

**AMENDED DECLARATION OF THE ZAPATA SUBDIVISION,  
A PLANNED COMMUNITY**

**THE ZAPATA HOMEOWNERS ASSOCIATION, INC., a Colorado non-profit corporation**, being made up of the landowners of the following-described real property located in the County of Alamosa, State of Colorado, together with the requisite majorities of landowners within each unit of the Zapata Subdivision described as:

*Legal Description Here*

All such property subject to these Amended Covenants is shown as the Zapata Subdivision on the boundary plat thereof recorded on \_\_\_\_\_, 2009, under reception number \_\_\_\_\_, and adopted by these Amended Covenants as the boundary for the property subject to the covenants.

**ARTICLE 1  
DEFINITIONS**

- 1.1. Act. The Act is the Colorado Common Interest Ownership Act, *et seq.*, Colorado Revised Statutes, as it may be amended from time to time. Neither these Amended Covenants nor the Association elect to have the Zapata Subdivision subject to all of the provisions of the Act; and the Act shall only apply to the Zapata Subdivision to the extent set forth in C.R.S. Section 38-33.3-117.
- 1.2. AC or Architectural Committee refers to the committee of the Association created pursuant to Article 8 of this Declaration.
- 1.3. Building. Any structure or improvement, whether permanent or temporary, placed on any lot or parcel within the Zapata Subdivision.
  - 1.3.1. Building site shall mean any lot, or portion thereof, upon which a **dwelling structure** may be erected in conformance with the requirements of these Covenants. Comment: Changed word
- 1.4. Bylaws. The Bylaws are the Bylaws of the Association, as they may be amended from time to time.
- 1.5. Commercial Lots or Areas: All that portion of Unit 3 of the Zapata Subdivision lying North **of the greenbelt band of tracts H, j, K, and L** as shown on the boundary plat recorded on \_\_\_\_\_, 20098, under reception number \_\_\_\_\_. Comment: Changed wording
- 1.6. Common Elements Property. The Common Property is all the real property of the Zapata Subdivision including, but not limited to, private streets, traffic control facilities, perimeter fences, drainage facilities, greenbelts, lakes, and appurtenant easements, all of which shall be owned by the Association. Comment: Change wording?
- 1.7. Common Expenses. The Common Expenses are the expenses or financial liabilities for the operation of the Zapata Subdivision.
  - 1.7.1. Common Expense Assessments are the funds required to be paid by each Lot Owner in payment of such Owner's Common Expense liability. These expenses include:
    - (a) expenses of administration, maintenance, construction, improvement, repair, or replacement of the Common Property;
    - (b) expenses of utilities not separately metered and billed directly to the Lot Owners;
    - (c) expenses declared to be Common Expenses by the Documents, the Executive Board, or by the Act, including administrative, legal, professional, and consulting expenses incurred by the management of the Zapata Subdivision for the purpose of preserving and protecting the Zapata Subdivision and the interests of its membership;
    - (d) reasonable reserves established by the Association, whether held in trust or by the Association, for repair, replacement, or addition to the Common Elements or any other real or personal property acquired or held by the Association.

In addition, the costs and expenses imposed on the Association, benefiting fewer than all the Lots, shall be a Common Expense but, except as otherwise stated herein, assessed exclusively against those Lots benefited.

- 1.8. Declaration. The Declaration is this document, including any amendments.
- 1.9. Director. A Director is a member of the Executive Board.
- 1.10. Documents. The Documents are this Declaration and the Plat recorded and filed pursuant to the provisions of the Act, the Articles of Incorporation of the Association, the Bylaws, Guidelines and the Policies, as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is a part of that Document.

- 1.11. Executive Board. The Executive Board is the board of directors of the Association, which is the governing body of the Association.
- 1.12. Household Pets
- 1.13. Improvements. Improvements are any construction, structure, equipment, fixture, or facilities existing, or to be constructed on the Property that is included in The Zapata Subdivision, including, but not limited to, residences, buildings, trees, and shrubbery planted by the Owner, or the Association, paving, utility wires, pipes, and light poles.
- 1.14. Lot. A lot or tract of land separately identified with a lot or parcel number on the recorded plats of the Zapata Subdivision.
- 1.15. Majority or Majority of Lot Owners. The Majority or Majority of Lot Owners means the Owners of more than 50 percent of the votes, as based upon assessments, in the Association.
- 1.16. Member. A Member is an individual, corporation, trust, partnership, limited liability company, association, joint venture, government, government subdivision or agency, or other legal or commercial entity authorized by law to hold title to real property in Colorado, and holding an ownership interest in a Lot in the Zapata Subdivision.
- 1.17. Operating Reserve
- 1.18. Plat. Refers to all existing recorded plats of the Zapata Subdivision.
- 1.19. Property. Property is the land and all Improvements, easements, rights, and appurtenances that have been submitted to the provisions of this Declaration, as described in the first paragraph hereof.
- 1.20. Replacement Reserve
- 1.21. Residential Lots or Areas. All Lots within the Zapata Subdivision are residential lots except those designated on the boundary plat recorded on \_\_\_\_\_, 2009, under reception number \_\_\_\_\_, as commercial, and those shown as common or greenbelt areas on any recorded plat of the Zapata Subdivision.
- 1.22. Responsible Lot Owner or Lot Owner. The owner of the Lot or any interest in the Lot.
- 1.23. Rules/Policies. The Rules/Policies are the regulations for the use of Common Property and for the conduct of persons within the Zapata Subdivision, as may be adopted by the Executive Board from time to time pursuant to this Declaration.
- 1.24. RV
- 1.25. Tract. A parcel made up of conjoined lots or other large parcel as shown on the Plat.
- 1.26. Trustee. The Trustee is the entity that may be designated by the Executive Board as the Trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Executive Board acting by majority vote.
- 1.27. The Zapata Subdivision. That common interest community consisting of the lots, tracts, and common areas described on the plats set forth above, and shown on the consolidated plat thereof recorded on \_\_\_\_\_, 2009, under reception number \_\_\_\_\_.

**Comment:** Need a definition

**Comment:** Needs definition

**Comment:** Needs definition

**Comment:** Need a definition

ARTICLE 2  
NAME AND TYPE OF COMMON INTEREST COMMUNITY AND ASSOCIATION

- 2.1. Name and Type of Common Interest Community. The name of the Common Interest Community is The Zapata Subdivision. The Zapata Subdivision is a planned community.
- 2.2. Association. The name of the Association is The Zapata Homeowners Association, Inc., a Colorado non-profit corporation.

ARTICLE 3  
DESCRIPTION OF LAND

All the land subject to these Amended Covenants is shown as the Zapata Subdivision on the new boundary plat thereof recorded on \_\_\_\_\_, 2009, under reception number \_\_\_\_\_.

ARTICLE 4  
MAINTENANCE OF THE PROPERTY

- 4.1. Individual Lots. It shall be the duty and obligation of each Lot Owner, at such Lot Owner's expense, to beautify and keep neat, attractive, sightly, and in good order such Owner's Lot and/or Residence and the exterior portions of the Residence, and to maintain, repair, and replace the same. The Lots and structures shall be maintained used and constructed so as not to be annoying or unsightly or a nuisance. No refuse or junk of any kind shall be kept on the Lots. In the event of noncompliance the Association reserves the right to take action to bring the Lot into compliance, and assess the lot owner for the cost of such action.
- 4.2. Duties of Association. The Association shall maintain, repair, replace, beautify and keep neat, attractive, sightly, and in good order, to the extent that such functions are not expected to be performed by Alamosa County or any other political subdivision thereof or of the State of Colorado, all of the Common Elements, including, but not limited to roads, culverts, greenbelts, lakes, gates, common property structures and the landscaped areas of the property outside of the lot boundaries. The Association may, from time to time, hire and/or contract with third parties to achieve the objectives of this article.
- 4.3. Right of Access. Other than in an emergency, any access to private property shall not be made by any representative of the ZHA without permission of the landowner. In situations where reasonable attempts to contact the landowner have failed and been documented, access shall not be made without majority consent of the Executive Board. In case of an emergency, no request or notice is required, and the right of entry for ZHA personnel to address the emergency shall be immediate whether or not the lot Owner is present at the time. A follow-up contact to the landowner shall be made within 24 hours of the emergency.
- 4.4. Repairs Resulting From Negligence. Each lot Owner will reimburse the Association for any damages to the Common Elements caused intentionally, negligently, or by such Owner's failure properly to maintain, repair, or make replacements to the lot and/or residence. If such expense is caused by misconduct, it will be assessed following Notice and Hearing. The Association will be responsible for damage to lots and/or residences that is caused by the Association intentionally, negligently, or by the Association's failure to maintain, repair, or make replacements to the Common Elements.

**Comment:** Does this go too far?

**Comment:** Repeated in 7

**Comment:** Does this go too far?

#### ARTICLE 5 RIGHTS OF THE ASSOCIATION

Association. The Association is The Zapata Homeowners Association, Inc., a Colorado non-profit corporation. It is hereby designated as the Association of Lot Owners pursuant to C.R.S., § 38-33.3-301. The Association shall have the following powers:

- (a) to operate the Common Interest Community in accordance with the Act as applicable and this Declaration;
- (b) to promote the health, safety, welfare and common benefit of the owners and residents of the Common Interest Community; and the real property described in Clause I hereof is subject to the covenants, restrictions, conditions, reservations, liens and charges hereby declared to insure the best use and the most appropriate development and improvement of each building site thereof; to protect the owners of building sites against such improper use of the surrounding building sites as will depreciate the value of their property; to preserve so far as practicable the natural beauty of said property; to protect the environment; to guard against the erection thereon of poorly designed or proportioned structures built of improper materials; to obtain harmonious color schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on building sites; to prevent haphazard and inharmonious improvements of building sites; to secure and maintain proper setbacks from streets, and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvement in said property, and thereby to enhance the values of investments made by purchasers of building sites therein.
- (c) to do any and all permitted acts and to have and exercise any and all powers, rights, and privileges that are granted to an Association of Lot Owners under the laws of the State of Colorado, this Declaration, the Bylaws, the Policies, the Guidelines, and any other governing documents of the Zapata Subdivision and the Association.

**Comment:** Moved from definitions

- 5.1. In addition to all rights required for the exercise of its responsibilities set forth in Section 1.3, above, the Association shall have the following specific rights:
  - (a) the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities on existing easements on Lots for the purpose of furnishing utility, drainage, and other services to Residences or any Lot;
  - (b) the right to withdraw and grant easements and licenses to public and quasi-public utility companies or districts and to convey Improvements within the Common Elements for the purposes mentioned above; and
  - (c) the right to allow an Owner to combine two or more lots or divide one lot for the purpose of combining portions of said divided lot with adjoining lots, thereby in both cases reducing the total number of lots, and thereby changing the Allocated Interests of all of the lots.

**Comment:** This could be taken out if stated on the plat maps, but does not hurt anything to leave in per Erich

**Comment:** b is good to have per Erich

- 5.2. The Association may construct any improvement required for the benefit of the Zapata Subdivision, including, but not limited to, a management office, firehouse or other community building on any lot owned by the Association, or on any portion of the Common Elements with a majority approval of the membership.

ARTICLE 6  
ARCHITECTURAL CONTROL

- 6.1. The Association shall provide for an Architectural Committee through its Bylaws.
- 6.2. Approval of project. No lot shall be developed, (including, driveway, septic, well, power), and no building shall be erected, placed, or the exterior altered on any premise in the Zapata Subdivision until the ZHA Architectural Committee ("AC") has approved the development plans. Development plans must be in accordance with the Architectural Guidelines, and submitted through the Architectural Committee. All improvements must comply with Alamosa County building and land use codes.
- 6.3. Completion of work. Upon commencement of construction of any building, the work on the structure shall be diligently pursued in a workmanlike manner. No construction shall commence until a building permit for said construction has been obtained from the local governing body having jurisdiction. All construction shall be completed within 24 months from the date of commencement of such construction.
- 6.4. Compensation of Members of AC. Neither the members of the AC nor its designated representative shall receive compensation for services performed, but may, with prior approval of the board, be reimbursed for actual and reasonable expenses incurred by them in the performance of their duties.
- 6.5. Non-Liability of AC Members. None of the AC, any member thereof, or the Executive Board shall be liable to any Owner or to any other person for any loss, damage, or injury arising out of, or in any way connected with, the performance of the AC's duties under this Declaration. By granting its approval of proposed improvements, the AC will not be deemed to have approved or to have made any representation as to the safety, structural soundness, or compliance with local building codes or other governmental laws or regulations concerning the proposed Improvements.

**Comment:** Suggested added language

ARTICLE 7  
RESTRICTIONS ON USE, ALIENATION, AND OCCUPANCY

- 7.1. Improvements to lots. Subject to the Special Declarant Rights reserved under Article 6, the following restrictions on construction of Improvements apply to all lots:
- (a) Zoning. In event of conflict between these Protective Covenants and the Zoning or Land Use Regulations of the County of Alamosa, the more restrictive shall apply. In the event of a conflict concerning uses allowed on any Lot within the Zapata Subdivision between these Protective Covenants and the Zoning or Land Use Regulations of Alamosa County, the requirements of both must be met, or appropriate variances or special use permits obtained.
- (b) No structures shall be erected, altered, placed or permitted to remain on any building site other than one detached dwelling, not to exceed two and one-half stories in height, a private garage, and other outbuildings incidental to residential use of the premises
- (c) No building shall be located on any building site less than 30 feet from the front lot line for all sites covered by these covenants, nor less than 30 feet from any side street line. No building shall be located less than 10 feet from any side lot line or 20 feet from any building on the same site. ~~except a detached garage or other outbuilding located in the rear yard may be placed 10 feet from the side line.~~
- (d) Garage and carports Garages shall meet the specifications set in the architectural guidelines. An attached or detached unenclosed carport will be permitted.
- (e) No Temporary Structures or Building Materials. Except during construction, which shall not exceed 24 months, no temporary structure, or temporary building or building materials shall be placed, stored, or maintained upon the lot. No non-conforming outbuildings, trailers, barns or other structures shall be maintained on any lot.
- (f) No basement, shack, garage, barn, or other building or structure of a temporary nature erected on a building site covered by these Covenants shall at any time be used for human habitation. Temporary use of a RV (up to 3 months/year) or tent is permitted as long as the tent or RV is hidden from view of the road as well as possible, sanitary conditions are kept, human waste is removed, the property owner is present, and the Board has been notified, a foundation has been constructed, and weekly progress is being made.
- (g) Except for mobile/modular/manufactured homes as covered below, no residential building structure shall be

**Comment:** redundant

**Comment:** need to clean this up and decide if we want to address tents here or in policy

permitted on any building site covered by these covenants, the habitable floor area of which, exclusive of basements, porches, and garages, is less than 950 square feet in the case of a one-story structure or less than 1200 square feet in the case of a one and one-half, two, or two and one-half story structure.

(h) A residence not built on site must be at least 22' wide, and at least 43 feet long, with an interior ceiling height of at least 8', and set on a fixed foundation

(i) No fence, wall, hedge, or mass planting of any height shall be permitted without the approval of the AC.

Fences, walls hedges, and mass plantings may come out to the lot lines, provided the lot owner understands that such improvements may interfere with the utility right of way, and the lot owner may not hold the utility company or its representative responsible for damage to such improvements, and/or may be required to remove such improvements when necessary to utilize the utility easement.

(j) Mineral Extraction. No portion of the Property, including, without limitation, any area within a Lot, shall be used to explore for, to remove any, or to refine any soil, hydrocarbons, hardrock, gravel, or other minerals of any kind.

(k) Each Lot Owner shall be responsible for drilling his or her own well for in-house use

(m) Each lot owner is responsible for providing gas, electric, and other utilities to his lot.

(n) Each lot owner shall be solely responsible for the approval, installation, and maintenance of the on-site sewage disposal system intended for use on his or her premises.

(o) Maintaining of Drainage. There shall be no interference with the established drainage pattern as existing on the ground or as shown on the Plats. Lot entrances shall not block drainage. Culverts are required where drainage is impacted.

7.2. Use Restrictions. Subject to the Association rights reserved under Article 6, the following use restrictions apply to all lots and to the Common Elements:

(a) All Lots shall be known and described as residential building sites, and may only be used for residential purposes, except commercial Lots and common areas.

(b) No Commercial Pursuits unless authorized by the Board. Except for those activities conducted as a part of the marketing of a residence, all commercial pursuits operated from a residence will be evaluated by the board and may be authorized on a case- by-case basis. Evaluation criteria will parallel Alamosa County restrictions and include visual, audible, and physical impacts to the subdivision.

Commercial lots, as shown in the Plat, may be improved in accordance with commercial architectural guidelines established by the AC. No commercial development will have negative impact on the Subdivision environment.

(c) Compliance with Laws. No improper or unlawful use, which may constitute a violation of federal, state, or county laws, regulations, codes, ordinances or restrictions, or disturb the peace and comfort of other Owners, may be made of the property.

(d) Offensive Activities. No noxious or offensive activity shall be carried on upon any portion of the Subdivision nor shall anything be done, either willfully or negligently, or placed thereon, that is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to other lot Owners, residence occupants, or to the neighborhood.

(e) No Hazardous Activities. There shall be no activity or improvement on any portion of the subdivision that is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be recreationally discharged upon the subdivision, and fires shall be governed by existing policies.

(f) Compliance with Insurance Requirements. Nothing shall be done or kept on the Property that could result in a material increase in the rates of insurance or would result in the cancellation of insurance maintained by the Association without the prior approval of the Association.

(g) Annoying Sounds or Odors. No sound or odor, including those caused by house pets and animals, shall be emitted from any portion of the Property that is noxious or offensive to, or would interfere with the rights, comforts, or convenience of other Lot Owners or occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any lot except with the prior written approval of the AC.

(h) Storage of Vehicles. Subject to the public-policy-based permissions contained in C.R.S., § 38-33.3-106.5, only operating vehicles that are personally owned or related to ZHA project work, and that don't create a nuisance, may be kept on a private lot or tract. RVs may be stored year round provided there is a residential structure on the same site, or a building permit for a residential structure is in hand.

No boat, camper (on or off supporting vehicles), trailer, tractor, truck, towed trailer unit, motorcycle, disabled, junked, or abandoned vehicle, motor home, mobile home, recreational vehicle, or any other vehicle, the primary

**Comment:** The "nuisance" area (which pops up all over the document) contains specific prohibitions and also contains multiple, repetitious, redundant, ambiguous, confusing, contradictory and subjective prohibitions. Use of specific prohibitions has merit, although if you are too specific and err, you live with it for 25 years. Adding a litany of subjective standards is not helpful. Nuanced repetition does not equate with clarity. The original Covenants contained a couple of short provisions which, with some updating, could cover the territory. Suggest you rewrite the language so that it is short and capable of being understood. d, e, g, m, o

purpose of which is for recreational, sporting, or commercial use, shall be parked or stored in, on, or about any street within the subdivision. The Association shall have the right to remove and store, at the Owner's expense, and dispose of, vehicles in violation of this Section. The Owner shall be entitled to Notice and Hearing prior to such action.

(i) Vehicle Repairs. No maintenance, service, repair, dismantling, or repainting of any type of vehicle, boat, machine, or device may be carried on for more than 48 hours except within a completely enclosed structure that screens the sight and sound of the activity from the street and from other lots.

(j) Pets. On a private lot of less than 5 acres you may have ~~dogs, cats,~~ household pets and up to 15 female chickens. On a private lot of 5 acres or more you may have the above plus 2 horses/each 5 acres, not to exceed a maximum of six horses per lot or per any number of contiguous lots under the same ownership. Legal watering of horses animals ~~is the responsibility of the landowner.~~ On common property, horses, dogs, and cats are permitted so long as under the control of the Owner. All animal activities shall be governed by Alamosa County ordinances. A second documented enforcement action by the county towards an individual shall constitute a nuisance.

**Comment:** suggested word change

**Comment:** suggested word change

(k) Access to Common Elements. No Owner shall engage in any activity that would temporarily or permanently deny free access to any part of the Common Elements by all Owners. No use shall ever be made of the Common Elements that would deny ingress or egress by any Owner to such Owner's lot.

**Comment:** do we need to say what uses are permitted /prohibited on common elements?

(l) Prohibition Against Discrimination. These covenants shall be construed as broadly as possible to prohibit restrictions based on race, color, national origin, creed, sex, marital status, ancestry, familial status, religion, sexual orientation, or disability.

(m) Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse, or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot except within an enclosed structure or area appropriately screened from view. This does not include firewood storage.

(n) Fires, No open burning is permitted except the annual burn at the wood recovery lot as directed by the board

**Comment:** suggested language

(o) No Unsightliness. All unsightly structures, facilities, equipment, objects, and conditions shall be enclosed within a structure, including snow removal equipment and garden or maintenance equipment except when in actual use. Clotheslines are permitted on the rear of the property out of sight from the roadway.

**Comment:** too restrictive

(p) Further Subdivision/Consolidation of Units. The Owner of a Lot shall not further subdivide that Lot; provided, however, that nothing in this subsection shall prohibit the Association from subdividing any Lot it owns for the sole purpose of annexing all subdivided portions of such lot to other adjacent lots as allowed by Alamosa County. No Lots shall be consolidated without the prior written consent of the Association.

(q) Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on a lot, the Owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the AC, or the Owner shall cause the damaged or destroyed Improvement to be demolished and the Lot to be suitably landscaped, subject to the approval of the AC, so as to present a pleasing and attractive appearance. Such restoration shall be accomplished within 24 months from the date of damage or destruction.

(r) Restrictions on Signs and Advertising. Subject to the public-policy-based permissions contained in C.R.S., § 38-33.3-106.5, no sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Property so as to be evident to public view without the approval of the Association except for a name plate, standard commercial realtor "for sale" sign, or sign not exceeding 1158 square inches in area within the Lot boundary, or address signs as covered by policy.

**Comment:** suggested language

(s) Electronic Equipment: No owner or operator of electronic equipment may erect a receiving and sending mast and antenna, other than a two-foot diameter dish, without prior written approval of the AC and the local governing body Executive Board. No equipment generating electromagnetic energy, which may interfere with communication reception, shall be permitted unless equipped with an adequate suppresser.

**Comment:** suggested language

7.3. Restrictions on Alienation. The following restrictions on alienation apply to all Lots and to the Common Elements:

(a) No Time-Sharing Plan. A Lot or residence may not be conveyed pursuant to a time-sharing plan.

(b) Leases. A Residence or portion thereof may not be leased or rented for a term of less than 30 days. All leases and rental agreements shall be in writing and subject to the requirements of the Documents and the Association. Property owners shall submit to the Executive Board proof that the lessee agrees to abide by the governing documents of the ZHA. Should the lessee be found in violation of the governing documents, the property Owner may be held accountable for damages.

(c) Association's Right to Evict Tenants. The Association will have the right and power to exercise the

landlord's rights of eviction against any tenant of a residence who violates the Rules; provided the Lot Owner has received Notice and Hearing and is given a reasonable opportunity to cure the violation following the hearing.

ARTICLE 8  
EASEMENTS AND LICENSES

- 8.1. Owner's Easement Across Common Elements. Every Owner shall have an unrestricted right and easement for ingress to, and egress from, the Common Elements, which easement shall be appurtenant to and shall pass with the title to every Lot.
- 8.2. Easements Reserved and Restrictions on Drainage Easements. Easements and rights-of-way are reserved on, over, and under the Common Elements and the Lots as shown on the original plats, for construction, maintenance, repair, replacement, and reconstruction of poles, wires, pipes and conduits for lighting, heating, air conditioning, electricity, gas, telephone, drainage and any other public or quasi-public utility service purposes, for sewer and water pipes of various kinds, and for any other necessary maintenance or repair. An easement is hereby reserved over the side five feet of each building site for utility installation and maintenance, and the front 10 feet of each building site where it shares a common boundary with a street right-of-way.
- 8.3. Easement Right of Access for Emergency Access. There is hereby created a right of access across all portions of the subdivision for the passage of emergency vehicles and police, fire, and other emergency service workers.

**Comment:** ok to strike through

**Comment:** better wording

ARTICLE 9  
AMENDMENTS TO DECLARATION

- 9.1. In General. These covenants shall affect and run with the land and shall exist and be binding upon all parties and persons claiming under them in perpetuity. This Declaration and the Plat may be amended only by vote or agreement of at least 51%-50 percent of the lot Owners, or be by action of the Association pursuant to CRS Section 38-33.3-217(7)..
- 9.2. Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year after the amendment is recorded.
- 9.3. Recording of Amendments. Each amendment to the Declaration must be recorded in the Records of the Alamosa County Clerk and Recorder, and the amendment is effective only upon recording.
- 9.4. Unanimous Consent. Except to the extent expressly permitted or required by other provisions of the Act or this Declaration, an amendment may not increase the number of lots or change the boundaries of the Subdivision or units, the allocated interests of a Lots, or the uses to which a Lot is restricted except by unanimous consent of the Lot Owners.
- 9.5. Execution of Amendments. An amendment to the Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, recorded, and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president chairman of the Association.

**Comment:** clarification

**Comment:** remove yellow or remove whole section per Erich

ARTICLE 10  
ASSESSMENT AND COLLECTION OF COMMON EXPENSES

- 10.1. Apportionment of Common Expenses. Assessments are set by Bylaw and Policy.
- 10.2. Common Expenses Attributable to Fewer than all Lots.
  - (a) Any Common Expense for services approved by the Executive Board and provided by the Association to an individual lot, or some lots, but fewer than all the lots, at the request of the particular lot Owner or Owners shall be assessed against the requesting lot(s).
  - (b) An assessment to pay a judgment against the Association may be made only against the Lots in existence at the time the judgment was entered in proportion to their Common Expense liabilities.
  - (c) If a Common Expense is incurred by the action or inaction of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner.
  - (d) Fees, charges, taxes, impositions, late charges, fines, collection costs, and interest charged against a Lot Owner pursuant to the Documents and the Act are enforceable as Common Expense Assessments.
- 10.3. Lien and Personal Obligation.
  - (a) The Association is hereby granted, and shall have, a lien on all Lots, for Common Expense Assessments

**Comment:** this does not affect individual lot owners

levied against the lot or fines imposed against its lot Owner.

(b) The method of imposing liens is described by policy.

10.4. Ratification of Nonbudgeted Common Expense Assessments. This item is addressed in the Bylaws  
10.5. Annual Payment of Common Expenses. All Common Expenses assessed under Sections 10.1 and 10.2 of this Declaration shall be due and payable annually before April 30th, unless otherwise determined by the Executive Board.

**Comment:** added language

10.6. No Waiver of Liability for Common Expenses. No Lot Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the lot against which the Common Expense Assessments are made.

10.7. Personal Liability of Lot Owners. The Owner of a lot, at the time a Common Expense Assessment or portion of the assessment is due and payable, is personally liable for the Common Expense Assessment. Personal liability for the Common Expense Assessment shall not pass to a successor in title to the lot unless the successor agrees to assume the obligation.

10.8. Reserve for Working Capital Fund. The Association shall maintain a reserve fund to meet unforeseen expenditures and/or to purchase any additional equipment or services (the "Working Capital Fund Operating Reserve"). This amount is set by policy.

**Comment:** term used in policy

10.9. Reserve Fund for Replacement of Improvements. The Association shall establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements (the "Reserve Fund Replacement Reserve"). This Reserve Fund shall be a line item in the periodic budget and shall be collected from and as part of the regular Common Expense Assessments.

**Comment:** term used in policy

## ARTICLE 11

### PERSONS AND UNITS SUBJECT TO DOCUMENTS

11.1. Compliance with Documents. All lot Owners, tenants, occupants of residences, and, to the extent they own lots, mortgagees, and the Association shall comply with the Documents and shall be subject to all rights and duties under the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a residence constitutes agreement that the provisions of the Documents are accepted and ratified by that lot Owner, tenant, mortgagee, or occupant. All provisions recorded in the Records are covenants running with the land and shall bind any persons having at any time any interest or estate in any Lot.

Enforcement of these conditions shall be by proceedings at law and/or in equity to restrain violation and/or for damages from any persons violating or attempting to violate any covenants herein contained. Such provisions, restrictions or covenants also shall be binding and effective against any lessee or sub lessee of said property whose interest thereto is acquired by assignment, inheritance or otherwise.

Every person acquiring legal or equitable title to any Lot covered by these covenants shall automatically become a member of the ZHA and with such ownership every such person becomes subject to the requirements and limitations imposed in these covenants and to the regulations and assessments of the ZHA, with the exception, however, of such person or persons who hold an interest in any property merely as a security for the performance to pay money, e.g., mortgages, deeds of trust, or real estate contract purchases. However, if such a person should realize upon his security and become the real owners of the lot within the development, he will be then subject to all the requirements and limitations imposed in these covenants on owners of Lots within the property and on members of the ZHA.

11.2. Adoption of Rules/Policies. The Executive Board may adopt Rules/Policies regarding the use of the Common Elements and the activities of the Association and its Members, subject to notice and comment.

11.3. Enforcement. In addition to, but not intended to contradict, the provisions of C.R.S., § 38-33.3-123, the Association, as well as any aggrieved lot Owner, is hereby granted a right of action against any lot Owner who fails to comply with the provisions of the Documents or to comply with decisions, policy and bylaws, made by the Association. Each and every lot Owner is also granted a similar right of action against the Association. In any action maintained under this Section, the prevailing party shall be awarded its reasonable attorneys' fees and costs.

## ARTICLE 12 INSURANCE

- 12.1. Coverage. The Association shall obtain and maintain insurance coverage as set forth in this Article.
- 12.2. Property Insurance Coverage. Property insurance will cover:
- (a) the facilities, consisting of all Common Elements and structures,
  - (b) all personal property owned by the Association.
- 12.3. Liability Insurance. Liability insurance, including medical payments insurance, will be maintained in an amount determined by the Executive Board, but in no event shall it be less than \$1,000,000. This insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of, or in connection with, the use, ownership, or maintenance of the Common Elements and the activities of the Association.
- 12.4. Workers' Compensation Insurance. The Executive Board shall obtain and maintain Workers' Compensation Insurance to meet the requirements of the laws of the State of Colorado.
- 12.5. Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain directors' and officers' liability insurance covering all of the Directors and officers of the Association. This insurance will have limits determined by the Executive Board.

ARTICLE 13  
RESTORATION OF COMMON PROPERTY

- 13.1. Duty to Restore. Any portion of the Common Property of property owned by the Association for which insurance proceeds are available to the Association must be repaired or replaced promptly by the Association unless:
- (a) the Common Interest Community is terminated;
  - (b) repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or
  - (c) 67 percent of the lot Owners, **as based upon assessments**, vote not to rebuild.
- 13.2. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

**Comment:** suggested addition

ARTICLE 14  
EXECUTIVE BOARD

The association shall be run by an Executive Board. The authorities, duties, and responsibilities of the Board are delineated in the Bylaws.

ARTICLE 15  
OPEN MEETINGS

**Meetings are open to members as** addressed in bylaws

**Comment:** suggested addition

ARTICLE 16  
MISCELLANEOUS PROVISIONS

- 16.1. Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of the Documents or the intent of any provision thereof.
- 16.2. Gender. The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.
- 16.3. Waiver. **No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches that may occur.**
- 16.4. Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and if a provision is invalid, all of the other provisions of the Documents shall continue in full force and effect.
- 16.5. Conflict. The Documents are intended to comply with the requirements of the applicable portions of the Act. If there is any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

**Comment:** per Erich, this should stay. It keeps the covenants enforceable

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ZAPATA HOMEOWNERS ASSOCIATION INC.  
a Colorado Non-Profit corporation

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

~~President~~ Chairman

ATTEST:

\_\_\_\_\_  
Secretary

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as ~~President~~ Chairman of The Zapata Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_.

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

This Amendment to Declaration was approved by the Owners of a majority of the lots in the Zapata Unit I (previously known as Hamptons, Unit 1), and a majority of the lots in Units II and III, and IV by a vote of Unit Owners of all of those Units taken on \_\_\_\_\_, 2009

**Comment:** may just need a majority.  
Erich checking.

IN WITNESS WHEREOF, the Association has caused its corporate name and seal to be affixed hereto by its ~~President~~ Chairman and Secretary hereunto authorized this *Current date*  
Zapata Homeowners Association  
BY ~~PRESIDENT~~ Chairman  
BY SECRETARY

STATE OF COLORADO )  
 ) ss.  
COUNTY OF ALAMOSA )

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 2009, by John White, as ~~President, Chairman and Joe Funk~~, as Secretary, of the Zapata Homeowners Association. WITNESS my Hand and official seal.

Notary Public  
My Commission expires:

END OF DOCUMENT