. No structural alterations to any Home shall be done by any Owner, without the prior, written approval of the Architectural Committee, as more fully provided in the Office Park Declaration. No improvement to the exterior of a Home or to any landscaping shall be constructed, erected, placed or installed unless complete plans and specifications thereto shall have been first submitted to and approved in writing by such Architectural Committee.

C. Lighting. No floodlights or other exterior or interior lighting shall be installed or situated on or about any Home so as to shine directly or indirectly into the windows of any other home in the Subdivision.

D. Sound and Noises. No Owner shall operate any machines, appliances, electronic devices, sound systems, accessories or equipment in such a manner as to cause an unreasonable disturbance to others, or cause any damage to or overloading of any mechanical, electrical, plumbing, or any other system serving the Homes.

In adding or modifying a Home's home theater or audio reproduction equipment, the Owner should be aware that the sound isolation between Homes is limited in acoustical performance and there may be times when systems like home theaters can be heard. The goal of this Section VI. D is to maintain a level of acoustical privacy intended for the Homes, given the understanding of the variability in power and capability of home theater audio systems.

Additional loudspeakers for music reproduction shall not be supported from or contact Party Walls in a Home. All loudspeakers mounted within assemblies shall have back boxes, and loudspeakers may not be mounted within demising cavities or be supported from structural members without approval from the Owners located adjacent to the Owner's Home. Loudspeakers shall not be permitted on any decks or patios.

E. Provisions Not Applicable to Cardel. The provisions of Sections VI. A, B, C and D shall not apply to improvements initially constructed by CARDEL.

F. Association Documents. Each Owner, by acquiring a Home, agrees to observe and perform the terms and provisions of this Covenant, the Master Association Documents and the Office Park Association Documents. In the event of any conflict between or among this Covenant, the Master Association Documents and the Office Park Association Documents, the more restrictive provision shall apply.

ARTICLE VII EASEMENTS

A. Access Easements. Each Respondent (as that term is defined in Article XI) shall have a perpetual non-exclusive easement to enter the Home of the Claimant (as that term is defined in Article XI) for the purposes of exercising the Respondent's rights set forth in Sections XI. B.(iii) and (iv), in accordance with the terms of those Sections. CARDEL shall have a non-exclusive easement to enter each Home for the purposes of exercising CARDEL's rights set forth in Section II. B., in accordance with the terms of that Section. In addition, CARDEL shall have a non-exclusive easement to enter each Home for the purpose of performing warranty work, and repair and construction work on Homes, and the right to control such work and repairs until completion.

B. Easements for Exterior Maintenance, Repair and Replacement. CARDEL hereby grants to each Owner of each Home, effective upon conveyance of each Home, an easement on, over, across, and through the other Home, except the interior of any dwelling, and specifically across the roof of each Home, for the purpose of maintenance (including, without limitation, painting), repair and replacement of the exterior of the Home benefitted by such easement, including, without limitation, the roof, gutter and downspouts, and chimney box, flue and chimney cap of such Home, and the exterior walls and stucco of such Home. Any Owner that intends to make use of such easement to enter another Owner's Home shall endeavor to provide advance notice of the planned work to such other Owner. In the event of the exercise of such easement by an Owner, any damages to the Home of such other Owner caused by the Owner exercising the easement, members of such Owner's family, his/her guests, employees, agents, contractors, invitees and licensees shall be promptly repaired by the Owner that caused such damage, at his/her sole cost and expense. If

such Owner fails to promptly commence and complete such repair, the affected Owner shall have the right to perform such repair and the Owner that caused such damage shall reimburse the other Owner for the cost of the repair, within 20 days after the receipt of an invoice therefor, and the affected Owner shall have the right to render invoices periodically during the course of such repair. Such easement, and the right to grant such easement to an Owner, is hereby reserved by CARDEL upon conveyance of each Home, whether or not specific mention of such reservation is made in the deed or other instrument by which such Home is conveyed by CARDEL.

C. Easements for Utilities. CARDEL hereby grants to each Owner of each Home, effective upon conveyance of each Home, an easement on, over, across, and through the garage that is part of each other Home, for utilities improvements now or hereafter located in such garage. Each Owner shall be entitled to exercise such easement to access such garage(s) in order to maintain, repair and/or replace, as necessary, utilities improvements that serve such Owner's Home and that are located in such garages, after reasonable prior notice to the Owner(s) of the Home(s) to which such garages are attached; provided, that any damages to the improvements in any such garages shall be promptly repaired by the persons causing the same at the sole cost and expense of such persons. Notwithstanding the foregoing, no prior notice shall be required in emergency situations. Such easement, and the right to grant such easement to an Owner, is hereby reserved by CARDEL upon conveyance of each Home, whether or not specific mention of such reservation is made in the deed or other instrument by which such Home is conveyed by CARDEL.

D. Metro District Easements. By acceptance of a deed to a Home, each Owner acknowledges that it understands that the District holds an easement, pursuant to the Access Easement Agreement, across the front, side, and rear portion of each Lot in order to allow the District to perform its maintenance responsibilities, including, without limitation, removal of snow from sidewalks (as described in Section II. E.) and mowing of lawns.

ARTICLE VIII OWNER'S ACKNOWLEDGMENT AND WAIVERS

A. Sound. Each Owner by taking title to a Home understands and acknowledges that: (1) in close living situations one will hear noises from adjacent Homes or outside noises; (2) sound tends to carry through pipes, air-conditioning, heating, wood studs and flooring; (3) sound transmission is highly subjective; and (4) the Homes are located near noisy streets. Each Owner acknowledges that CARDEL has made no representations or warranties about what noise will be or will not be transmitted into the Home from other Homes or other sources. Each Owner accepts their Home (and its improvements) in its then-current condition and all noises that may be transmitted to the Home from all sources. Each Owner accepts their Home "AS IS" and "WHERE IS" with respect to the transmission of noise into the Home and releases CARDEL from any and all liability and claims with respect to sound transmission.

B. Mold. Certain types of mold and fungus have been discovered in residences in Colorado. Such organisms may or may not be toxic, and may have different adverse health effects. Typically, mold and fungus result from, or are caused by, the accumulation of water, condensation or

moisture. By purchasing a Home, each Owner acknowledges that mold and fungus and their growth can be caused by both natural and unnatural conditions throughout a Home, and may be introduced through soils, building materials, or other sources over which limited control exists. Each Owner acknowledges and agrees that they have had the right and obligation to investigate whether mold and fungus is present or is likely to develop within a Home. Each Owner accepts their Home "AS IS" and "WHERE IS" with respect to mold and fungus and releases CARDEL from any and all liability and claims with respect to mold and fungus.

C. Radon. The Colorado Department of Health and the United States Environmental Protection Agency have detected elevated levels of naturally occurring radon gas in certain residences throughout Colorado. These agencies have expressed concern that prolonged exposure to high levels of radon gas may result in adverse effects on human health. Each Owner accepts their Home "AS IS" and "WHERE IS" with respect to radon gas and releases CARDEL from any and all liability and claims with respect to radon gas.

D. NORM. In certain locations in Colorado, above average levels of naturally occurring radioactive material ("NORM") have been detected. Some scientists think that such radioactive emissions may be hazardous to health. However, no federal or Colorado state regulations or standards set forth the acceptable levels of NORM in residential buildings. Each Owner accepts their Home "AS IS" and "WHERE IS" with respect to NORM and releases CARDEL from any and all liability and claims with respect to NORM.

E. Soils. The soils in Colorado consist of both expansive soils and low-density soils which may adversely affect the integrity of a Home if the Home is not properly maintained. Expansive soils contain clay materials which change volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils. Each Owner accepts their Home "AS IS" and "WHERE IS" with respect to soil condition and releases CARDEL from any and all liability and claims with respect to soil conditions.

F. As-Is, Where-Is. Each Owner acknowledges and agrees that he/she has acquired their Home in an "AS-IS" and "WHERE-IS" condition and except for a Limited Warranty delivered to each original Owner by CARDEL, neither CARDEL nor any contractor have made nor shall be responsible for any warranties of any kind relating in any manner to the Home or the Subdivision, whether express or implied, including, without limitation, those of workmanlike construction, merchantability, conformance with local building codes, fitness for a particular purpose, habitability, design, condition, quality or otherwise; and each Owner waives and agrees not to assert any claim for any express or implied warranties, other than the Limited Warranty. Each Owner agrees to save and hold harmless CARDEL and Contractor from and against all claims asserted or based upon any express or implied warranty, including, without limitation, those of workmanlike construction, merchantability, conformance with local building codes, fitness for a particular purpose, habitability, design, condition, quality or otherwise relating to the Home and the Project, except to the extent provided in the Limited Warranty. Each Owner further waives all non-warranty claims against CARDEL and Contractor relating to the construction, design and

condition of the Home and the Project, including, without limitation, claims based on negligence, misrepresentation, breach of contract, and/or the Colorado Consumer Protection Act, C.R.S. § 6-1-101, *et seq.*, except to the extent set forth in the Limited Warranty. Each Owner expressly waives any right to claim or recover treble and other statutory damages.

ARTICLE IX DURATION, AMENDMENT AND TERMINATION

All provisions of this Covenant shall continue and remain in full force and effect in perpetuity from the date of recordation of this Covenant in the real estate records of Jefferson County, Colorado, until terminated as provided for herein or pursuant to law. Except as provided in the following sentences of this Article IX, this Covenant may only be amended upon the unanimous consent of both Owners, plus CARDEL if the amendment is proposed less than 15 years after the date of recordation of this Covenant. Notwithstanding the foregoing, CARDEL, acting alone, reserves to itself the right and power to modify or amend this Covenant (A) to correct clerical errors, typographical errors or technical errors, and (B) to comply with the requirements, standards or guidelines of recognized secondary mortgage markets and agencies, such as VA, FHA, HUD, Fannie Mae and Freddie Mac, and any successor thereto.

ARTICLE X ENFORCEMENT

A. Grounds for Relief. Except as otherwise stated herein, each Owner shall comply with all provisions of this Covenant. Failure to comply with such provisions shall be grounds for an action by affected Owners to recover sums due, damages and/or injunctive relief and costs and expenses of such proceedings, including all reasonable attorneys' fees and court/arbitration costs.

B. Lien. All sums and accounts due and payable by one Owner ("**Delinquent Owner**") to the other Owner ("**Non-Delinquent Owner**") hereunder, which are not paid within the time provided for herein, shall constitute a lien on the Delinquent Owner's Home in favor of the Non-Delinquent Owner. To evidence such lien, the Non-Delinquent Owner shall prepare a written notice of the lien ("**Notice of Lien**"), setting forth the amount of such unpaid indebtedness, the nature of the indebtedness, the date the indebtedness first became due, the name of the Delinquent Owner and the legal description of the Delinquent Owner's Home. Such Notice of Lien may be recorded in the real estate records Jefferson County, Colorado, ten days after demand by the Non-Delinquent Owner to the Delinquent Owner for such payment. Such lien shall be deemed, however, to have attached from the date on which payment of the indebtedness first became due. Such lien may be enforced by foreclosure of the lien in a like manner as a mortgage on real property subsequent to the recording of a notice of claim of such lien. **SUCH LIEN SHALL BE SUBORDINATE TO THE LIEN OF A FIRST MORTGAGE, BUT SHALL BE SUPERIOR TO ANY HOMESTEAD EXEMPTION IN ACCORDANCE WITH THE PROVISIONS OF C.R.S. 38-41-201, et seq.** In any such proceedings, the Delinquent Owner shall be required to pay the costs, expenses and reasonable attorneys' fees and court costs incurred in connection with the Notice of Lien and for otherwise enforcing the claim, and in the event of foreclosure proceedings the additional costs, all

expenses and reasonable attorneys' fees and court costs incurred thereby. In the event that the Delinquent Owner satisfies the indebtedness prior to the foreclosure of the lien, the lienholder shall record an appropriate instrument releasing and discharging the lien.

C. Performance Statement. Each Owner shall provide, within fifteen days of a written request by the other Owner, a statement indicating the amount of any unpaid charges or amounts due from the requesting Owner under the terms of this Covenant, any existing defaults under this Covenant by the requesting Owner, and any other information deemed proper by the responding Owner. In the event that the Owner requested to provide the statement fails to do so within said fifteen-day period to such Owner, such failure shall be deemed conclusive evidence that no amounts due under this Covenant are unpaid by the requesting Owner and no defaults by the requesting Owner exist under this Covenant.

ARTICLE XI DISPUTE RESOLUTION

A. Resolution of Disputes Without Litigation.

(1) **Bound Parties.** CARDEL, all Owners, and any person or organization not otherwise subject to this Covenant who agrees to submit to this chapter (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees to resolve all Claims by using the procedures in this Article XI and not by litigation, and each Bound Party agrees not to file suit in any court with respect to a Claim. If a Bound Party commences any action in a court of law or equity against any person or organization that is not a Bound Party, such Bound Party shall nevertheless be required to comply with the provisions of this Article XI with respect to any Claim it wishes to assert against a Bound Party, even if such Claim is the same or substantially the same, or arises from the same or similar facts, as the claim against the non-Bound Party. Each Bound Party agrees that the procedures in this Article XI are and shall be the sole and exclusive remedy that each Bound Party shall have for any Claim. The provisions of this Article XI shall be deemed a contract between and among all Bound Parties, as well as covenants and equitable servitudes that run with the Property. EACH OWNER BY ACCEPTANCE OF A DEED OR OTHER INSTRUMENT OF CONVEYANCE FOR A HOME AGREES TO HAVE ANY AND ALL CLAIMS RESOLVED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE XI, WAIVES HIS/HER RIGHTS TO PURSUE ANY CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE XI, AND ACKNOWLEDGES THAT, BY AGREEING TO RESOLVE CLAIMS AS PROVIDED IN THIS ARTICLE XI, HE/SHE IS GIVING UP HIS/HER RESPECTIVE RIGHTS TO HAVE SUCH CLAIMS TRIED BEFORE A COURT OR JURY.

(2) **Claims.** As used in this Article XI, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (a) the interpretation, application, or enforcement of this Covenant;

“Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in this Article XI:

- (a) any suit by an Owner or Cardel to collect sums due from any Owner or to foreclose any lien to collect such sums, pursuant to any of Sections II. B., II. D., III. A., III. B., III. E., IV. B., V. B., V. C., and Article X;
- (b) any suit or action by an Owner that involves the protest of real property taxes;
- (c) any suit to challenge condemnation proceedings;
- (d) any suit by an Owner or CARDEL to enforce the provisions of Article VI;
- (e) any suit to compel mediation or arbitration of a Claim or to enforce any award or decision of an arbitration conducted in accordance with this Article XI or to enforce a settlement agreement reached through negotiation or mediation pursuant to this Article XI; and
- (f) any dispute in which a party to the dispute is not a Bound Party and has not agreed to submit to the procedures set forth in this Article XI.

(4) Amendment. This Article XI shall not be amended or deleted unless such amendment is consented to in writing by both Owners and by First Mortgagees, and by CARDEL if such amendment is proposed less than 15 years after the date of recordation of this Covenant. Any amendment to this Article XI shall not apply to Claims based on alleged acts or omissions or circumstances that predate the recording of the amendment.

(5) Reformation. All Bound Parties agree that reliance upon courts of law and equity can add significant costs and delays to the process of resolving Claims. Accordingly, they recognize that one of the essential purposes of this Article XI is to provide for the submission of all Claims to mediation and final and binding arbitration. Therefore, if any court concludes that any provision of this Article XI is void, voidable or otherwise unenforceable, all Bound Parties understand and agree that the court shall reform each such provision to render it enforceable, but only to the extent absolutely necessary to render the provision enforceable and only in view of the express desire of the Bound Parties that the merits of all Claims be resolved only by mediation and final and binding arbitration and, to the greatest extent possible and permitted by law, in accordance with the principles, limitations, procedures and provisions set forth in this Article XI.

B. Dispute Resolution Procedures.

(1) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent, and if the Claim is a Defect Claim involving a Home, then to the First Mortgagee, if any, with a lien against such Home, and to Cardel if such Defect Claim is asserted less than 15 years after the date of recordation of this Covenant, stating plainly and concisely:

- (a) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (b) if the Claim is a Defect Claim, (i) a list of all alleged design and/or construction defects or other physical conditions that are the subject of the Defect claim and a detailed description thereof specifying the type and location of such defects or conditions (identified by the specific room or room where the alleged defects or conditions exist if contained within a structure or identified on a plat plan or map where the defects or conditions exist outside a structure, in either case with a legend that identifies the type of defect), (ii) a description of the damages claimed to have been caused by the alleged defects or conditions, and (C) a list of the Persons involved and a description of the Respondent's role in the Defect Claim;
- (c) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (d) the Claimant's proposed resolution or remedy; and
- (e) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

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

(3) Right to Inspect. If the Claim is a Defect Claim, the Claimant shall permit each Respondent, its employees, agents, contractors and consultants to enter the Claimant's Home at reasonable times, to permit each Respondent to inspect the matters identified in the Defect Claim. CARDEL hereby reserves for itself and grants to each Respondent, an easement to enter and Claimant's Home for the purposes of making inspections pursuant to this Section XI. B.(3). Each Respondent shall make reasonable efforts to schedule convenient times with the Claimant for such inspections, but the Claimant's refusal to schedule such times shall not relieve the Claimant of its obligations set forth in this Section XI. B.(3). If the Claimant refuses to allow each Respondent, its employees, agents, contractors and consultants to enter the Claimant's Home in order to make such inspections, the Claimant shall be deemed to be in breach of its obligations set forth in this Section XI. B.(3) and shall be liable to each Respondent that has been denied access, and each such Respondent shall be entitled to recover from the Claimant, liquidated damages in the amount of \$250.00 per day for each day after the Claimant's receipt of the Respondent's written request

for access to the Home, until the Claimant provides such access; provided that the amount of liquidated damages shall increase by five percent (5%) on each anniversary of the date upon which this Covenant is recorded (for example, but without limitation, on the first anniversary of the date upon which this Covenant is recorded, the amount of liquidated damages required by this Section XI. B.(3) shall be \$262.50 per day). Liquidated damages provided in this Section XI. B.(3) are separate from and independent of liquidated damages provided in Section XI. B.(4) and a Respondent that is in breach of its obligations under each Section will be liable for liquidated damages under each Section. By acquiring ownership of any Home, each Owner acknowledges and agrees that the actual damages to a Respondent arising from a Claimant's breach of its obligations set forth in this Section XI. B.(3) would be extremely difficult and impractical to ascertain, including, without limitation, loss of reputation and goodwill, and that the liquidated damage amount referenced in the preceding sentence is a fair and reasonable estimate thereof.

(4) Right to Remedy. If the Claim is a Defect Claim, if a Respondent informs the Claimant in writing that the Respondent intends to repair, remedy or otherwise cure one or more matters described in the Claim, the Claimant shall provide access to its Home to such Respondent, its employees, agents, contractors and consultants for the purpose of making such repair, remedy or cure. CARDEL hereby reserves for itself, and grants to each Respondent, an easement to enter and Claimant's Home for the purposes of making any repair, remedy or cure pursuant to this Section XI. B.(4). The Respondent shall make reasonable efforts to schedule convenient times with the Claimant for the performance of such work, but the Claimant's refusal to schedule such times shall not relieve the Claimant of its obligations set forth in this Section XI. B.(4). The Claimant agrees that each Respondent has an absolute right to attempt to repair, remedy or otherwise cure one or more matters described in the Claim. The Claimant further agrees that nothing contained in this Section XI. B.(4) creates any obligation upon any Respondent to attempt to repair, remedy or otherwise cure any matters described in the Claim and each Respondent's obligations in that respect are limited to those obligations, if any, imposed by any written express warranty separately provided to the Claimant (and which, by its terms, may not run to the benefit of succeeding owners of the property) and by applicable law. If the Claimant refuses to allow each Respondent, its employees, agents, contractors and consultants to enter the Claimant's Home in order to perform such work, the Claimant shall be deemed to be in breach of its obligations set forth in this Section XI. B.(4) and shall be liable to such Respondent, and such Respondent shall be entitled to recover from the Claimant, liquidated damages in the amount of \$250.00 per day for each day after the Claimant's receipt of the Respondent's written notice that it intends to repair, remedy or otherwise cure one or more matters described in the Claim until the Claimant provides such access; provided that the amount of liquidated damages shall increase by five percent (5%) on each anniversary of the date upon which this Covenant is recorded (for example, but without limitation, on the first anniversary of the date upon which this Covenant is recorded, the amount of liquidated damages required by this Section XI. B.(4) shall be \$262.50 per day). Liquidated damages provided in this Section XI. B.(4) are separate from and independent of liquidated damages provided in Section XI. B.(3) and a Respondent that is in breach of its obligations under each Section will be liable for liquidated damages under each Section. By acquiring ownership of any Home, each Owner acknowledges and agrees that the actual damages to a Respondent arising from a Claimant's breach of its obligations set forth in this Section XI. B.(4) would be extremely difficult and impractical to

ascertain, including, without limitation, loss of reputation and goodwill, and that the liquidated damage amount referenced in the preceding sentence is a fair and reasonable estimate thereof.

(5) Enforcement. Without limiting any other remedy available to a Respondent (including, without limitation, the liquidated damages provided for in this Section XI. B.), if the Claimant fails to perform or observe any provision of this Section XI. B., each Respondent shall be entitled to enforce such provision by specific performance or injunction, as may be applicable. The Claimant's obligations set forth in this Section XI. B. may not be waived, except only by a written instrument signed by each Respondent and identifying in detail in what respects provisions of this Section XI. B. have been waived.

(6) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within any other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an organization (a "Dispute Resolution Service") that is not controlled by or affiliated with the Claimant or any Respondent and which provides, and has experience in providing, dispute resolution services in the Denver, Colorado metropolitan area, including, without limitation, the American Arbitration Association, the Judicial Arbitrator Groups and JAMS, Inc. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent(s) shall be relieved of any and all liability to the Claimant on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (a "Termination of Mediation") indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to commence binding arbitration on the Claim, pursuant to and as provided in Section XI. B.(8).

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

(7) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-

complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(8) **Arbitration.** After receiving a Termination of Mediation, if the Claimant wants to pursue the Claim and the Claim is not otherwise barred as provided elsewhere in this Article XI, the Claimant shall initiate final, binding arbitration of the Claim under the auspices of a Dispute Resolution Service (which does not necessarily have to be the same Dispute Resolution Service that provided mediation with respect to the Claim), and the Claimant shall provide to the Respondent(s) a "Notice of Intent to Arbitrate," all within 20 days after the Termination of Mediation. If the Claimant does not initiate final, binding arbitration of the Claim and provide a Notice of Intent to Arbitrate to the Respondent(s) within 20 days after the Termination of Mediation, then the Claimant shall be deemed to have waived the Claim, and the Respondent(s) shall be relieved of any and all liability to the Claimant on account of such Claim. In addition, if a Claim is a Defect Claim, the Claimant shall promptly disclose the Defect Claim and its details to his/her prospective purchasers and prospective mortgagees. If a Claim is a Defect Claim, an Owner shall not join any other Owner or other person complaining of the same or similar defects in other property without the prior written consent of all Respondents. The Claimant and each Respondent shall have the right to join any contractors or other design professionals that the Claimant alleges are responsible, in whole or in part, for the Claim, if such contractor or other design professional is, or agrees to become, a Bound Party. The term "Party" when used in this Section XI. B.(8) shall mean a party to an arbitration proceeding to resolve a Claim and the term "Parties" shall mean all the parties to such arbitration proceeding. The following arbitration procedures shall govern each Claim submitted to arbitration:

- (a) The arbitration shall be presided over by a single arbitrator.
- (b) The arbitrator must be a person qualified to consider and resolve the Claim with the appropriate industry and/or legal experience.
- (c) No person shall serve as the arbitrator where that person has any financial or personal interest in the arbitration or any family, social or significant professional acquaintance with any Party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the arbitration ("Arbitrator Disclosure"). If any Party objects to the service of any arbitrator with fourteen (14) days after receipt of the Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner as the initial arbitrator was selected.
- (d) The arbitrator shall have the exclusive authority to, and shall, determine all issues about whether a Claim is covered by this Article XI. Notwithstanding anything herein to the contrary (including, but not limited to, Section XI. B.(8)(i) below), if a Party contests the validity or scope of arbitration in court, the arbitrator or the court shall award reasonable attorneys' fees and

expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party.

- (e) The arbitrator shall hold at least one (1) hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitrator is not required to hold more than one (1) hearing. The arbitration proceedings shall be conducted in the metropolitan Denver, Colorado area unless the Parties otherwise agree.
- (f) No formal discovery shall be conducted without an order of the arbitrator or express written agreement of all Parties.
- (g) Unless directed by the arbitrator, there shall be no post hearing briefs.
- (h) The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered no later than fourteen (14) days after the close of the hearing, unless otherwise agreed by the Parties. The arbitration award shall be in writing and shall be signed by the arbitrator.
- (i) The arbitrator shall apply the substantive law of Colorado and may award injunctive relief or any other remedy available in Colorado but shall not have the power to award punitive damages, consequential damages, exemplary damages, treble damages, indirect or incidental damages, attorneys' fees, expert's fees and/or costs to the prevailing Party. Each Party is responsible for any fees and costs incurred by that Party, including, without limitation, the fees and costs of its attorneys, consultants and experts. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court of competent jurisdiction.
- (j) The Parties shall pay their pro rata share of all arbitration fees and costs, including, without limitation, the costs for the arbitrator.
- (k) With respect to a Defect Claim, the arbitrator shall have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants and may require that the results of any such inspections and testing and the reports of independent consultants be submitted to the arbitrator and to the other Parties, whether or not the Party that ordered such inspections or testing or engaged the consultant intends to present such results or reports to the arbitrator as evidence.
- (l) Except as may be required by law or for confirmation of an arbitration award, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration without the prior written consent of all Parties to the arbitration.

scheduled, then the Claimant shall be deemed to have waived the Claim, and the Respondent(s) shall be relieved of any and all liability to the Claimant on account of any such Claim.

C. Conflicts with Law. In the event that any provisions of this Article XI conflict with any applicable federal or Colorado statutes which provide non-waivable legal rights, including, without limitation, the Colorado Construction Defect Action Reform Act or the Colorado Consumer Protection Act, then the non-waivable terms of such statute shall control and all other provisions herein remain in full force and effect as written.

ARTICLE XII MISCELLANEOUS

A. Supplement Applicable Law. The provisions of this Covenant shall be in addition and supplemental to all other applicable provisions of law.

B. Master Association and Office Park Association; Owner's Rights Subject to Master Association Documents and Office Park Association Documents. Each Owner, by virtue of its ownership of a Townhome, is a member of the Master Association and obligated to perform its obligations contained in any of the Master Association Documents, and also is a member of the Office Park Association and obligated to perform its obligations contained in any of the Office Park Association Documents. Each Owner shall own their Townhome subject to the provisions of the Master Association Documents and the Office Park Association Documents. As provided in the Master Association Documents and the Office Park Association Documents, Owners have an obligation to pay assessments and other amounts to the Master Association and the Office Park Association. In the event of a conflict between the provisions of this Covenant and the Master Association Documents and/or the Office Park Association Documents, the more restrictive provision shall control unless the more restrictive provision is contained within this Covenant and the provision in the Master Association Documents and/or the Office Park Association Documents expressly provides that it is to control in such event.

C. Headings and Grammatical References. The captions and headings in this Covenant are for convenience only and shall not be considered in construing any provision of this Covenant. Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

D. Notices. Unless an Owner shall notify the other Owner of a different address, any notice required or permitted to be given under this Covenant to any Owner or any other written

communication to any Owner shall be either hand-delivered, posted securely on the front door or mailed to such Owner, postage prepaid, first class U.S. Mail, registered or certified, return receipt requested, to the Home of the Owner in question. If more than one person owns a Home, any notice or other written communication may be addressed to any one such person. Any notice or other written communication given hereunder shall be effective upon hand-delivery or posting or three days after deposit in the U.S. Mail as aforesaid.

E. Severability. The provisions of this Covenant shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Covenant, or the application thereof to any person or any circumstance, is invalid or unenforceable, (1) the invalid or unenforceable provision shall be reformed, to the minimum extent required to render such invalid or unenforceable provision enforceable in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (2) the remainder of this Covenant and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision.

F. No Waiver. Failure to enforce any provision of this Covenant shall not operate as a waiver of any such provision or of any other provision in this Covenant.

G. Perpetuities. If any of the options, privileges, covenants or rights created by this Covenant shall be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common law rules imposing time limits, then such provision shall continue only for the period of the life of the natural person signing this Covenant on behalf of CARDEL, and their now living descendants, and the survivors of them plus twenty-one years.

H. No Warranties. CARDEL disclaims any intent to, and does not, warrant or make any representation regarding any aspect of a Home or any improvements thereon by virtue of this Covenant.

I. No Merger. This Covenant shall not be deemed waived, released or terminated by any merger of title to both Homes.

