

Eagle Development Company  
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Colorado Springs, CO 80903

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR  
JACKSON CREEK HOMEOWNERS  
ASSOCIATION, INC.**

*Indexing Note: Please index in the grantee's index under Jackson Creek Homeowners Association, Inc., and in the grantor's index under Eagle Development Company.*

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
JACKSON CREEK HOMEOWNERS ASSOCIATION, INC.**

This Declaration of Covenants, Conditions and Restrictions for Jackson Creek Homeowners Association, Inc. is made this 15<sup>th</sup> day of September, 2023 by Eagle Development Company, a Colorado corporation (“Declarant”)

**INTRODUCTION TO THE COMMUNITY**

Declarant has created this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of Jackson Creek Homeowners Association, Inc. as a planned community.

**ARTICLE 1 CREATION OF THE COMMUNITY**

1.1 Purpose and Intent. Declarant intends by recording this Declaration to establish a general plan and scheme of development for the planned community known as Jackson Creek Homeowners Association, Inc. consisting of residential and recreational areas and uses. This Declaration provides for the Community’s overall development, administration, maintenance, and preservation, and provides flexible and reasonable procedures for its future expansion.

An integral part of the development plan is the creation of Jackson Creek Homeowners Association, Inc., an association comprised of all Community real property owners, to own, operate, manage, and/or maintain amenities upon various Common Areas and community improvements, provide services for the benefit of the real property owners in the Community and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration. Declarant desires to form the Association as a nonprofit corporation to (a) own, manage and maintain the Common Areas and certain other areas in the Community, (b) levy, collect and disburse the Assessments and other charges imposed hereunder, (c) act as the agent and representative of the Owners in the Community and enforce the use restrictions and other provision of this Declaration, and (d) subject to any limitations set forth in this Declaration or the other Governing Documents, exercise all powers granted to Colorado nonprofit corporations as a unit owners’ association under Colorado law and under the Act.

Declarant reserves the right, without obligation, to annex additional land into the Community. As the development of the Community proceeds, Declarant may, without obligation, record various subdivision plats, dedicate portions of the Annexable Property to the public for streets, roadways, drainage, flood control and general public use, or keep all or portions of the above private and convey them to the Association or special or metropolitan districts, and to record Annexing Deeds and/or Supplemental Declarations causing portions of the Annexable Property to be subject to this Declaration and designating the purposes for which such portions of the Community may be used and may set forth additional covenants, conditions and restrictions applicable to such portions of the Community. Notwithstanding the foregoing or anything otherwise to the contrary, the recordation of a Plat without a corresponding deed or Supplemental Declaration shall not subject the property contained within such Plat to this Declaration. Except for the property described in Exhibit A, no property shall become subject to the terms and conditions contained in this Declaration unless such property is properly described in an Annexing Deed or Supplemental Declaration that is properly recorded with the applicable jurisdiction,

and in no event shall any property be construed or deemed to be subject to this Declaration in any manner whatsoever until such recordation of such Annexing Deed or Supplemental Declaration.

This document is prepared pursuant to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq. (the "Act"), and establishes a planned community as defined in, and subject to, the Act.

1.2 Binding Effect. All property described in Exhibit A, and any additional property made subject to this Declaration in the future by recording one or more Supplemental Declarations, shall be acquired, held, owned, conveyed, and used subject to this Declaration. This Declaration shall run with the title to the Property and shall be binding upon all Persons having any right, title, or interest in any portion of the Property, their heirs, successors, and assigns, whether or not it is specifically referenced in the conveyance deed or instrument whereby such Person obtained such interest. Each and every provision of this Declaration shall run with and bind the Property in perpetuity. This Declaration may be terminated only in accordance with the termination procedures set forth in the Act. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement. Notwithstanding the foregoing or anything otherwise to the contrary, the recordation of a Plat shall not subject the property contained within such Plat to this Declaration. Except for the property described in Exhibit A, no property shall become subject to the terms and conditions contained in this Declaration unless such property is properly described in a Supplemental Declaration or Annexing Deed that is properly recorded with the applicable jurisdiction, and in no event shall any property be construed or deemed to be subject to this Declaration in any manner whatsoever until such recordation of such Supplemental Declaration or Annexing Deed.

1.3 Definitions. The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as follows:

(a) Act. The Colorado Common Interest Ownership Act, as it may be amended from time to time.

(b) Agencies. The Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (Fannie Mae), the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA) or any other governmental or quasi-governmental agency or any other entity which may perform functions similar to those currently performed by such entities.

(c) Allocated Interests. The votes in the Association and liability for Common Expenses allocated to each Lot. The Owners of each Lot shall be allocated one vote in the Association for each Lot owned. Subject to the provisions of Section 5.5 below, the liability for Common Expenses shall be allocated among all Lots in the Community. The allocation of such Common Expenses to any one Lot shall be based on the percentage equivalent of a fraction in which the numerator is one (1) and the denominator is the total number of all Lots in the Community from time to time.

The Allocated Interest for each Lot is subject to decrease with the annexation of additional property to this Community, or increase should Declarant exercise its right to withdraw property as provided herein.

(d) Annexable Property. The property described on Exhibit B attached hereto and incorporated herein by this reference, plus such additional real estate from such locations as the Declarant may elect in an amount not to exceed the maximum that is permitted by the Act. Unless and until the Annexable Property or any portion thereof is annexed to this Declaration, and not withdrawn, such

property shall not be subject to this Declaration or any provision hereof, except the rights of annexation by the Declarant that are provided for in Section 12.2 of this Declaration.

(e) Annexing Deed. A deed conveying a Lot to a Person other than Declarant which also makes the Lot conveyed subject to and encumbered by the provisions of the Declaration. An Annexing Deed must satisfy all of the requirements of an amendment to this Declaration as provided in Section 210 of the Act.

(f) Annual Assessment. Annual Assessments levied to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 5.3 of this Declaration.

(g) Architectural Review Committee or ARC. The committee appointed by the Declarant until automatic termination of the Special Declarant Rights as provided in Section 12.1 of this Declaration, and then appointed by the Board of Directors, all as more fully provided in Section 6.1 of this Declaration. The ARC shall review and approve or disapprove plans for Improvements located on Lots, as more fully provided in this Declaration.

(h) Articles of Incorporation. The Articles of Incorporation of the Association, as they may be amended from time to time.

(i) Assessment or Assessments. Any Annual Assessment, Special Assessment, Specific Assessments, New Member Fee (as defined in Section 5.6), or any other fees, fines or charges made or assessed hereunder by the Association against an Owner and his or her Lot in accordance with the provisions of ARTICLE 5, below.

(j) Association. Jackson Creek Homeowners Association, Inc., a Colorado nonprofit corporation organized pursuant to Section 38-33.3-301 of the Act.

(k) Board of Directors or Board. The board elected pursuant to the Association's Bylaws or appointed by the Declarant responsible for acting on behalf of the Association; the "Executive Board" as the term is used in the Act.

(l) Bylaws. The bylaws of the Association, as they may be amended from time to time.

(m) Common Areas. All real and personal property, including easements and other land use rights, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including areas designated as Common Areas by Declarant from time to time, and including all improvements located therein or thereon. Common Areas do not include any Lot owned by the Association unless such Lot is expressly designated as Common Area on a Plat or in a Supplemental Declaration. As of the recording date of this Declaration, there is not any real property which is or which must become Common Area.

(n) Common Expenses. The actual expenses or liabilities incurred by or on behalf of the Association the Board finds necessary or appropriate, including reserves.

(o) Community. The Property and Improvements subject to this Declaration, as it may be supplemented from time to time.

(p) Declarant. Eagle Development Company, a Colorado corporation, and any other Person(s) to whom the Declarant, by recorded instrument, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds). Declarant is the owner of an interest in the real property described in Exhibit A.



(q) Declaration. This document, including any amendments and supplements thereto, and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including, but not limited to, plats and maps.

(r) Development Rights. In addition to any right or combination of rights reserved by Declarant in this Declaration related thereto, the right to: (a) add real estate to the Community; (b) create Lots, Units, or Common Areas within the Community; (c) subdivide Lots or convert Lots into Common Areas; (d) withdraw real estate from the Community; (e) reserve, grant, create, modify and use easements over, across, under or through the Property; and (f) the right to move any Lot lines(s) on Lot(s) owned by Declarant, for the purpose of accommodating Improvements which are constructed or may be constructed.

(s) Director. A member of the Board of Directors.

(t) Dwelling Unit. A single building or structure or portion of a building or structure situated upon a Lot, which is intended for use and occupancy as a separate attached or detached dwelling unit for one or more persons, including the patio, deck, porch, basement, garage, and outbuildings, if applicable.

(u) Good Standing. An Owner who is no more than thirty (30) days late in the payment of any Assessments, and who has none of his, her or its membership privileges suspended. An Owner who is not in Good Standing with the Association is not entitled to vote on any matter. All Owners in Good Standing shall be entitled to vote in accordance with the provisions of Section 3.4 herein.

(v) Governing Documents. This Declaration, the Plats, the Articles of Incorporation, Bylaws and Rules, as they may be amended or supplemented from time to time.

(w) Improvements. Structures now or hereafter located on a Lot or in the Common Areas; exterior improvements or modifications to any such structures; and any other exterior improvements or modifications made to a Lot or the Common Areas; and any exterior appurtenances thereto or exterior components thereof, of every type and kind, including all landscaping features; and all actions taken to develop a Lot or any Common Area.

(x) Initially Unoccupied Lots. Those Lots that do not contain a Dwelling Unit for which a certificate of occupancy, or its equivalent, has been issued by the applicable governmental authority. Initially Unoccupied Lots also includes those Lots on which the Dwelling Unit on such Lot has been destroyed (for example, by fire or other casualty). However, the Initially Unoccupied Lots that are referenced in the preceding sentence shall each cease to be an Initially Unoccupied Lot when such Lot contains a Dwelling Unit on which a certificate of occupancy, or its equivalent, has been issued by the applicable governmental authority. Further, any Lot containing a Dwelling Unit that is first occupied and used for residential purposes shall not be considered an Initially Unoccupied Lot.

(y) Lot or Lots. Each platted lot which is a physical portion of the Community, other than Common Areas, designated for separate ownership or occupancy, the boundaries of which are described on the Plat. Any parcel of real property that may be, but has not been, further subdivided shall be considered a single Lot. The term "Lot" shall have the same meaning as the term "Unit" in the Act.

(z) Lots that May Be Included. The maximum number of Lots that may be subject to this Declaration, including those Lots which may be included if all of the Annexable Property is annexed to this Declaration. However, the number of Lots that May Be Included is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in, or constructed, as part of the Community. This term shall include Lots that Declarant or a successor to Declarant may elect to create.

Notwithstanding the foregoing or anything otherwise to the contrary, the designation of Lots that May Be Included shall not subject such property to this Declaration. Except for the property described in Exhibit A, no property shall become subject to the terms and conditions contained in this Declaration unless such property is properly described in an Annexing Deed or a Supplemental Declaration that is properly recorded with the applicable jurisdiction, and in no event shall any property be construed or deemed to be subject to this Declaration in any manner whatsoever until such recordation of such Annexing Deed or Supplemental Declaration.

(aa) Member. All Owners of a Lot collectively or, following termination of the Community, all former Owners entitled to distributions of proceeds under the Act, their heirs, personal representatives, successors and assigns.

(bb) Mortgage. A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. A first Mortgage is a Mortgage, the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

(cc) Mortgagee. The holder or beneficiary of a Mortgage.

(dd) Notice and Hearing. The right of an Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon, as provided for herein, or in the Bylaws or in a Rule duly adopted by the Board.

(ee) Owner. Any Person who is the owner of record of the fee title to any Lot, but not a Mortgagee. The Declarant is the initial owner of any Lot created by or subject to this Declaration.

(ff) Period of Declarant Control. A length of time that terminates no later than the earlier of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant; (ii) two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; (iii) two (2) years after the right to add new lots to the Declaration was last exercised; or (iv) when at an earlier date, in its discretion, the Declarant so determines.

(gg) Permittee. Any family members, tenants, subtenants, licensees, occupants, invitees, guests or visitors of an Owner, or family members, invitees, guests or visitors of a tenant.

(hh) Person. A natural person, corporation, trust, partnership, limited liability company, association, joint venture, or other legal or commercial entity or combination thereof.

(ii) Plat. One or more recorded subdivision plats for all or any portion of the Community, as may be amended and supplemented from time to time.

(jj) Property. The real property described in Exhibit A together with such additional property as is subjected to this Declaration from time to time.

(kk) Rules. Rules, regulations, procedures, policies and guidelines, however denominated, adopted, amended or repealed by the Board from time to time, for the regulation and management of the Community, including Common Areas and Lots.

(ll) Special Assessments. Any Assessment levied and assessed against all Owners or some Owners as provided in ARTICLE 5 below.

(mm) Special Declarant Rights. Rights reserved for the benefit of a Declarant as described in ARTICLE 12 of this Declaration.

(nn) Specific Assessments. Charges against a specific Owner and his, her or its Lot as provided in ARTICLE 5 below.

(oo) Supplemental Declaration. A recorded instrument under which the Declarant subjects additional property to this Declaration, designates Common Areas, and/or imposes expressly or by reference additional restrictions and obligations on the land described in such instrument, or which creates additional obligations of the Association. A Supplemental Declaration shall constitute an amendment to this Declaration as required by Section 210 of the Act. Any Supplemental Declaration may be amended or supplemented by Declarant in the exercise of Special Declarant Rights. Except for the property described in Exhibit A, no property shall become subject to the terms and conditions contained in this Declaration unless such property is properly described in an Annexing Deed or a Supplemental Declaration that is properly recorded with the applicable jurisdiction, and in no event shall any property be construed or deemed to be subject to this Declaration in any manner whatsoever until such recordation of such Annexing Deed or Supplemental Declaration.

## ARTICLE 2 THE COMMUNITY

2.1 The Community. The name of the Community is Jackson Creek Homeowners Association, Inc. It is a planned community, as that term is defined in the Act.

2.2 The Association. The name of the Association is Jackson Creek Homeowners Association, Inc.

2.3 Lots That May be Included. The Declarant reserves the right to create a maximum of four hundred twenty five (425) Lots.

2.4 Identification of Lots. The identification number of each Lot is shown on the Plat, as supplemented or amended from time to time.

## ARTICLE 3 THE ASSOCIATION AND ITS MEMBERS

3.1 Function of Association. The Association is the entity responsible for management, maintenance, operation, and control of the Common Areas. The Association also has primary responsibility for enforcing the Governing Documents, and may provide for the general recreation and welfare of its residents.

3.2 Membership. Every Owner shall be a Member of the Association, and the membership of the Association at all times shall consist exclusively of all Owners or, following termination of the Community, of all former Owners entitled to distributions of proceeds under the Act or their heirs, personal representatives, successors or assigns. Membership shall be appurtenant to and may not be separated from ownership of any Lot. There shall be only one membership per Lot. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner which is not an individual may be exercised by any officer, director, partner, member, manager or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Association's Secretary.

3.3 One Class of Membership. The Association shall have one class of voting membership. The right to vote commences at such time as the Lot is made subject to the Declaration; provided, no vote shall be exercised for any Lot which is exempt from Assessment under Section 5.13, and no votes

allocated to a Lot owned by the Association may be cast.

3.4 Exercise of Voting Rights. Subject to being in Good Standing, each membership shall be entitled to one vote for each Lot owned. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the multiple Owners casts the vote without protest being made promptly to the Person presiding over the meeting by any of the other Owners of the Lot. In the event that more than one such co-Owner casts a vote or attempts to cast a vote, the vote allocated to the Lot shall be suspended and excluded from the final vote tally on the matter on which a vote is being taken. No Owner shall be entitled to vote in any matter unless that Owner is in Good Standing with the Association.

3.5 Election of Part of Board of Directors During Period of Declarant Control. No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May be Included to Owners other than Declarant, at least one (1) Director and not less than twenty-five percent (25%) of the Directors on the Board of Directors must be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that May be Included to Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the Directors on the Board of Directors must be elected by Owners other than the Declarant. No Owner shall be entitled to serve as a Director unless that Owner is in Good Standing with the Association.

3.6 Termination of Period of Declarant Control. The Period of Declarant Control terminates upon the earlier to occur of the following: (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May be Included to Owners other than Declarant; (b) two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; (c) two (2) years after the right to add new Lots to the Declaration was last exercised; or (d) when at an earlier date, in its discretion, the Declarant so determines. Not later than the termination of the Period of Declarant Control, the Owners shall elect a Board of Directors (with the exact number of Directors to be set forth in the Bylaws of the Association), at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant.

3.7 Authority of Declarant During Period of Declarant Control. Except as otherwise provided in this ARTICLE 3, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and Directors, and may remove all officers and Directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and Directors before termination of the Period of Declarant Control; but, in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

3.8 Delivery of Documents by Declarant. After the Owners other than the Declarant elect a majority of the Directors on the Board of Directors, the Declarant shall deliver to the Association all property of the Owners and of the Association held or controlled by the Declarant, if and to the extent required by the Act.

#### ARTICLE 4 ASSOCIATION POWERS AND RESPONSIBILITIES

##### 4.1 Acceptance and Control of Association Property.

(a) The Association, through action of the Board, may acquire, hold, lease (as landlord or tenant), operate, and dispose of tangible and intangible personal property and real property,

subject to the requirement that any conveyance of, or granting a security interest in, the Common Areas may only occur following approval of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated. The Association may enter into leases, licenses, or operating agreements for portions of the Common Areas, for payment or no payment as the Board deems appropriate, to permit use of portions of the Common Areas by community organizations and by other third parties.

(b) Declarant and its designees may transfer to the Association, and the Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibits A or B.

(c) The Association shall be responsible for the management, operation, and control of the Common Areas, subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Association and all matters of record and those a proper survey of such property would reveal. Except as required in this Declaration with respect to maintenance, repair and replacement responsibilities of Owners, no Owner or Permittee shall make any addition or other alteration to any portion of the Common Areas, no matter how minor, without the express prior written consent of the Board, which consent may be withheld in the Board's sole and absolute discretion. The Board shall have the power to adopt Rules regulating use and enjoyment of the Common Areas, including Rules limiting the number of guests who may use the Common Areas.

4.2 Maintenance of Common Areas, Exterior Landscaping and Other Properties. Except as required in this Declaration with respect to maintenance, repair and replacement responsibilities of Owners, the Association shall maintain, or cause to be maintained, the Common Areas, which shall include, but need not be limited to:

(a) all portions of the Common Areas, including landscaping, seasonal lawn mowing, lawn, tree and shrub watering, lawn fertilization and related treatment, pruning and/or replacement of trees and/or shrubs, removal of weeds and debris, removal of growth and debris from rock mulch areas, replacement of rock mulch as deemed necessary from time to time, repair of sidewalk cracks deemed necessary or appropriate by the Association, repair and, from time to time, necessary replacement of system components of freestanding lights on or along sidewalks or private rights of way, and seasonal turn on and clean out and, from time to time, necessary replacement of sprinkler system components, retaining walls (excluding any retaining walls located on a Lot for which the Association has not expressly assumed the responsibility therefor in writing), structures, trails, trail lighting, playground equipment, signage (other than Declarant signs), monumentation, detention areas (that are not maintained by others), drainage channels (that are not maintained by others), and upkeep and repair as deemed necessary or appropriate by the Association for private streets and street improvements and other improvements located on Common Areas;

(b) snow removal from Common Areas sidewalks, graffiti removal and maintenance and debris removal from the private streets and concrete sidewalks along private streets, and the cluster mailbox locations in the Community and other areas designated by the Association, but not on garage aprons or individual walks to the front doors of the Dwelling Units unless the Board, in its discretion, elects to provide such services. In no event shall the Association or the Board be responsible for removal of ice, or for damage or injuries caused by ice and snow;

(c) landscaping within public rights-of-way or other publicly-owned property abutting public streets within the Community, and any detention areas, drainage channels, ponds, structure or facilities, to the extent such maintenance is required to be performed by the Association by the local governmental entity as a condition of the development of the Community or any part thereof, or as otherwise agreed to by the Association;

(d) such portions of any additional property as may be required by this Declaration, any Supplemental Declaration, any Plat, development plan or any contract, covenant, or agreement for maintenance entered into by, or for the benefit of, the Association; and

(e) all ponds, streams, and wetlands situated within the Community which serve as part of the Community's stormwater drainage system, including associated improvements and equipment unless the same have been dedicated to and/or accepted and/or agreed to be maintained by a local governmental entity, special district, another community association or other entity for the purpose of maintenance, repair and replacement. The Association is responsible for maintenance, repair and replacement of the main line of the underdrain system up to the point of connection of the same with the lateral underdrain system lines, including any portion of the main line of the underdrain system underlying any Lot, but not including lateral underdrain system lines.

The Association may partially or completely maintain other real property, facilities and public improvements which it does not own, including, without limitation, publicly-dedicated and publicly-owned real property (including the Tracts identified in Exhibit B attached to this Declaration), easements, landscaping, facilities, buildings and improvements ("Maintenance Property") owned by a municipality, special district, business improvement district or other governmental or quasi-governmental entity or an Owner or other third party, if required by a local governmental entity as a condition of development of the Community or any part thereof, or if pursuant to any written agreement, or if the Board determines that such maintenance is necessary or desirable; provided, however, the Association may not undertake the maintenance of Dwelling Units that have been constructed upon a Lot except as provided in Section 9.2 of this Declaration. The Association is authorized to enter into agreements, easements or other arrangements by and between the Association and any municipality, special district, business improvement district or other governmental or quasi-governmental entity local governmental entity, or other Persons regarding the use, operation, maintenance, repair or replacement of any Maintenance Property or other property as the Board deems appropriate. The costs incurred by the Association that are associated with the operation, maintenance, repair, and replacement of Maintenance Property shall be a Common Expense. The Association may accept, seek and enter agreements for compensation, contribution or reimbursement from the owner of such Maintenance Property in connection with such costs.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been grossly negligent in the performance of its maintenance responsibilities. Further, the Association shall not be liable for any damage or injury to any Person or Lot occurring on or arising out of naturally occurring events or conditions occurring or existing on the Common Areas except to the extent that it has caused such damage or injury by its gross negligence or intentional acts or omissions.

The Association shall maintain the facilities and equipment within the Common Areas in consistent operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated agree in writing to discontinue such operation. Except as provided above, the Common Areas shall not be reduced during the Special Declarant Rights Period (hereinafter defined) except with Declarant's prior written approval.

Except as otherwise provided herein, the costs associated with maintenance, repair, and replacement as provided for in this Section 4.2, as well as any fees or charges payable with respect to the Common Areas, shall be a Common Expense; provided, the Association may seek reimbursement from the Owner(s), other than Declarant, of, or other Persons responsible for, certain portions of the Common Areas or a Lot pursuant to this Declaration, a Supplemental Declaration, or other recorded covenants or agreements. An Owner will reimburse the Association for the costs, expenses and fees for maintenance,

repair or replacement to the Common Areas caused intentionally, negligently or by the failure to properly maintain, repair or make replacements to such Owner's Lot (including drainage). If such expense is caused by misconduct, it will be assessed as a Specific Assessment following Notice and Hearing.

#### 4.4 Compliance and Enforcement.

(a) The Association shall have the power to enforce the provisions of the Governing Documents, and shall take such action as the Board deems necessary or desirable to cause compliance by each Member and Permittee. The Board may impose sanctions for violations of the Governing Documents, which sanctions include those listed below and any others specifically described in the Governing Documents or as permitted by law, and may establish a range of penalties for different violations. The following sanctions require Notice and Hearing, provided that only a single Notice and Hearing is required for continuing violations:

(i) imposing reasonable monetary fines. Fines may be imposed within a graduated range. There is no limit on the aggregate amount of any fine for a continuing violation except as otherwise provided in the Rules or the Act;

(ii) suspending an Owner's right to vote, except that no Notice and Hearing shall be required to suspend an Owner's right to vote if the Owner is not in Good Standing;

(iii) suspending any Person's right to use Common Areas; provided, nothing shall authorize the Board to impair an Owner's or occupant's access to his or her Lot;

(iv) suspending any services the Association furnishes to the Owner's Lot;

(v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Lot; and

(vi) levying Specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

(b) In addition, without Notice and Hearing being required, the Board or its designees may take the following enforcement actions to ensure compliance with the Governing Documents:

(i) taking other action to abate a violation on the Common Areas or a violation on a Lot in an emergency situation; and

(ii) bringing action at law or in equity to enjoin any violation or to recover monetary damages, or both.

#### 4.5 Authority of Association and Board.

(a) The Association may exercise any right or privilege given to it expressly, or by reasonable implication, by the Governing Documents, the Act or the Colorado Revised Nonprofit Corporation Act, or take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, the Board may exercise the Association's rights and powers without a vote or approval of the Owners. No Owner shall be entitled to serve as a Director unless that Owner is in Good Standing with the Association. The Board of Directors shall elect the officers. The Directors and officers shall take office upon election.

(b) Without limiting the authority of the Board, the Board shall have the following duties and powers to act on behalf of the Association:

(i) subject to the terms of this Declaration, institute, defend, settle, or intervene on the Association's behalf or on behalf of two or more Owners, in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute any legal or other action or proceeding on behalf of or in the name of the Association or the Members.

(ii) maintain insurance as required in accordance with ARTICLE 7 herein;

(iii) prepare, and submit to the Owners, annual budgets for revenues, expenditures and reserves for the Association as elsewhere provided in this Declaration.

(iv) levy and collect Assessments as elsewhere provided in this Declaration.

(v) keep and provide the Association's records in compliance with the Act;

(vi) adopt and amend Bylaws and Rules as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Lots or the Common Areas, the use of any other property within the Community, and otherwise for the benefit of the Community and the Owners. Any such Rules shall be non-discriminatory and reasonable. The Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and the provisions of this Declaration, the provisions of this Declaration shall control;

(vii) in accordance with Section 4.4 above, suspend the right of an Owner to use any Common Areas (a) for any period during which any Assessment or other charge against the Owner's Lot remains delinquent, and (b) other than as set forth in (a) immediately preceding this sentence, for a period not to exceed sixty (60) days for a single violation of the Governing Documents, or for a longer period in the case of any continuing violation including a period of time following termination of the violation;

(viii) enter into contracts and incur liabilities;

(ix) borrow money and assign its future income, including its right to receive Assessments, upon resolution of the Board without approval of the Owners. Further, the Board shall have the power to dedicate, transfer, or encumber, in the name of the Association, any right, title or interest in real or personal property, except that Common Areas may be conveyed in fee or subjected to a security interest only if, unless otherwise restricted, Owners to which at least sixty-seven percent (67%) of the votes are allocated agree to that action;

(x) grant easements, leases, licenses and concessions through or over the Common Areas;

(xi) rent any portion of any Common Areas or recreational facilities on an exclusive or non-exclusive short-term basis to any Person, and impose fees or charges for the use, rental or operation of the Common Areas; and

(xii) permit use of any Common Areas by Persons who are not Members of the Community, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion.



(c) **Limitation on Actions.** The Association may not sue anyone or arbitrate claims on behalf of two or more Owners, or take an assignment of claims from one or more Owners, with respect to any claims or issues on individual Dwelling Units, including without limitation, any claim or dispute over or related to the design, construction or physical condition of the Lot or the Dwelling Unit or other improvements thereon.

(d) **Authenticated Electronic Representation.** To the extent not prohibited by applicable law, the Association may use technology or electronic representation in completing its duties and responsibilities. In this regard, any reference in any of such documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent not prohibited by applicable law, the provisions of all of such documents shall be deemed to include provisions which permit such authenticated electronic activity. To the extent not prohibited by applicable law, the Association may conduct Member and Board meeting by videoconference or otherwise through the use of, any means of communication by which all Members and Directors participating may hear each other during the meeting. A Member or Director participating in a meeting by this means is deemed to be present in person at the meeting..

4.6 **Indemnification of Officers, Directors, and Others.** The officers, Directors, and committee members, acting in those capacities, shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual intentional or willful misconduct. The officers and Directors, acting in those capacities, shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association.

Subject to and to the fullest extent permitted by Colorado law, the Association shall defend and indemnify every present and former officer, director, and committee member against all claims, damages and expenses, including attorneys' fees, reasonably incurred in connection with any claim, action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, Director, or committee member, except that such obligation to indemnify shall be limited to those actions for which the indemnitee's personal liability is limited under this Section.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, Director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7 **Safety and Security.** Each Owner and Permittee is responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself and his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or injury or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its Permittees that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within

the Community assumes all risks of personal injury and loss or damage to property, including Lots, and the contents of Lots, resulting from acts of third parties.

4.8 Right to Contract. The Association shall have the right to contract for and regulate the provision of services and facilities, including, without limitation, snow removal, trash collection and recycling, cable television and/or telecommunications services and facilities for all or any of the Owners and their Lots, and may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or require Owners to pay the costs of such services or facilities directly, or may include the costs in the Association's budget as a Common Expense. If provided to less than all Lots, the Association may assess such costs as a Specific Assessment. The Association is authorized to contract for such services for all or portions of the Community, and determine that the cost of such services shall be charged as use or service fees for such services, or paid by the Association as part of the Common Expenses, or that the cost of such services shall be paid by each Owner directly to the service provider in which case the Association shall not have any duty to pay the costs of such services or to assess the costs thereof to the Owners as Assessments. Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board may modify or cancel existing contracts for services or facilities in its discretion, unless the services or facilities are otherwise required by the Governing Documents. Non-use of services or facilities provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay Assessments for such services.

4.9 Relationships with Other Properties. The Association may enter into contractual agreements or covenants to share costs with any neighboring properties to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of maintenance of Common Areas.

4.10 View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, any Common Areas, or any open space within the Community will be preserved without impairment, and neither shall be obligated to remove, relocate, prune, or thin trees or other landscaping. The Association and the Declarant (with respect to the Common Areas) have the right to add trees, walls, fences, berms, or other structures, signs, lighting, water features and other landscaping from time to time subject to applicable law, without regard to any view impairment. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

4.11 Relationship with Governmental and Tax-Exempt Organizations. The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements, leases or licenses over the Common Areas to, state or local governments, special districts, or metropolitan districts, public utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Association, and the Members. The Association may contribute or receive money, real property (including Common Areas), personal property, or services to or from any such entity.

4.12 Cooperation with Other Associations. The Association shall have the right and authority at any time, and from time to time, to enter into agreements and otherwise cooperate with other community associations, and/or any special districts or metropolitan districts, to share facilities, to share the costs and/or responsibility for any operation, maintenance, repair, replacement or other matters, to perform maintenance, repair or replacement for any person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers or others who may perform services for the Association, any other community associations and/or any districts, or to otherwise cooperate with any other community associations and/or any districts in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any,

shall be shared or apportioned between the Association and/or any other community associations and/or any districts, as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, and from time to time, to enter into agreements and otherwise cooperate with any other community associations and/or any districts to collect Assessments, other charges or other amounts which may be due to such entity and to permit any such entity to collect Assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

4.13 Management Contracts. Any agreement for professional management of the Association's business shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice.

## ARTICLE 5 ASSOCIATION FINANCES

5.1 Purpose of Assessments. The Assessments levied by the Association may be used to promote the recreation and welfare of the residents of the Lots, and for all of those purposes and activities which may be required of the Association, or the Board of Directors, or which the Association, or the Board of Directors, may be empowered to pursue pursuant to the Governing Documents, or by law.

5.2 Budgets. The Board shall, in advance, prepare and adopt a proposed Common Expense budget at least ninety (90) days before expiration of each fiscal year based on estimated Common Expenses. Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, including posting the proposed budget on the Association's website, a summary of the Association budget to all the Owners and shall set a date for a meeting of the Owners to consider the budget. The meeting must occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Board shall cause notice to the Owners to be given as allowed for in the Bylaws. The proposed budget does not require approval by Owners and is deemed approved by the Owners in the absence of a veto at the meeting by the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board is not vetoed by the Owners. The Board may revise the budget and adjust the Annual Assessment from time to time during the year, subject to the notice requirements set forth above.

5.3 Allocations of Assessments. Common Expenses shall be assessed against all Lots (other than Initially Unoccupied Lots) according to the budget adopted by the Board, and according to the Allocated Interests. In determining the Annual Assessment, the Board may consider any Lots that may reasonably be anticipated to be added to the Community or otherwise become subject to Annual Assessments during the ensuing fiscal year, and Assessment income expected to be generated from such additional Lots. If additional Lots are added to the Community after adoption of a budget, or fewer Lots are added than anticipated, then the Board may reallocate any Annual Assessment not yet due based on the number of Lots then included, or expected to be included, in the Community. Notwithstanding the foregoing, however, pursuant to Colorado Revised Statutes §38-33.3-315(3)(b), the amount of the Annual Assessment and any Special Assessment or portion thereof benefitting fewer than all of the Lots may be assessed exclusively against the Lots benefitting as determined by the Board. Furthermore, the Declarant is specifically authorized, but has no obligation, to provide subsidies to the Association as a result of any shortfalls in Association revenues not covered by Assessments, or the Declarant may enter into contracts for "in kind" contribution of services, materials, or a combination of services and materials. The payment of a subsidy in any year shall not obligate Declarant to continue payment of such subsidy in

future years, unless otherwise provided in a written agreement between the Association and Declarant.

5.4 Special Assessments. In addition to other authorized Assessments, the Association acting through the Board without the necessity of a vote or approval of the Owners, may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership if such Special Assessment is for Common Expenses, or against those individual Lots or groups of Lots that will benefit from the purpose of the Special Assessment. Any such Special Assessment shall be levied against each Lot in accordance with the Allocated Interests, except that the rate of Special Assessments against Initially Unoccupied Lots shall be at the rate specified in Section 5.3 above. Any Special Assessment shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

5.5 Specific Assessments. In addition to other authorized Assessments, the Association acting through the Board without the necessity of a vote or approval of the Owners shall have the power to levy Specific Assessments against a particular Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any special services which the Association may offer or which the Association may otherwise provide to less than all Owners under the Declaration or any Supplemental Declaration. Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing a Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot or the Owner's Permittees or as otherwise provided herein.

5.6 New Member Fee.

(a) As an additional funding source, in addition to any administrative or transfer fee collected to cover administrative costs of membership transfer, the Association shall collect a New Member Fee upon each transfer of title to a Lot, other than exempt transfers as set forth herein. The New Member Fee shall be charged to, and payable by, the grantee of the property, to the Association at the closing of the transfer, and shall be secured by the Association's lien for Assessments.

(b) The New Member Fee to the Association is initially established to be an amount equal to two (2) months of the annual Assessment per Lot for that year, and shall be due upon the closing of the transfer of the Lot. By duly adopted resolution, the Board of Directors may change the fee from time to time, but in any event, shall not exceed six (6) months of the Annual Assessment per Lot for that year.

(c) Notwithstanding the above, no New Member Fee shall be levied upon transfer of title to property:

(i) to the Declarant;

(ii) to the Association;

(iii) by a co-Owner to any Person who was a co-Owner immediately prior to such transfer;

(iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

(v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the New Member Fee shall become due; or

(vi) to an institutional lender as security for the performance of an obligation pursuant to a Mortgage.

5.7 Commencement of Assessment Obligation; Time of Payment. No Lot which is an Initially Unoccupied Lot shall be obligated to pay Assessments. The obligation to pay Assessments shall commence as to all Lots (other than Initially Unoccupied Lots) which are within the Community and subject to the Declaration on the day of the conveyance of title to the first such Lot by Declarant and/or one or more of the consenting owners who have executed this Declaration to a non-Declarant, or at such later time as is determined by Declarant in compliance with the Act. The first Annual Assessment levied on each Lot shall be pro-rated for the time remaining in the first Assessment period. Advance payment of Assessments shall be required for the applicable payment period upon conveyance of title to an applicable Lot to the first non-Declarant Owner. Assessments shall be paid in advance annually, semi-annually, quarterly or in monthly installments, as determined by the Board. The Board may impose special requirements for Owners with a history of delinquent payment.

5.8 Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed to a Lot whether or not it shall be so expressed in such deed, covenants and agrees to pay all Assessments authorized in the Governing Documents. All Assessments, together with interest (computed from its due date at a rate of Twenty-One percent (21%) per annum or such lesser rate as the Board may establish from time to time), charges, late charges as determined by the Board, costs, fees, fines, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Board's failure to establish or obtain Member approval, if required, of Assessment amounts or rates or failure to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Annual Assessments on the same basis as during the previous fiscal year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections. No Owner is exempt from liability for Assessments by non-use of Common Areas, abandonment of his or her Lot, dissatisfaction with the performance of the Board, or for any other reason. The obligation to pay Assessments is a covenant, separate and independent of any obligation of the Board or the Association herein, for which each Owner is jointly and severally liable. No deduction, diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes, or for any other reason.

(b) Certificate of Status of Assessments. Upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, or Owner's designee, Agency, Mortgagee or Mortgagee's designee shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot. Unless such statement is furnished by personal delivery or by certified mail, first class postage prepaid, return receipt requested to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Lot for unpaid Assessments which were due as of the date of the request.

The Association may require the payment of a reasonable processing fee for the issuance of such certificate.

(c) Subsidies/“In Kind” Contribution. The Association is specifically authorized to enter into subsidy contracts or contracts for “in kind” contribution of services, materials, or a combination of services and materials with Declarant or other entities for payment of Common Expenses. Declarant’s or such other entities’ payment of Assessments may be reduced or abated by the agreed value of any such services or materials provided by them, in accordance with any such contract or agreement with the Association. Any subsidy for Assessments shall be disclosed as a line item in the income portion of the budget. The payment of any subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

5.9 Effect of Nonpayment of Assessments. Any Assessment, whether pertaining to any Annual Assessment, Special Assessment, Specific Assessment or New Member Fee, which is not paid when due shall be delinquent. If an Assessment or Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

(a) If the delinquency continues for a period of fifteen (15) days, assess a late charge for each delinquency in such amount as the Association deems appropriate;

(b) If the delinquency continues for a period of thirty (30) days, proceed in accordance with the Association’s collection policy and assess late charges, and interest in arrears, from the due date until paid at the yearly rate determined in accordance with Section 5.8 above;

(c) Suspend the voting rights or other membership privileges of the Owner during any period of delinquency, without Notice and Hearing being required;

(d) Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

(e) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

(f) Proceed with foreclosure as set forth in more detail below or exercise any other available remedies.

5.10 Lien for Assessments.

(a) The Association has a statutory lien on a Lot for any Assessment levied against that Lot. Fees, charges, late charges, attorneys’ fees, fines and interest charged pursuant to this Declaration or the Act are enforceable as Assessments under this ARTICLE. Such lien will be subject to the provisions of Colorado Revised Statutes, Section 38-33.3-316. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid acceleration of installment obligations.

(b) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required. However, the Board of Directors or any authorized agent of the Association may prepare and record a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. If a lien is recorded, the costs and expenses thereof shall be added to the Assessment for the Lot against which it is recorded and collected as part and parcel thereof.

(c) The Association may institute foreclosure proceedings against the defaulting Owner's Lot in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado and in accordance with the Act and other applicable law. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the regular Assessment installments for the Lot during the period of any foreclosure. The Association shall have the power to bid on a Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Notwithstanding the above, if a Lot is owned by the Association: (i) no right to vote shall be exercised with respect to such Lot; and (ii) no Assessment shall be levied on it.

(d) A lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the Assessment becomes due.

(e) If two (2) or more associations have liens for Assessments created at any time on the same property, those liens shall have equal priority.

(f) The Association's lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any homestead exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment lien provided by Colorado or federal law.

#### 5.11 Priority of Association Lien.

(a) A lien under this ARTICLE 5 is prior to all other liens and encumbrances on a Lot except:

(i) Liens and encumbrances recorded before the recordation of the Declaration;

(ii) A first Mortgage on the Lot which was recorded before the date on which the Assessment sought to be enforced became delinquent; and

(iii) Liens for real estate taxes and other governmental assessments or charges against the Lot.

(b) A lien under this ARTICLE 5 is also prior to the first Mortgage described in the preceding subsection (a)(ii) to the extent of an amount equal to the Assessments which would have come due, in the absence of acceleration, during the six months immediately preceding institution by either the Association or any first Mortgagee of an action or a nonjudicial foreclosure either to enforce or extinguish the lien.

(c) This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other Assessments made by the Association.

5.12 Receiver. In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the Association may request that the court appoint a receiver of the Lot prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver first to the costs of the receivership, including receiver's fees, and then to the Association during

the pendency of the action to the extent of the Association's Assessments.

5.13 Exempt Property. The following property shall be exempt from payment of Assessments and Special Assessments:

- (a) All Common Area and other portions of the Community which are not Lots; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

5.14 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for operating, capital and other reserves need not be paid to the Owners in proportion to their liability for Common Expenses, but shall be credited to them to reduce their future Assessments, or at the discretion of the Board, may be contributed to fund reserves.

## ARTICLE 6 ARCHITECTURAL REVIEW COMMITTEE

### 6.1 Composition of Architectural Review Committee; Authority of Representative(s).

(a) The Architectural Review Committee shall consist of three (3) or more persons. Until automatic termination of the Special Declarant Rights, the ARC shall be appointed by the Declarant; subsequent to such date, the ARC shall be appointed by the Board of Directors. At any time(s), the membership of the ARC may be the same as the Board of Directors and/or the membership of the ARC may include one or more Directors. The power to appoint the ARC shall include the power to: constitute the membership of the ARC; appoint members to the ARC on the occurrence of any vacancy therein, for whatever reason; and remove any members of the ARC, with or without cause, and appoint the successor(s) thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set by the appointer. The appointments of all then-current members of the ARC who were appointed by the Declarant shall automatically terminate at such time as the Declarant's power to appoint members of the ARC expires. The members of the ARC shall not be officers of the Association as a result of their membership on the ARC and thus, as a result of such membership on the ARC, shall not have any of the rights or duties attributable to officers of the Association.

(b) The Architectural Review Committee may appoint one or more representatives to act on its behalf. If the ARC does so, then the actions of such representative(s) shall be the actions of the ARC, subject to the right of appeal as provided below. However, if one or more such representatives are appointed by the ARC, then the ARC shall have full power over such representatives, including the power to withdraw from any or all of such representatives their authority to act on behalf of the ARC, and shall also have the power to remove or replace any or all of such representatives.

### 6.2 Required Review and Approval; Reimbursement for Expenses.

(a) Except as provided in Sections 6.9 and 6.12 of this Declaration, no Improvements shall be constructed, erected, placed, planted, applied, installed or modified upon any Lot, or on any Common Area if the same will be completed by any Person other than by or on behalf of the Declarant or the Association, unless complete plans and specifications therefor shall have been first submitted to and approved, or conditionally approved, in writing by the Architectural Review Committee. Said plans and specifications shall show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, retaining walls, windbreaks and grading plan, as well as such other materials and information as may be required by the ARC.



(b) The ARC shall have the authority to approve, disapprove or conditionally approve any proposed Improvements.

(c) In its review of such plans, specifications and other materials and information, the Architectural Review Committee may require that the applicant(s) pay a design review fee or otherwise reimburse the ARC for the actual expenses incurred, or reasonably anticipated to be incurred, by the ARC, in the review and/or approval process. Such amounts, if any, shall be levied in addition to the Assessments against the Lot for which the request for ARC approval was made, and shall be subject to the Association's lien and subject to all other rights of the Association for the collection of Assessments.

(d) In addition to the required approvals by the Architectural Review Committee as provided in this ARTICLE, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction, and issuance of all required permits, licenses and approvals by all such entities.

6.3 Procedures. The Architectural Review Committee shall decide each request for approval within forty-five (45) days after the complete submission of the application or request and submission to the ARC of all plans, specifications and other materials and information which the ARC may require in conjunction with such application or request. If the ARC fails to decide any application or request within forty-five (45) days after the complete submission of the plans, specifications, materials and other information with respect thereto, then such application or request for approval shall be deemed to have been approved by the ARC.

6.4 Vote and Appeal. A majority vote of the Architectural Review Committee is required to approve, or conditionally approve a request for approval pursuant to this ARTICLE, unless the ARC has appointed one or more representatives to act for it, in which case the decision of a majority of such representatives shall control. In the event the representatives acting on behalf of the ARC deny a request for approval, then the Owner submitting the request shall have the right to appeal such decision to the full ARC, upon a written request therefor submitted to the ARC within thirty (30) days after such decision by the ARC's representatives. The decision of the ARC shall be final. No additional or further appeals are permitted, nor will any be recognized.

6.5 Prosecution of Work After Approval. After approval or conditional approval of any proposed Improvement by the Architectural Review Committee, the approved Improvement shall be completed as promptly and diligently as possible, and in complete conformity with the terms and conditions of the approval or conditional approval, and in any event, within one (1) year after approval or conditional approval by the ARC, unless the ARC approves some greater or lesser period of time. Failure to complete the approved Improvement within such time period, or failure to complete the Improvement in complete conformance with the terms and conditions of the approval or conditional approval, shall constitute noncompliance with the requirements for approval or conditional approval issued by the ARC and a violation of this ARTICLE; provided, however, that the ARC may grant extension(s) of time for completion of any Improvement(s).

6.6 Inspection of Work. The Architectural Review Committee, or its duly authorized representative, shall have the right to inspect any Improvement prior to, during or after completion. However, unless the ARC expressly states, in a written document, that an Improvement is being, or has been, completed in conformance with the ARC's approval or conditional approval therefor, no such conformance shall be implied from any inspection of the Improvement.

6.7 Standards/Guidelines. The Architectural Review Committee has the authority to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce design standards, guidelines, and rules

and regulations, to interpret and implement the provisions of this Declaration. However, after appointment of the ARC by the Board of Directors, any new design standards, guidelines, and rules and regulations, or any modifications to existing design standards, guidelines, rules and regulations, proposed by the ARC shall not be effective until the same have been approved by the Board of Directors. Such provisions may include guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the ARC, may state procedural requirements, may specify acceptable Improvement(s) that may be installed without the prior approval of the ARC, may include design standards, design guidelines, conditions, restrictions, requirements, and/or other provisions, pertaining to any matters, and may include any provisions that are different for different types, sizes or prices of Lots, construction or Dwelling Units; and may provide for changes in technology, industry standards, style, materials, safety issues, consistency with updated building codes or other laws or ordinances, or for any other reason that the ARC deems to be proper, necessary or in the best interests of the Community. In addition, such provisions may provide for blanket approvals, interpretations and/or restrictions on Improvements. All Improvements proposed to be constructed, and any guidelines that are adopted, shall be completed and used in accordance with this Declaration.

6.8 Enforcement.

(a) All design approvals and conditional approvals shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. Any construction, alteration, or other work performed in violation of this ARTICLE 6 or any approved or conditionally approved plans, shall be deemed to be nonconforming. Upon written request from the Association or Declarant, any violating Owner shall, at his own cost and expense and within such reasonable time frame as set forth in such written notice, cure the nonconformance to the satisfaction of the requester or restore the Lot to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association, Declarant, or their designees shall have the right, after Notice and Hearing to the Owner of the Lot, in addition to any other available right or remedy set forth herein, to record a notice of violation or noncompliance against title to the Lot, to enter the property, remove the violation, and restore the Lot to substantially the same condition as previously existed. All costs, together with interest at the rate established by the Board (not to exceed the maximum rate provided in Section 5.8 above), may be assessed against the benefited Lot and collected as a Specific Assessment.

(b) The Association shall be primarily responsible for enforcement of the provisions of this ARTICLE 6. If, however, in the discretion of Declarant, the Association fails to take appropriate enforcement action, as authorized herein, within a reasonable time period, Declarant, for so long as it owns any property described in Exhibits A or B to this Declaration, may, but shall not be obligated to, exercise enforcement rights in the same manner as set forth above. In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this ARTICLE 6. If the Association or Declarant prevails, they shall be entitled to recover all costs including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

6.9 Variance. The Architectural Review Committee may grant variances or adjustments from any conditions and restrictions imposed by this ARTICLE 6 or ARTICLE 10 of this Declaration (Restrictions), in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the Community, and shall not militate against the general intent and purpose

hereof.

6.10 Waivers; No Precedent. The approval or conditional approval or consent of the Architectural Review Committee, or any representative thereof, to any application shall not be deemed to constitute a waiver of any right to withhold or deny approval or conditional approval by the ARC, or any representative thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval, conditional approval or consent be deemed to constitute a precedent as to any other matter.

6.11 Liability. Neither the Association, the Architectural Review Committee, nor any members, employees or agents thereof, nor the Declarant, nor any officers, employees or agents thereof, shall be liable in equity or damages to any Person submitting request(s) for approval or to any Person by reason of any action, failure to act, approval, conditional approval, disapproval, or failure to approve or disapprove. In reviewing any matter, neither the ARC, the Association, nor the Declarant, shall be responsible for the safety, whether structural or otherwise, of any item(s) submitted for review, nor conformance with applicable building codes or other governmental laws or regulations, and any approval or conditional approval of an Improvement by the ARC, or the Declarant, shall not be deemed an approval of any such matters. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval, conditional approval or disapproval granted by, the ARC or the Declarant.

6.12 Declarant's Exemption. Notwithstanding anything to the contrary, the Declarant and other Persons whose plans and specifications have received Declarant's prior written approval shall be exempt from all provisions of this ARTICLE 6, as well as any and all other matters that require Architectural Review Committee review and/or approval, except the requirements to obtain approval of governmental entities with jurisdiction as provided in Section 6.2 of this Declaration.

## ARTICLE 7 INSURANCE.

7.1 Insurance. To the extent reasonably available, the Association shall obtain and maintain insurance coverage as set forth in this ARTICLE 7. If such insurance is not reasonably available, or if any policy is canceled, or not renewed, without a replacement policy having been obtained, the Association shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners at their respective last known addresses.

7.2 Property Insurance Coverage. The Association shall obtain property insurance on the Common Areas for broad form covered causes of loss and on all personal property owned by the Association. The property insurance will be for an amount equal to one hundred percent (100%) of the full insurable replacement cost of the insured property less applicable deductibles, exclusive of items normally excluded from property policies, such as land, foundations, and excavations. The Board of Directors is authorized to obtain appraisals periodically for the purpose of establishing replacement cost of the property, and the cost of such appraisals shall be a Common Expense.

7.3 Commercial General Liability Insurance. The Association shall obtain commercial general liability insurance in an amount determined by the Board of Directors, but in no event shall it be less than \$1,000,000. Reasonable amounts of umbrella liability insurance in excess of the primary limits may also be obtained. 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, existence, or maintenance of the Common Areas and the activities of the Association; and may also include, if applicable, comprehensive automobile liability insurance, garage keeper's liability, liability for property

of others, host liquor liability, contractual liability, and such other risks as determined by the Board.

7.4 Other Insurance. In addition, the Association shall maintain insurance as required by applicable law or applicable regulation, and including fidelity coverage and personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as Directors and/or officers on behalf of the Association. In addition, the Association may maintain insurance against such other risks as the Board of Directors may determine, including workers' compensation insurance, and may maintain insurance on such other property and/or against such other risks, as the Board of Directors may determine.

7.5 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. Additionally, each Owner and each Mortgagee shall be beneficiaries of the policy in a percentage equal to the Owner's Allocated Interest in payment of Common Expenses. The policy or policies shall contain a standard non-contributory Mortgagee's clause in favor of each Mortgagee and a provision, if reasonably available, that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days prior written notice thereof is given to the insured and each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including a Mortgagee, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any Owner or member of such Owner's household. Further, all policies of insurance carried by the Association shall also contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

7.6 Deductibles. The Board shall determine applicable deductibles under the Association's insurance policies, and may adopt and establish written non-discriminatory rules and regulations or policies and procedures relating to the responsibility for deductibles. Such rules, regulations or policies may provide that any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association, must be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, may be apportioned among the Persons sharing in a joint duty of repair and maintenance, apportioned among the Persons causing such loss or damage, apportioned among the Persons owning the Lot where the loss or damage originated, and/or may be partly or wholly borne by the Association, and/or may be shared by any such Person(s) and the Association, all at the election of the Board of Directors. After Notice and Hearing, the Board may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners; and, upon said determination by the Board, any such loss, or any portion thereof, may be assessed to the Owner(s) in question and the Association may collect such amount(s) from said Owner(s) as a Specific Assessment.

7.7 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Section 7.1 hereof, must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Mortgagee. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 8.2 of this Declaration, the proceeds must be disbursed first for the repair, restoration or replacement of the damaged property; and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired, restored or replaced and any budget or reserve deficit funded, or unless the Community is

terminated.

7.8 Insurance to be Maintained by Owners. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Owner's Lot, and the Improvements thereon, as well as on personal property, furnishings and fixtures belonging to an Owner and liability insurance coverage on each Lot, shall all be the responsibility of the Owner of such Lot. Each Lot shall be insured in an amount not less than the full replacement cost of the Improvements thereon, less applicable deductibles, and excluding items normally excluded from property policies such as land, foundations and excavations.

## ARTICLE 8 DAMAGE OR DESTRUCTION.

### 8.1 Damage or Destruction.

(a) Any portion of the Community for which property insurance is carried by the Association, and which is damaged or destroyed, must be repaired or replaced promptly by the Association except as may otherwise be provided in the Act.

(b) The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is a Common Expense, subject to the Board's authority to allocate deductibles as provided for in Section 7.6 above. The insurance proceeds attributable to the portions of the Community that are damaged or destroyed must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to their Allocated Interest in payment of Common Expenses.

8.2 Damage or Destruction of Structures on Lots. Except as otherwise provided in Section 8.1 hereof, any damage to or destruction of any structure or Improvement located on a Lot shall be promptly repaired and replaced by the Owner(s) thereof, in accordance with this Declaration. "Repaired and replaced," as used in this Section, shall mean restoring the structure or Improvement to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before, unless otherwise approved in accordance with this Declaration. Except as otherwise provided in this Declaration, the cost of such repair or replacement shall be the personal obligation of the Owner(s) of the Lot on which such work was performed.

## ARTICLE 9 EXTERIOR MAINTENANCE OF LOTS AND DWELLING UNITS.

9.1 General. Except as expressly set forth in this Declaration or otherwise indicated by the Board in writing, each Owner shall, at all times, maintain, repair and replace such Owner's Lot, and all Improvements on said Lot, including, but not limited to, the Dwelling Unit and all landscaping. In addition, Owners are responsible for maintenance, repair and replacement of the lateral lines of the perforated drain system, sump pump, and lateral connection to the underdrain main line located on or within such Owner's Lot, including the portion of the lateral located within the right-of-way adjacent to such Owner's Lot (if any). The maintenance, repair and replacement described in this Section 9.1 shall be performed at such Owner's sole cost and expense. Owners are responsible for snow removal from the garage aprons and individual walks leading to the front door of the Dwelling Unit on their respective Lots, as well as from decks, patios, porches and balconies of their own Dwelling Units.

9.2 Association's Right to Repair, Maintain and Replace. In addition to any other enforcement rights, if, following conveyance of the Lot by Declarant, an Owner fails to properly perform his maintenance, repair and/or replacement obligations, the Association may record a notice of violation or noncompliance or, after Notice and Hearing to the Owner of the Lot, perform any or all of such

required maintenance, repair or replacement and assess all costs incurred against the Lot and the Owner as a Specific Assessment. Any person authorized by the Board of Directors shall have the right of access to all portions of any Lot other than the interior of the Dwelling Unit for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Community. Notwithstanding any contrary provision of this Section 9.2, in case of an emergency, no request or advance notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

9.3 Maintenance of and Non-Interference with Grade and Drainage; Irrigation Recommendations Around Foundations and Slabs.

(a) Following the conveyance of the Lot by Declarant, each Owner shall maintain the grading on his Lot (including grading around the foundation of the building constructed thereon) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. For purposes of this Section, "established drainage" is defined as the drainage that exists at the time final grading by the Declarant is completed.

(b) Following the conveyance of the Lot by Declarant, any change in established drainage by an Owner is discouraged. However, if an Owner (other than Declarant) desires to change the established drainage on his Lot, it shall be the sole responsibility of such Owner to provide adequate alternative drainage for both the Owner's Lot and all other property that may be affected by such change. To ensure that adequate alternative drainage is provided, the Owner desiring to change the established drainage on his Lot must submit to the ARC, for its review and approval, plans and specifications for alternative drainage which have been prepared and certified by a qualified, licensed design professional. Any damages incurred by another Owner, the Association or any other Person due to a change in the established drainage of a Lot, shall be the sole liability of the Owner who changed, or who caused the change in, such established drainage.

(c) No approval of a proposed Improvement shall in any way imply that the Association, the Architectural Review Committee, the Board of Directors, or Declarant, has reviewed or approved any change in the established drainage of a Lot. Neither the Association, nor the ARC, nor the Board of Directors, nor the Declarant, shall be liable for any damages incurred by any Owner or other Person due to a change in the established drainage.

(d) Following the conveyance of the Lot by Declarant, the Owner of a Lot should not plant flower beds (especially annuals), vegetable gardens or other landscaping which requires regular watering, within five (5) feet of the foundation of the Dwelling Unit or any slab on the Lot. If evergreen shrubbery is located within five (5) feet of any foundation wall or slab, then the Owner of the Lot (other than Declarant) should water such shrubbery only by controlled hand-watering, and should avoid excessive watering. Further, piping and heads for sprinkler systems should not be installed within five (5) feet of foundation walls or slabs. Following the conveyance of the Lot by Declarant, any such flower beds, vegetable gardens, or other landscaping installed by Owner, for which Owner must obtain prior ARC approval, must be maintained by an Owner and will not be maintained by the Association, notwithstanding any other landscaping obligations of the Association contained herein.

9.4 Acts or Omissions. Notwithstanding anything to the contrary herein, in the event that the need for maintenance, repair or replacement of or within any property or Improvement, including Common Areas, is caused by the act or omission of any Owner, or by the act or omission of such Owner's Permittees, the cost of such repair, maintenance, replacement or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or replacement shall become a Specific Assessment against such

Owner and his Lot. A determination of the act or omission of any Owner, or such Owner's Permittees, and the amount of the Owner's liability therefor, shall be determined by the Board following Notice and Hearing.

## ARTICLE 10 RESTRICTIONS

10.1 Restrictions Imposed. This Community is subject to the following restrictions, as well as all provisions of any Plat, development plan and/or matter of record applicable to the Community or any portion thereof, as well as the covenants, conditions, restrictions, easements and licenses in the documents identified in Exhibit C attached hereto and incorporated herein by this reference. These restrictions are general in nature and the Board shall have the power to adopt, amend, repeal and enforce further or additional Rules which modify, limit, interpret, create exceptions to or expand, the initial use restrictions set forth in this ARTICLE 10 as the Board deems to be reasonable and necessary to carry out the intent of this Declaration, and in accordance with its duty to exercise reasonable business judgment.

10.2 Compliance With Law. All Owners, all Permittees, and all other Persons, shall comply with all applicable federal, state, and local statutes, ordinances, laws, regulations, rules and requirements, of all governmental and quasi-governmental entities, agencies and authorities with respect to the use and occupancy of the applicable Lot.

10.3 Residential Use; Certain Permitted Business Activities. Subject to Declarant's right to exercise the Special Declarant Rights, Lots and Dwelling Units shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes except as expressly permitted herein. Notwithstanding the foregoing, however, Owners may conduct business activities or home occupations within their Dwelling Units provided that all of the following conditions are met to the satisfaction of the Board:

- (a) The business conducted is clearly secondary to the residential use of the Dwelling Unit and is conducted entirely within the Dwelling Unit;
- (b) The existence or operation of the business is not detectable from outside of the Dwelling Unit by sight, sound, smell, vibration or otherwise, or by the existence of signs, and/or deliveries, indicating that a business is being conducted;
- (c) The business does not result in an undue volume of traffic or parking within the Community;
- (d) The business conforms to all zoning provisions and is lawful in nature; and
- (e) The business conforms to all Rules.

10.4 Animals. No horses, livestock, birds, poultry, reptiles, insects or other animals of any kind shall be raised, bred, kept or boarded in the Community; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats, and other domestic animals approved by the Board), so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Community. The Association shall have, and is hereby given, the right and authority to do the following as well as take such other action(s) with regard to these matters as the Board of Directors may determine: set a maximum number of household pets; set a size or weight limit for pets; regulate the type(s) of animals that are permitted to be kept; determine that any dog(s), cat(s), pet(s), or other animals are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other governmental laws, ordinances, or other provisions; or determine that an Owner is otherwise in

violation of any provision of the Governing Documents. If the Board determines that any of the foregoing have been or are being violated, the Association may take any action(s) it determines appropriate, including requiring permanent removal of the pet. An Owner's right to keep household pets is coupled with the responsibility to pay for any damage caused by such pets, as well as all costs incurred by the Association as a result of such pets, and all such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in this Declaration.

#### 10.5 Miscellaneous Improvements.

(a) The display of a sign by the Owner or occupant of a Dwelling Unit on property within the boundaries of the Lot or in a window of the dwelling unit is permitted and the Association shall not prohibit or regulate such signs on the basis of their subject matter, message, or content; except that the Association may prohibit or regulate signs bearing commercial messages. The Association may establish reasonable, content-neutral sign regulations based on the number, placement, or size of the signs or on other objective factors consistent with applicable law. No commercial advertising banners or signs bearing commercial messages shall be erected, placed, permitted or maintained. A name plate of the occupant and a street number, and a "For Sale," "Open House," "For Rent" or security sign(s) of not more than a total of five (5) square feet posted only for the purpose of selling, renting or evidencing the existence of a security system on such Lot, are permitted. Notwithstanding the foregoing, the Declarant and other Persons engaged in the construction of infrastructure and homes in the Community may use any signs, advertising, or billboards without regard to any specifications, Rules, or requirements of the Association, the ARC, the Board, or any committee or representative of the Association, the ARC, or the Board.

(b) No wood piles or storage areas shall be so located as to be visible from a street, from the ground level of any Lot or from any Common Area.

(c) Except as may otherwise be permitted in writing by the ARC, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot, except inside a Dwelling Unit or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its development, sales or construction; and provided further, however, that the requirements of this subsection shall be subject to the Telecommunications Act of 1996 and applicable regulations.

(d) No fences shall be permitted without the prior, written approval of the ARC, except such fences as may be constructed, installed or located by Declarant.

#### 10.6 Vehicular Parking, Storage and Repairs.

(a) No house trailer, camping trailer, boat trailer, hauling trailer, snowmobile, jet ski, boat, or accessories thereto, truck (excluding, except as hereinafter provided, pickup trucks and vans that are 1 ton capacity or less), self-contained motorized recreational vehicle, or other type of recreational or commercial vehicle or equipment, may be parked or stored on a Lot unless such parking or storage is entirely within the garage of any Dwelling Unit or will be suitably screened from view in accordance with the requirements, and prior written approval of, the Board of Directors. Except for reasonable temporary periods, no trailer, equipment or commercial vehicle of any kind may be parked on any private street or other private area within the Community other than a Lot in accordance with this Declaration. A "commercial vehicle" means a vehicle (excluding passenger cars, pickup trucks and vans that are rated at 1 ton capacity or less) that meets any of the following: is used to transport cargo or passengers for profit or hire; or may (but is not required to) contain signage, advertising, or written information on the vehicle or extending from the vehicle; or is any vehicle registered with the State Motor Vehicles Department as a



“commercial vehicle”; or is any vehicle that is larger than 1 ton capacity. However, any such vehicle may otherwise be parked temporarily for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles that are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon. “Recreational vehicle” includes motor homes, trailers, self-contained recreational vehicles, snowmobiles, jet skis, boats, all-terrain vehicles, and other apparatus intended for use on land, water, or in the air, and the trailers used for their transportation.

(b) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community except in the garage of a Dwelling Unit. An “abandoned or inoperable vehicle” shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of seventy-two (72) consecutive hours or longer, or which does not have an operable propulsion system installed therein, or which is not then currently registered and licensed, or which exhibits other characteristics of being abandoned or inoperable, such as, but not limited to, flattened tires or broken windows; provided, however, that otherwise permitted vehicles may be parked while residents are on vacation or during a period of illness, or otherwise for such length(s) of time as determined by the Board and/or as provided in the Rules of the Association.

(c) The Association reserves the right to adopt Rules prohibiting or restricting parking on any of the Common Areas.

(d) In the event the Association determines that a vehicle is parked or stored on the Common Areas in violation of subsections (a), (b) or (c) of this Section 10.7, then a written notice of violation describing said vehicle may be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or may be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Board of Directors, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

(e) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within the garage of the Dwelling Unit with the garage door completely closed and the sight and sound of the activity is screened from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent the washing and polishing of any motor vehicle, boat, trailer, motorcycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing on a Lot.

10.7 Temporary Structures: Unightly Condition. Except as hereinafter provided, no structure of a temporary character, including a house trailer, shack, storage shed, or outbuilding, shall be placed or erected upon any Lot without the prior written approval of the Architectural Review Committee; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvement, necessary temporary structures for storage of materials (and with respect to the Declarant, construction and sales trailers) may be erected, placed and maintained by the Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be located on any Lot as to be visible from a street or from any other Lot.

10.8 Nuisances. No nuisance shall be permitted which is visible within or otherwise affects the Community or any portion thereof, nor any use, activity or practice which unreasonably interferes with the peaceful enjoyment or possession and proper use of other Lots in the Community or any portion thereof. As used herein, the term “nuisance” shall include each violation of the Governing Documents, but shall not include any activities of Declarant. No noxious or offensive activity shall be carried on upon

any Lot, nor shall anything be done or placed on any Lot which is or may become a nuisance or cause unreasonable embarrassment, disturbance or annoyance to others.

10.9 No Hazardous Activities; No Hazardous Materials or Chemicals. No activities shall be conducted on any Lot, or within Improvements constructed on any Lot, which are unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged in the Community, and no open fires shall be permitted on any Lot, except in a contained cooking appliance while attended and in use for cooking purposes, or within a fireplace and/or fire pit, or except such campfires or picnic fires on property which may be designated for such use by the Association. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

10.10 No Annoying Lights, Sounds or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying (exclusive of the sounds of normal construction activity during any period of permitted construction); and no odor shall be permitted from any Lot which is unreasonably noxious or offensive to others.

10.11 Restrictions on Trash and Materials. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot. Compost shall be kept in a suitable container with an attached lid located in a screened area solely for the purpose of composting. All equipment for the storage or disposal of trash and refuse shall be kept in a clean condition. No garbage containers, trash containers or recycling containers shall be maintained in an exposed or unsightly manner. All trash, recycling and yard waste containers shall be kept within the garage of each Dwelling Unit except on collection days. If the Board elects to not provide trash collection and disposal services, each Owner must utilize a competent provider of trash collection and disposal service. The Board may require all Lots to be served by designated trash collection and disposal companies.

10.12 Landscaping of Lots. Within the time frames set forth in the Governing Documents, or if none, then as hereinafter provided, and subject to obtaining prior ARC approval, the Owner of each Lot (other than Declarant) that is not landscaped by the Declarant shall install landscaping on all of the Lot which is not covered by a building or building Improvement within one hundred eighty (180) days after acquisition of such Lot by such Owner if acquisition occurs between April 1 and September 1; if acquisition does not occur between such dates, then such landscaping shall be installed by such Owner by the following October 1. The Owner of each Lot shall thereafter maintain such landscaping in a neat and attractive condition, including periodic and horticulturally-correct pruning, removal of weeds, and replacement of landscaping. If the Owner of a Lot fails or refuses to maintain landscaping on such Owner's Lot, then the Association may (but is not obligated to), at the direction of the Board of Directors, after Notice and Hearing, enter upon such Lot to perform such maintenance. All resulting costs and expenses incurred by the Association in maintaining such landscaping, as provided in the preceding sentence shall be the personal obligation of the Owner(s) of the Lot on which such work is performed, and shall be a Specific Assessment against the Owner and his such Lot.

10.13 Repair and Reconstruction of Improvements on Lots. No Owner shall permit an Improvement on such Owner's Lot to fall into disrepair, and each such Improvement shall at all times be kept by the Owner thereof in good condition and repair, and adequately painted, or otherwise finished by such Owner, before the surfacing becomes weather beaten or worn off. Further, as to Improvements on a Lot which may be destroyed in whole or in part by fire, hail, windstorm or any other cause or act of God,

the same shall be rebuilt and/or repaired by the Owner of such Lot within a reasonable time after destruction, as determined by the Board, or all debris promptly removed by such Owner, so as not to render any such property, or any portion thereof, as determined by the Board, unsanitary, unsightly, offensive or detrimental to any other property or to its occupants.

10.14 Leases. The term “lease,” as used herein, shall include any agreement or arrangement for the occupancy of a Lot or Dwelling Unit on the Lot by a Person other than the Owner or members of the Owner’s immediate family, with or without the contemporaneous occupancy by the Owner or members of the Owner’s immediate family, including month-to-month rentals, shorter term rentals, long-term rentals, and subleases, and “leases” shall mean collectively all leases then in effect. Any Owner has the right to lease his Lot, or any portion thereof, under the following conditions:

(a) All leases shall be in writing; and

(b) All leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be for no less than thirty (30) days, be subject in all respects to the Governing Documents; and that any failure by the lessee to comply with any of the Governing Documents, in any respect, shall be a default under the lease, enforceable by the Association as a third party beneficiary and in the same manner as if the Association were the landlord. Upon request thereof by the Association, the respective Owner shall provide the Association with a copy of any subject lease.

(c) No Dwelling Unit or portion thereof may be used for short term lodging, home share arrangements, home exchange arrangements, vacation rental, or any similar temporary lodging or living quarter arrangement.

10.15 Restrictions on Mining or Drilling. No property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel, earth or water.

## ARTICLE 11 EASEMENTS AND LICENSES

11.1 Easements and Licenses. The Community is subject to easements and licenses identified in Exhibit C attached hereto. In addition to any other easements that may be granted or reserved elsewhere in this Declaration, the Plat, or other documents, the following Sections describe easements to which the Community is or may be subject.

11.2 Access Easement. Every Owner shall have a nonexclusive right and easement for the purpose of access to their Lots and for use for all other allowed purposes, in and to the Common Areas, including without limitation, the private roads within the Community (as such roads are depicted on the Plat), and such easement shall be appurtenant to and shall pass with the title to every Lot. Each Owner hereby grants to the Association, and to its agents, employees and contractors, a right and easement on, over, under, across and through such Owner’s Lot, for access to, and maintenance, repair and replacement of Improvements as permitted or required in this Declaration; to utility providers, their contractors, agents and employees, for access to, inspection, maintenance, repair and replacement of utility meters, lines and appurtenances; and to the Association, for and incidental to inspection and/or enforcement, and incidental to any term or provision of any of the Governing Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Area, any Improvement, any other property, or any Lot, the Owner responsible for the damage, or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt restoration and repair. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive entry; and except that in emergency situations entry upon a Lot may be made at

any time, provided that the Owner(s) or occupant(s) of each affected Lot shall be notified of emergency entry as early as is reasonably possible. The interior of any Dwelling Unit shall not be subject to the easements provided for in this Section.

11.3 Utilities Easements. The Declarant hereby reserves a blanket easement upon, across, over and under the Common Areas for utilities and the installation, replacement, repair and maintenance of utilities, including water, sewer, gas, telephone, electricity, cable, and television antenna or cable or satellite television, or other wire, wireless or electronic communications systems, if any, and the access to and installation, maintenance and replacement of real and personal property owned or maintained by the Association. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Area and to affix, repair, maintain and replace water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters, and systems, regardless of whether the aforesaid constitute portions of main distribution systems or individual services. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over and/or under any part or all of the Common Areas without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall cease upon the expiration of the Special Declarant Rights Period, at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Areas.

11.4 Easement for Encroachments. To the extent that any Improvement on a Lot, or on the Common Area, encroaches on any other Lot or Common Area, including overhangs, eaves, gutters, pipes and window wells, a valid easement for the encroachment exists. Such easement does not relieve an Owner of liability in case of willful misconduct nor relieve the Declarant or any other person of liability for failure to adhere to the Plat.

11.5 Drainage Easement. Declarant hereby reserves, to itself and to the Association, easements for drainage and drainage facilities across the five (5) rear, five (5) front, and five (5) side feet of each Lot; provided, however, that if a residence is located upon any of the areas described in this sentence, then such easement shall be reduced in width to the width of the distance from the nearest lot line of such Lot to the exterior wall of the residence on such Lot that is nearest to such lot line. Except for residences as provided in the preceding sentence, no Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such rear, front or side yard drainage easements. Declarant reserves to itself and to the Association the right to enter upon each such rear, front and side yard drainage easements to construct, repair, replace or change drainage pipes, structures or drainage ways, or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable; provided, however, that such right and authority in the Declarant shall cease upon the expiration of the Special Declarant Rights Period, at which time said reserved right shall vest in the Association.

11.6 Easement for Unannexed Property. The Declarant hereby reserves, for the use and benefit of the Annexable Property, a non-exclusive, perpetual easement for pedestrian and vehicular access, ingress and egress, on, over and across the roads, driveways, streets, alleys, sidewalks, access ways and similar Common Area, now or hereafter constructed, erected, installed or located in or on the Community, and on, over, across and under the Common Area for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement, reading, and use of any utilities Improvements that may now or hereafter serve the Annexable Property or any portion thereof. In the event any utility or quasi-utility company furnishing a service covered by the general easement created

herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Area without conflicting with the terms hereof; provided, however, that such right and authority shall cease and terminate upon the expiration of the Special Declarant Rights Period, at which time said reserved right shall vest in the Association.

11.7 Easements Deemed Created. All conveyances of any Lot hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this ARTICLE 11 even though no specific reference to such easements or to this ARTICLE appears in the instrument of such conveyance.

## ARTICLE 12 SPECIAL DECLARANT RIGHTS

12.1 Special Declarant Rights. Special Declarant Rights means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this ARTICLE 12: to build and complete Improvements; to exercise any Development Right; to maintain sales offices, sales trailers, construction offices, construction trailers, management offices, model homes and signs advertising the Community and/or Lots; to use easements through the Common Area for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to make the Community subject to a master association; to merge or consolidate with a common interest community of the same form of ownership; to appoint or remove any officer of the Association or any Director during the Period of Declarant Control as provided in this Declaration; and to exercise any other rights reserved to the Declarant in this Declaration. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any times, and from time to time. Such rights shall terminate automatically either twenty (20) years after the date of Recording of this Declaration or at such time as Declarant no longer owns any portion of the property described on the attached Exhibits A or B, whichever occurs earlier (the "Special Declarant Rights Period").

### 12.2 Expansion of the Community by the Declarant.

(a) Declarant may annex to the Community additional property within the Annexable Property until the expiration of the Special Declarant Rights Period, without the consent or approval of any other Owners, Mortgagees or any other Person other than the Owner of the property if other than Declarant. However, such annexation is subject to HUD or VA approval, if required by HUD or VA (if the Declarant desires to attempt to obtain HUD or VA approval of the property being annexed). Each such annexation shall be effected, if at all, by recording a plat or map of the property to be annexed (unless such plat or map has previously been recorded), and by recording a Supplemental Declaration in the office of the Clerk and Recorder of El Paso County, Colorado, or an Annexing Deed in the office of the Clerk and Recorder of El Paso County, Colorado, as further set forth below. A Supplemental Declaration may provide for phased annexation so that annexed property may be made subject to the Supplemental Declaration and this Declaration at different times. A Supplemental Declaration (i) shall be executed and acknowledged by Declarant, and by the owner of the annexed property described therein, if other than Declarant; (ii) shall contain an adequate legal description of the annexed property, including legal descriptions of the applicable Lots and Common Areas; (iii) shall contain a reference to this Declaration, including its date of recordation and reception number of the records of the El Paso County clerk and recorder's office; (iv) shall contain a statement that the annexed property is declared to be part of the Community under this Declaration, that the annexed property shall be subject to this Declaration and the effective date of the annexation if a date other than the date of recordation; (v) shall identify Common Areas within the property being annexed, if any; (vi) re-allocate the Allocated Interests if necessary; and (vii) may include such other provisions as Declarant deems necessary or appropriate. A Supplemental Declaration may impose on the annexed property described therein covenants, conditions,

restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions in addition to those set forth in this Declaration, including, without limitation, creating additional obligations of the Association, taking into account the unique and particular aspects of the proposed development of the annexed property covered thereby. Such annexation is subject to HUD or VA approval, if required by HUD or VA (if the Declarant desires to attempt to obtain HUD or VA approval of the property being annexed). All provisions of this Declaration, including, but not limited to those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members, shall apply to annexed property as of the date set forth in the applicable Supplemental Declaration, or if not specified therein, immediately upon recording the applicable Supplemental Declaration. Such Supplemental Declaration shall be deemed an amendment to the Declaration for purposes of the Act. In addition to the foregoing, the Declarant may amend this Declaration at any time during the Special Declarant Rights Period, in order to add additional real estate to the Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Community pursuant to this sentence, and not described in the attached Exhibits A and B, does not exceed ten percent (10%) of the total area described in the attached Exhibits A and B.

(b) In addition to the rights contained in Section 12.2(a) above, and notwithstanding anything to the contrary, the Declarant may annex to the Community additional property within the Annexable Property until the expiration of the Special Declarant Rights Period, by recording one or more Annexing Deeds by which such property is conveyed by Declarant to a non-Declarant. Each of such deeds shall be executed and acknowledged by Declarant and include the following provisions in such deed: (i) the legal description of the subject property including legal descriptions of the applicable Lots and Common Areas; (ii) a reference to this Declaration, including its date of recordation and reception number of the records of the El Paso County clerk and recorder's office; (iii) a statement that the annexed property is declared to be part of the Community under this Declaration and subject to this Declaration as of the date of recordation, unless another date is specified therein; (iv) an identification of Common Areas within the property being conveyed, if any; (v) the number of Lots then existing in the Community including the Lot or Lots described in the Annexing Deed; and (vi) the Allocated Interests allocated to the Lot or Lots. Notwithstanding the foregoing, a deed which does not convey property from the Declarant to a non-Declarant shall not be an "Annexing Deed" as provided in this Section, nor shall a deed which otherwise complies with this Section if the same states on its face that it is not an "Annexing Deed." An Annexing Deed executed and recorded as provided for in this Section 12.2(b) shall constitute an amendment to the Declaration as required under Section 210 of the Act.

(c) No assurances are made by the Declarant regarding the Development Rights reserved as to whether the Declarant will exercise its Development Rights or the order in which Development Rights will be exercised, if at all. The exercise of Development Rights as to some portions of the property described in the attached Exhibit B will not obligate the Declarant to exercise them as to other portions.

12.3 Withdrawal of Property. So long as Declarant has a right to annex property pursuant to Section 12.2, Declarant reserves the right to amend this Declaration by recording an amended Supplemental Declaration to withdraw any unimproved portion of the Community including any Lot, from the coverage of this Declaration, provided a Lot in such portion has not been conveyed to a non-Declarant Owner. "Unimproved" means that no permanent vertical structure or other permanent vertical improvements have yet been built on the property to be withdrawn. For purposes of determining rights of withdrawal, each Lot or tract of Common Area shall be considered "a portion of real estate" subject to the right of withdrawal under the provisions of C.R.S. 38-33.3-210 of the Act. Such amendment shall not require the consent of any Person other than the Declarant. If the property is Common Area, the Association shall reconvey to Declarant any withdrawn property owned by the Association.

12.4 Marketing and Sales Activities. Notwithstanding any provision in this Declaration to the

contrary, Declarant may construct and maintain upon portions of the Common Area and other property owned by Declarant such facilities, activities, and things as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Dwelling Units or Lots. Such permitted facilities, activities, and things shall include, without limitation, business offices, signs, flags (whether hung from flag poles or attached to a structure), banners, model Lots, model homes, parking lots, sales offices, sales trailers, construction offices, construction trailers, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant may park vehicles in areas other than garages or driveways, including on streets. During the Special Declarant Rights Period, Declarant shall have easements for access to and use of such facilities at no charge.

12.5 Right to Develop. Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area, and to the Annexable Property, as it deems appropriate in its sole discretion. Each Owner acknowledges that the Community is a planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property, or (b) changes in the master plan. Declarant for itself or its successors specifically reserves the right to develop land within, adjacent to or in the vicinity of, the Community. Nothing contained in this Declaration or in any Supplemental Declaration shall be construed to prevent the construction, installation or maintenance by the Declarant, any Declarant affiliate or any agents or contractors thereof, during the period of development, construction and sales on the Property, of Improvements, landscaping or signs deemed necessary or convenient by the Declarant, in its sole discretion, to the development or sale of property within the Property.

12.6 Right to Designate Sites for Governmental and Public Interests. During the Special Declarant Rights Period, Declarant may designate sites within the Community which are owned by Declarant for government, education, or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, commercial and other public facilities subject to receiving all necessary approvals.

12.7 Right to Approve Additional Covenants. During the Special Declarant Rights Period, no Person shall record any additional covenants, conditions, or restrictions affecting any portion of the Community without Declarant's review and written consent other than solar covenants and party wall declarations. Any such instrument recorded without such consent shall be void and of no force or effect unless subsequently approved by written consent, signed by Declarant, and recorded.

12.8 Right to Approve Changes in the Restrictions and Rules. During the Special Declarant Rights Period, no amendment to or modification of this Declaration or any Rules shall be effective without prior notice to, and the written approval of, Declarant.

12.9 Right to Transfer or Assign Declarant Rights. Any or all of the Special Declarant Rights may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer or assignment shall be effective unless it is in a recorded instrument signed by Declarant and the Person to whom the rights are transferred or assigned.

12.10 Trade Marks. Any use by the Association of names, marks, or symbols of Declarant, or any of its affiliates (collectively "Declarant Marks") shall inure to the benefit of Declarant and shall be subject to Declarant's periodic review for quality control. The Association may enter into license agreements with Declarant, terminable with or without cause and in a form specified by Declarant in its sole discretion, with respect to permissive use of certain Declarant Marks. The Association shall not use

any Declarant Mark without Declarant's prior written consent.

12.11 Equal Treatment. During the Special Declarant Rights Period, neither the Association nor any other entity shall, without the prior written consent of Declarant, adopt any policy, rule, or procedure that:

(a) limits the access of Declarant, its successors, assigns, and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas of the Association or to any property owned by any of them;

(b) limits or prevents Declarant, its successors, assigns, and/or affiliates or their personnel from advertising, marketing, or using the Association or its Common Areas or any property owned by any of them in promotional materials;

(c) limits or prevents purchasers of Lots, their successors, assigns, and/or affiliates in the Community from becoming members of the Association or enjoying full use of its Common Areas, subject to the membership provisions of this Declaration and the Bylaws;

(d) discriminates against or singles out any group of Members or prospective Members or Declarant. This provision shall expressly prohibit the establishment of a fee structure (i.e., Assessments, Special Assessments and other mandatory fees or charges other than Specific Assessments and use fees) that discriminates against or singles out any group of Members or Declarant;

(e) impacts the ability of Declarant, its successors, assigns, and/or affiliates, to carry out to completion its development plans and related construction activities for the Community. Policies, rules, or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete the Community shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction, and landscaping activities and utilities; or

(f) impacts the ability of Declarant, its successors, assigns, and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

Neither the Association nor any other entity shall exercise its authority over the Common Areas (including, but not limited to, any means of access to the Community or the Annexable Property) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Community or the Annexable Property, or over the streets and other Common Areas within the Community.

12.12 Right To Use Common Area for Special Events. During the Special Declarant Rights Period, Declarant shall have the right to use all Common Area, including recreational facilities, to sponsor special events for charitable, philanthropic, and social purposes as determined by Declarant in its sole discretion. Any such event shall be subject to the following conditions:

(a) the availability of the facilities for the period of time requested of the Association by the Declarant;

(b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event other than customary use charges that shall be waived;



(c) Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the applicable special event; and

(d) Declarant shall have the right to assign its rights contained in this Section 12.12 to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

12.13 Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate an easement for the right to inspect, monitor, test, redesign, and correct any structure, Improvement, or condition which may exist on any portion of the Community, including Lots, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a Dwelling Unit or other structure on a Lot shall be permitted without the consent of the Owner of the Lot. The Person exercising this easement shall promptly repair, and pay for, any resulting damage.

12.14 Right to Notice of Design or Construction Claims. No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation against Declarant involving such design or construction unless Declarant has been first notified in writing at least ten (10) days prior to such inspection and given an opportunity to meet with the Owner and the Association and conduct an independent inspection.

## ARTICLE 13 DURATION, AMENDMENTS, MERGER AND TERMINATION

13.1 Duration. This Declaration shall run with and bind the land perpetually, unless terminated as set forth below.

13.2 Declarant Amendment. Declarant declares and reserves the right to amend this Declaration (including any Supplemental Declarations) and any Plat, without the consent of Owners or Mortgagees at any time when Declarant may exercise Special Declarant Rights, as follows:

(a) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement;

(b) At any time before the first Lot is conveyed to a non-Declarant owner, for any purpose;

(c) To comply with any requirements of the Act or amendments thereto, or any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee Mortgages; and

(d) To exercise Special Declarant Rights.

### 13.3 Owner Annexation and Amendment.

(a) Annexation. In addition to the Special Declarant Rights, additional property may be annexed to this Declaration with the affirmative vote or agreement, at the time such annexation is to be effective, of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed.

(b) Amendment. Except as otherwise provided in this Declaration, including without limitation as provided in Section 14.9, this Declaration may be amended by the affirmative vote or agreement of Owners to which at least sixty-five percent (65%) of the votes in the Association are allocated; provided, however, during the Special Declarant Rights Period and for a period of nine (9) years thereafter, including the right to exercise any Development Right, no amendment of this Declaration shall be effective without the prior, written approval of the Declarant.

(c) Effect. Each amendment to this Declaration enacted by the vote or agreement of Owners of Lots shall be applicable only to disputes, issues, controversies, circumstances, events, claims or causes of action that arose out of acts, omissions, events or other circumstances that occurred after the date of recording of such amendment in the County, and no such amendment shall be applied retroactively (i) to any disputes, issues, controversies, circumstances, events, claims or causes of action that arose out of acts, omissions, events or other circumstances that occurred before the date of recording of such amendment in the County, or (ii) to impair the rights or obligations of any Person, including Declarant, bound by the provisions of this Declaration.

(d) Indemnity. Any repeal or modification of any provision of the Governing Documents of the Association that permit or require the indemnification of director's and officer's shall be prospective only, and shall not adversely affect any limitation on the personal liability of a current or former director or officer of the Association for acts or omissions prior to such repeal or modification; any such repeal or modification shall not be effective as against a current or former director or officer of the Association for acts or omissions prior to such repeal or modification without such director's or officer's written consent. Any indemnification or right of indemnification of directors and officers of the Association as provided by any of the Governing Documents shall continue as to a person who has ceased to be a director or officer of the Association and shall inure to the benefit of the director's or officer's estate, heirs, personal representatives, executors and administrators.

13.4 Execution of Amendments. Except as to amendments which may be made by Declarant, amendments to this Declaration may be prepared, executed, recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant to this Declaration or as permitted by the Act, may be signed by the Declarant and shall require no other signatory.

13.5 Mergers. The Community may be merged or consolidated with another community of the same form of ownership by complying with Section 221 of the Act, including, following approval of the same number of Owners as is required to terminate each community, an agreement providing for the merger or consolidation and specifying which community is the legal successor and the reallocation of the Allocated Interests.

13.6 Owner Consent. Except to the extent expressly permitted or required by other provisions of this Declaration, an amendment may not create or increase Special Declarant Rights, increase the number of Lots that May be Included or boundaries of any Lot, change the Allocated Interests of a Lot or the uses to which a Lot is restricted, except by affirmative vote or agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

13.7 Termination of the Community. Termination of the Community may be accomplished only in accordance with Section 218 of the Act, upon affirmative vote or agreement of Owners to which

at least sixty-seven percent (67%) of the votes are allocated.

#### ARTICLE 14 MANDATORY DISPUTE RESOLUTION

14.1 Statement of Clarification. Without modifying or restricting the scope of this ARTICLE and as a statement of clarification only, nothing contained in this ARTICLE is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a Claim (as defined herein), that the mandatory dispute resolution provisions contained in this ARTICLE are required.

14.2 Alternative Method for Resolving Disputes. Declarant, the Association, their officers, directors, affiliates, agents, employees and contractors, all Owners, consultants, and any Person not otherwise subject to this Declaration but who agrees to submit to this ARTICLE (including any design professionals, subcontractors and suppliers), each such entity being referred to individually as a "Bound Party" and collectively as the "Bound Parties," agree to encourage the amicable resolution of disputes involving the Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, except as otherwise agreed to in writing between any Bound Parties, each Bound Party covenants and agrees to submit all Claims to mediation, and if such mediation is not successful, final binding arbitration, as set forth below in this Declaration, and not to otherwise bring legal or equitable action in any court.

14.3 Claims. Except as specifically excluded in this Section 14.3 or as otherwise agreed to in writing between any Bound Parties, including without limitation any purchase and sale agreement or similar document (each a "Superseding Agreement"), all claims, disputes and other controversies arising out of or relating in any way to the:

- (a) interpretation, application or enforcement of this Declaration;
- (b) design, development, construction, sale, maintenance, repair, habitability or condition of any improvements within the Community or any alleged defect therein, including without limitation any "action" as defined in C.R.S. §13-20-802.5(l);
- (c) rights, obligations and duties of any Bound Party under this Declaration, and/or any breach or alleged breach thereof;

are hereinafter referred to as a "Claim" or "Claims." All Claims shall be subject to and resolved in accordance with the terms and provisions of this ARTICLE 14.

Notwithstanding any contrary provision of this ARTICLE 14, the following shall not be Claims and shall not be subject to the provisions of this ARTICLE 14:

- (d) any action by the Association against any Bound Party to enforce the provisions of ARTICLE 5 (Association Finances);
- (e) any action by the Association or Declarant to obtain a temporary or permanent restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under or enforce the provisions of ARTICLE 6 (Design Approval) or ARTICLE 10 (Restrictions); and
- (f) any action to enforce a settlement agreement or an arbitration award provided in this ARTICLE 14.

Any question about whether a matter is a Claim, and/or whether such matter is covered by this ARTICLE, shall be determined by the arbitrator.

14.4 Notice of Claim. Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”) shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely:

- (a) the nature of and factual basis for the Claim, including the Persons involved and Respondent’s role in the Claim;
- (b) the legal or contractual basis of the Claim (i.e., the specific authority out of which the claim arises); and
- (c) the specific relief and/or proposed remedy sought.

14.5 Timely Initiation. All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen, and in no event shall a Claim be made after the date when institution of legal or equitable action based on such Claim would be barred by the applicable statute of limitations or repose.

14.6 Right to be Heard; Mediation. Upon receipt of a Claim and prior to commencing any arbitration proceeding which may fall within the scope of this ARTICLE 14, the Respondent shall have the right to be heard by the Claimant in an effort to resolve the Claim. The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any party may appoint a representative to assist such party in negotiations. In the event the Respondent and the Claimant are unable to resolve the Claim through negotiations, the Claimant and Respondent shall individually (i.e. without the joinder or inclusion of other Owners or such Claimant serving as a class representative for or becoming a class member of other Owners) mediate all Claims prior to proceeding under Section 14.8 below. The mediation shall be conducted by a single mediator. If such parties are unable to agree upon the selection of a mediator within fifteen (15) days of initiation of the Claim, then a single mediator shall be chosen in accordance with the rules governing the selection of an arbitrator under the Colorado Uniform Arbitration Act (the “CUAA”). All mediation fees shall be split equally among the Claimant and Respondent. Prior to conducting such mediation, and consistent with Colorado law, the parties thereto shall agree in writing to limit the admissibility in arbitration or any court action of anything said, any admission made, and any documents prepared in the course of the mediation.

14.7 Right to Inspect. If the Claim is asserted against Declarant and/or its officers, directors, affiliates, agents, employees, design professionals, contractors, subcontractors, suppliers and/or consultants and is based on an alleged defect in the design or the construction of any Improvements within the Community, Declarant shall have the right to access the affected area for purposes of inspecting the condition complained of, and the correction thereof, including any necessary redesign. This shall include, but not be limited to, notice prior to conducting any investigative or destructive testing. The Claimant shall meet with Declarant and/or its designees to discuss, in good faith, ways to resolve the Claim. The Association shall have the same right to inspect related to any Claims by an Owner against the Association as set forth above in this Section.

In the exercise of the inspection rights contained herein, the inspecting party (“Inspecting Party”) shall exercise reasonable care to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party. The Inspecting Party shall use best efforts to avoid causing any damage to, or interference with, any improvements on the property being inspected (“Inspection Property”) and minimize any disruption or inconvenience to any person who occupies the Inspection Property; shall remove all debris placed on the Inspection Property by the Inspecting Party on a timely basis; and in a reasonable and timely manner, at the Inspecting Party’s sole cost and expense, promptly remove

equipment and materials from the Inspection Property placed on the Inspection Property by the Inspecting Party, and repair, replace and restore the Inspection Property to the condition of the Inspection Property as of the date of entry thereon by the Inspecting Party. The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the exercise of its rights to accrue against or attach to the Inspection Property. The repair, replacement and restoration work includes, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other Improvements on the Inspection Property that were damaged, removed or destroyed by Inspecting Party.

The Inspecting Party shall indemnify, defend and hold harmless the Owners, tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorneys' fees, resulting from or in performance of this Section 14.7, or as a result of any Inspecting Party's breach of this Section 14.7.

14.8 Final Binding Arbitration. If the Parties do not reach a settlement of the Claim within 30 days after the conclusion of the mediation conducted and if the Claimant is the Association making a Claim that is a construction defect action as defined by C.R.S. 38-33.3-303.5 of the Act, binding arbitration shall be the sole means for resolving the Claim, and the Association shall comply with the provisions of C.R.S. 38-33.3-303.5 of the Act before initiating binding arbitration to resolve the Claim in accordance with the arbitration procedures set forth below. For any other Claim, the Claimant shall have 30 additional days after the conclusion of the mediation to submit the Claim to binding arbitration in accordance with the arbitration procedures set forth below:

(a) The parties agree that if a Claim is submitted to arbitration, and any other Bound Party other than another Owner may have liability with respect thereto, all parties to the dispute agree that other Bound Parties (other than another Owner) related to such dispute or any intertwined or connected dispute, may be joined as additional parties in such arbitration, or if separate arbitrations exist or are separately initiated, to the consolidation of all such arbitrations. Notwithstanding anything to the contrary herein, each arbitration shall be conducted on an individual Owner basis to address the applicable Claim (i.e. without the joinder or inclusion of other Owners or such Claimant serving as a class representative for or becoming a class member of other Owners).

(b) If the Claim(s) are not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claims shall be deemed abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claims.

(c) In the absence of an agreement otherwise between the applicable Bound Parties, all Claims subject to arbitration shall be conducted in accordance with the CUAA and be decided by a single private party arbitrator who is a retired Colorado state court or federal court judge, or attorney licensed to practice law in Colorado.

(d) If the parties are unable to agree upon an arbitrator within thirty (30) days from the date of the demand for arbitration, then the arbitrator shall be chosen in accordance with the rules governing the selection of an arbitrator under the CUAA.

(e) No person shall serve as the arbitrator who may have any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other 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 and/or actual impartiality, including any bias or financial or personal interest or relationship in the outcome of the arbitration ("Arbitrator's Disclosure"). If any party objects to the service of any arbitrator within 14 days after receipt of that Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner as provided in Section 14.8(d) above.

(f) The arbitration shall not be open to the public. The decision shall not be published. The arbitrator's decision shall not establish a precedent.

(g) In the event the arbitrator requires any advance fees to be paid, the parties will divide and pay those equally. If the arbitration award requires any party to pay more than one-half of the fees, the parties shall adjust credit for payment of the advance fee to accurately reflect payment required under the award.

(h) The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in El Paso County, Colorado unless otherwise agreed by the parties.

(i) The arbitrator shall apply the substantive law of Colorado to all claims and defenses. Subject to the provisions of these procedures, the arbitration shall be conducted in accordance with rules and procedures determined by the arbitrator.

(j) If Declarant is a party to a Claim, Declarant shall have the right to join any Bound Party or Bound Parties in the arbitrations.

(k) Subject to the arbitrator's right to establish rules and procedures governing formal discovery in the arbitration, no formal discovery shall be conducted in the absence of an order of the arbitrator or express written agreement of the parties. Notwithstanding the foregoing sentence, any party asserting Claims against the Declarant and/or its officers, directors, affiliates, agents, employees, contractors or consultants shall notify the Declarant prior to retaining any Person as an expert witness for purposes of any arbitration or authorized litigation, and the Declarant shall be entitled to conduct discovery, including depositions, of such expert.

(l) The award rendered by the arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in accordance with applicable law and judgment obtained thereon, and execution may issue. An award in favor of any party shall be limited to actual damages, and the arbitrator shall not have any authority to award exemplary, punitive, special, indirect, consequential or any other damages other than actual damages. All arbitrator and arbitration fees shall be split equally among all Claimants and Respondents. Each party shall be responsible for its own costs and expenses related to the Claim and shall not be entitled to or awarded its attorneys' fees or costs incurred with respect thereto, or the arbitrator's fees or arbitration fees.

(m) Unless directed by the arbitrator, there shall be no post-hearing briefs.

(n) The arbitration award shall address each claim to be resolved in the arbitration, provide a summary of the reasons therefor and the relief granted.

14.9 Amendment; Servitude in Gross. The rights, terms and provision of this ARTICLE 14 are enforceable by Declarant, and shall not be amended without the written consent of Declarant. Further, this ARTICLE 14 and the rights, terms and provisions contained herein constitute a servitude in gross for the benefit of Declarant and its officers, directors, affiliates, agents, employees, contractors, subcontractors, design professionals and consultants, shall inure to the benefit of the foregoing, and all of the foregoing are third party beneficiaries thereof, regardless of ownership of any portion of the Community.

14.10 Binding Effect. BY TAKING TITLE TO ANY PORTION OF THE COMMUNITY, EACH OWNER THEREOF ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 14 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP THE COMMUNITY, CONSTRUCT IMPROVEMENTS AND SELL LOTS AND DWELLING UNITS, AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS

ARTICLE 14, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP THE COMMUNITY, CONSTRUCT IMPROVEMENTS OR SELL LOTS AND DWELLING UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO SUCH PORTION OF THE COMMUNITY, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 14 LIMIT HIS OR HER RIGHTS WITH RESPECT TO THE RIGHTS AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A POTENTIAL OR ACTUAL CONSTRUCTION DEFECT AFFECTING THE IMPROVEMENTS OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION ANY DWELLING UNIT.

## ARTICLE 15 MORTGAGEE PROTECTION

15.1 Rights of First Mortgagees. First Mortgagees shall have the following rights:

(a) First Mortgagees shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Areas and may pay overdue premiums on property insurance policies or secure new property insurance coverage on the lapse of a policy for the Common Areas, and any first Mortgagee making any such payments shall be owed immediate reimbursement therefor from the Association.

(b) First Mortgagees will be entitled to cure any delinquency of the Owner of the Lot encumbered by the first Mortgage in the payment of Assessments. In such event, the first Mortgagee will be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency to the extent of the amounts paid.

15.2 Title Taken by First Mortgagee. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage, including foreclosure or deed in lieu of foreclosure, will be liable for all Assessments due and payable following the date title to the Lot vests in the Mortgagee under the statutes of Colorado governing foreclosures. Except as provided herein (to the extent permissible under the Act) or in the Act, such Mortgagee will not be liable for any unpaid Assessments, dues, or charges attributable to the Lot which accrued prior to the date such title vests in the Mortgagee.

## ARTICLE 16 DISCLOSURES AND DISCLAIMERS

16.1 Disclosures by Declarant. Declarant hereby discloses the following:

(a) Land Use Documents. The Community is being developed in accordance with the land use regulations of the Town of Monument, Colorado. Declarant, for itself, its successors and assigns, reserves the right to obtain modifications and amendments to all land use documents, subject to the approval of the Town of Monument. Such modifications and amendments could change the uses of adjacent and nearby land from the uses which are set forth in the land use documents or as described herein.

(b) Future Development and Views. Owners acknowledge that existing views, if any, of the immediate and surrounding areas and mountains may be subject to change or elimination as a result of future development of non-residential and residential uses, construction, tree growth and landscaping. Declarant may charge premium prices for similar houses or lots depending on a variety of factors, which may include location, lot size, cul-de-sac frontage, solar orientation or proximity to open space. The market value of these factors may be subjective. Each Owner acknowledges that development within and surrounding the Community may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses, may change over time. Such development may entail changes to or alterations in the access to the Community, views of or from the Community or the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development or proximity to other uses also may entail noise, odors, unsightliness,

dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot subject to the foregoing, and waives and releases any claim against the Declarant, the Association, the Board of Directors, the ARC, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing.

16.2 Disclaimer Regarding Security. Declarant, the Association, the Board of Directors, the ARC, and their respective officers, directors, members, partners, agents and employees hereby disclaim any obligation regarding the security of any Persons or property within the Community. By accepting a deed to property within the Community, each Owner acknowledges that Declarant, the Association, the Board of Directors, the ARC, and their respective officers, directors, members, partners, agents and employees are only obligated to do those acts specifically identified herein, or in the Governing Documents, and are not obligated to do any other acts with respect to the safety or protection of Persons or property within the Community.

## ARTICLE 17 GENERAL PROVISIONS

17.1 Enforcement. All of the provisions of this Section 17.1 are subject to the provisions of ARTICLE 14 above, and shall apply to those matters not constituting a Claim under the provisions of ARTICLE 14. The Association on behalf of itself and any two or more aggrieved Owners, and any Owner, shall have the right, but not the obligation to bring legal or equitable action for any matter not constituting a Claim under ARTICLE 14 against any and all Owners for failure to comply with the provisions of the Governing Documents, or for failure to comply with decisions of the Board made pursuant to the authority granted to the Association in the Governing Documents. Failure by the Association or any Owner to enforce compliance with any provision of the Governing Documents shall not be deemed a waiver of the right to enforce any provision thereafter. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity, except as limited therein or in this Declaration. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (a) the Association's position is not strong enough to justify taking any or further action;
- (b) the covenant, restriction, or Rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Association's right to enforce such provision at a later time or preclude the Association from enforcing any other covenant, restriction, or rule.

17.2 Limitation on Liability. The Association, the Board of Directors, the ARC, the Declarant, and their respective officers, directors, members, partners, agents and employees, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith



and was done or withheld with malice.

17.3 Electronic Delivery; Registration of Owner's Address. Unless otherwise required by applicable law or this Declaration, any requirement to deliver any notice, statement, demand, document or record to an Owner shall be deemed satisfied by sending the same to the applicable Owner by electronic delivery if the Owner has provided an electronic mail or delivery address to the Association. Otherwise, an Owner shall register his mailing address with the Association, and any notice, statement, demand, document or record intended to be delivered to an Owner must be sent by U.S. mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice, statement, demand, document or record may be delivered or mailed to such Owner at the address of such Owner's Lot.

17.4 No Representations, Guaranties or Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, the ARC, or by any of their respective officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, value or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

17.5 Headings. The headings contained in this Declaration are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the terms and provisions of this Declaration or the intent of any provision thereof.

17.6 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 this Declaration so requires.

17.7 Waiver. No provision contained in this Declaration is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

17.8 Conflict. The Governing Documents are intended to comply with the requirements of the Act and the Colorado Revised Nonprofit Corporation Act. If there is any conflict between the Governing 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 Governing Document, this Declaration shall control. In the event of any conflict between this Declaration and any Superseding Agreement, the provisions of the Superseding Agreement shall control. In the event of any conflict between the Articles of Incorporation and the Bylaws or Rules, the Articles of Incorporation shall control. In the event of any conflict between the Bylaws and the Rules, the Bylaws shall control.

17.9 Severability. All provisions of this Declaration are severable. Invalidation of any of the provisions of this Declaration by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

*[Signature page follow]*

The Declarant has caused this Declaration to be executed this 15<sup>th</sup> day of September, 2023.

Eagle Development Company,  
a Colorado corporation

By: *JM*  
Name: JEFF MARK  
Title: VICE PRESIDENT

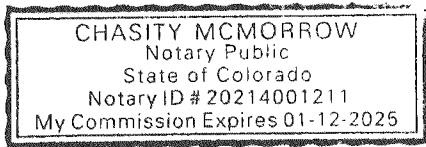
STATE OF COLORADO )  
CITY OF Colorado Springs ) ss.

The foregoing Declaration of Covenants, Conditions and Restrictions for Jackson Creek Homeowners Association, Inc. was acknowledged before me this 15 day of September, 2023, by Jeff Mark, as vice president of Eagle Development Company, a Colorado corporation.

Witness my hand and official seal.

My commission expires: 01-12-2025

[SEAL]




*Chasity McMorrow*  
Notary Public

**AFFIDAVIT OF OWNERSHIP & INCLUSION**  
Jackson Creek Homeowners Association, Inc.

Lorson South Land Corp., a Colorado corporation, affirms ownership of an interest in a portion of the real property described in Exhibit A of the Declaration (the "Lorson Property"), and by our authorized signature hereon consent to all terms, conditions, restrictions and provisions of this Declaration of Covenants, Conditions and Restrictions for Jackson Creek Homeowners Association, Inc. (the "Declaration"), to the designation of Eagle Development Company, a Colorado corporation, as Declarant under the Declaration, and to the inclusion and addition of the Lorson Property to the Declaration and the Community.

Lorson South Land Corp.,  
a Colorado corporation


By:   
Name: JEFF MARK  
Title: VICE PRESIDENT

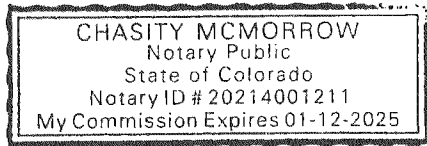
STATE OF COLORADO )  
 ) ss.  
\_\_\_\_\_ COUNTY OF El Paso )

The foregoing instrument was acknowledged before me this 15 day of September, 2023, by Jeff Mark, as Vice President of Lorson South Land Corp., a Colorado corporation.

Witness my hand and official seal.  
My commission expires: 01-12-2025

( S E A L )


  
Notary Public



**AFFIDAVIT OF OWNERSHIP & INCLUSION**  
Jackson Creek Homeowners Association, Inc.

Babcock Land Corp., a Colorado corporation, affirms ownership of an interest in a portion of the real property described in Exhibit A of the Declaration (the "Babcock Property"), and by our authorized signature hereon consent to all terms, conditions, restrictions and provisions of this Declaration of Covenants, Conditions and Restrictions for Jackson Creek Homeowners Association, Inc. (the "Declaration"), to the designation of Eagle Development Company, a Colorado corporation, as Declarant under the Declaration, and to the inclusion and addition of the Babcock Property to the Declaration and the Community.

Babcock Land Corp.,  
a Colorado corporation


By:   
Name: JEFF MARK  
Title: VICE PRESIDENT

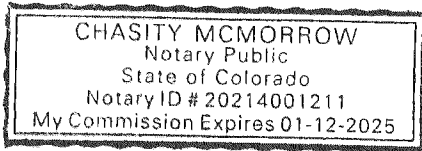
STATE OF COLORADO )  
 )  
 ) ss.  
 )  
\_\_\_\_\_ COUNTY OF El Paso )

The foregoing instrument was acknowledged before me this 15 day of September, 2023, by Jeff Mark, as Vice President of Babcock Land Corp., a Colorado corporation.

Witness my hand and official seal.  
My commission expires: 01-12-2025

( S E A L )

  
Notary Public



**AFFIDAVIT OF OWNERSHIP & INCLUSION**

Jackson Creek Homeowners Association, Inc.

Murray Fountain, LLC, a Colorado limited liability company, affirms ownership of an interest in a portion of the real property described in Exhibit A of the Declaration (the "Murray Property"), and by our authorized signature hereon consent to all terms, conditions, restrictions and provisions of this Declaration of Covenants, Conditions and Restrictions for Jackson Creek Homeowners Association, Inc. (the "Declaration"), to the designation of Eagle Development Company, a Colorado corporation, as Declarant under the Declaration, and to the inclusion and addition of the Murray Property to the Declaration and the Community.

Murray Fountain, LLC,  
a Colorado limited liability company

By: JM  
Name: JEFF MARK  
Title: VICE PRESIDENT

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

The foregoing instrument was acknowledged before me this 15 day of September, 2023, by Jeff Mark, as Vice President of Murray Fountain, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 01-12-2025

(SEAL)

Chasity MCMorrow  
Notary Public

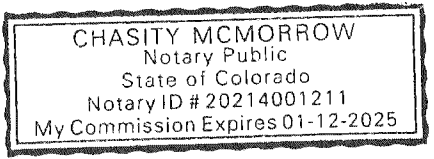


EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
JACKSON CREEK HOMEOWNERS ASSOCIATION, INC.

LEGAL DESCRIPTION OF  
PROPERTY SUBJECT TO DECLARATION

Lots 1 through 99, inclusive,  
Jackson Creek North Filing No. 3,  
Town of Monument, County of El Paso, State of Colorado,  
according to the plat recorded November 4, 2021 at Reception No. 221714844, as may be amended and  
replatted from time to time; and

Lots 1 through 73, inclusive,  
Jackson Creek North Filing No. 4,  
Town of Monument, County of El Paso, State of Colorado,  
according to the plat recorded November 4, 2021 at Reception No. 221714849, as may be amended and  
replatted from time to time; and

Lots 1 through 94, inclusive,  
Jackson Creek North Filing No. 5,  
Town of Monument, County of El Paso, State of Colorado,  
according to the plat recorded November 4, 2021 at Reception No. 221714850, as may be amended and  
replatted from time to time; and

Lots 1 through 112, inclusive,  
Jackson Creek North Filing No. 6,  
Town of Monument, County of El Paso, State of Colorado,  
according to the plat recorded November 4, 2021 at Reception No. 221714848, as may be amended and  
replatted from time to time.

EXHIBIT B  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
JACKSON CREEK HOMEOWNERS ASSOCIATION, INC.

LEGAL DESCRIPTION OF  
ANNEXABLE PROPERTY

Tracts A, B, C, D, E, F, G, H, I, J, K and L,  
Jackson Creek North Filing No. 3,  
Town of Monument, County of El Paso, State of Colorado,  
according to the plat recorded November 4, 2021 at Reception No. 221714844, as may be amended and  
replatted from time to time; and

Tracts A, B, C, D, E and F,  
Jackson Creek North Filing No. 4,  
Town of Monument, County of El Paso, State of Colorado,  
according to the plat recorded November 4, 2021 at Reception No. 221714849, as may be amended and  
replatted from time to time; and

Tracts A, B, C, D, E, F, G, H, I and J,  
Jackson Creek North Filing No. 5,  
Town of Monument, County of El Paso, State of Colorado,  
according to the plat recorded November 4, 2021 at Reception No. 221714850, as may be amended and  
replatted from time to time; and

Tracts A, B, C, D, E, F, G, H, I, J, K and L,  
Jackson Creek North Filing No. 6,  
Town of Monument, County of El Paso, State of Colorado,  
according to the plat recorded November 4, 2021 at Reception No. 221714848, as may be amended and  
replatted from time to time; and

Additional real estate from such locations as the Declarant may elect in its sole discretion, so long as the  
total additional real estate so annexed to the Community pursuant to this sentence, and not described in  
Exhibit A and Exhibit B attached to this Declaration does not exceed ten percent (10%) of the total area  
described in the attached Exhibit A and Exhibit B.

EXHIBIT C  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
JACKSON CREEK HOMEOWNERS ASSOCIATION, INC.

EASEMENTS AND LICENSES AND OTHER TITLE MATTERS BURDENING AND SERVING THE  
COMMUNITY

Reservations contained in United States Patent recorded March 29, 1878, in Book 25, at Page 155.

Water rights described in Warranty Deed recorded December 29, 1917, in Book 620, at Page 32. NOTE: Warranty Deed recorded July 6, 1970, in Book 2352, at Page 544. NOTE: Warranty Deed recorded July 6, 1970, in Book 2352, at Page 545. NOTE: Warranty Deed recorded September 6, 1984, in Book 3914, at Page 643. NOTE: Warranty Deed recorded June 2, 1986, in Book 5178, at Page 547. NOTE: Quit Claim Deed recorded November 1, 1994, in Book 6554, at Page 383. NOTE: Quit Claim Deed recorded December 9, 1994, in Book 6575, at Page 231. NOTE: Correction Quit Claim Deed recorded March 1, 1996, in Book 6830, at Page 1453. NOTE: Quit Claim Deed recorded March 1, 1996, in Book 6830, at Page 1470. NOTE: Special Warranty Deed recorded January 9, 1990, at Reception Number 098002906. NOTE: Special Warranty Deed recorded April 3, 2014, at Reception Number 214027677. NOTE: Quitclaim Deed recorded April 16, 2014, at Reception Number 214031517. NOTE: Special Warranty Deed recorded April 16, 2014, at Reception Number 214031518.

Mineral Deed recorded September 29, 1951, in Book 1313, at Page 159.

Order and Decree Creating District, regarding Tri-Lakes Fire Protection District, recorded July 18, 1977, in Book 2941, at Page 577.

Resolution No. 82-44, regarding zoning, recorded March 16, 1982, in Book 3542, at Page 339.  
NOTE: Ordinance No. 13-87, amending the zoning district map, recorded February 12, 1988, in Book 5474, at Page 804.

Findings and Decree, regarding Triview Metropolitan District recorded June 4, 1985, in Book 5017, at Page 193. NOTE: Regional Facilities Agreement recorded November 25, 1986, in Book 5276, at Page 517. NOTE: Legal Description of Property w/in the Boundaries of Triview Metropolitan District recorded November 25, 1986, in Book 5276, at Page 569. NOTE: Notice recorded December 11, 1997, at Reception Number 97145688. NOTE: Special District Public Disclosure recorded April 23, 2020, at Reception Number 22055583. NOTE: Release of Funding Obligation recorded May 16, 2022, at Reception Number 222068196.

Annexation and Development Contract recorded October 1, 1987, in Book 5428, at Page 1246. NOTE: Ordinance No. 12-87, regarding acceptance of Annexation Petition, recorded October 1, 1987, in Book 5428, at Page 1196, and in Book 5428, at Page 1380. NOTE: Regency Park Phase II annexation map recorded October 1, 1987, at Reception Number 16266666.

Tap Fee Agreement recorded August 22, 1988, in Book 5545, at Page 584, and recorded July 10, 1990, in



Book 5754, at Page 190.

NOTE: Addendum recorded August 22, 1988, in Book 5545, at Page 605.

First Amended Development Plan of Regency Park recorded August 28, 1997, at Reception Number 97100215. NOTE: Second Amended Development Plan and Rezoning Plan recorded August 27, 1998 at Reception Number 98122863.

NOTE: Third Amended Development Plan and Rezoning Plan recorded March 17, 2006, at Reception Number 206039572.

NOTE: Fifth Amended Development Plan and Rezoning Plan recorded April 17, 2014, at Reception Number 214031892.

NOTE: Sixth Amended Development Plan and Rezoning Plan recorded August 14, 2015, at Reception Number 215088249.

Resolution 18-2014, regarding Water Agreement, recorded April 30, 2014, at Reception Number 214036043.

Findings, Order and Decree to Create District, regarding Jackson Creek North Metropolitan District, recorded December 10, 2018, at Reception Number 218141462.

NOTE: Order for Inclusion of Property recorded November 20, 2020, at Reception Number 220189485.

Amended and Restated Infrastructure Agreement recorded May 27, 2020, at Reception Number 220071800.

Appendix Two – Improvements Agreement for Public/Private Development Project recorded November 4, 2021, at Reception Number 221204567.

Easements, notes, restrictions and rights-of-way, as set forth on the plat of Jackson Creek North Filing No. 3, recorded November 4, 2021, at Reception Number 221714847.

Easements, notes, restrictions and rights-of-way, as set forth on the plat of Jackson Creek North Filing No. 4, recorded November 4, 2021 at Reception No. 221714849.

Easements, notes, restrictions and rights-of-way, as set forth on the plat of Jackson Creek North Filing No. 5, recorded November 4, 2021 at Reception No. 221714850.

Easements, notes, restrictions and rights-of-way, as set forth on the plat of Jackson Creek North Filing No. 6, recorded November 4, 2021 at Reception No. 221714848.

Notes as shown on the ALTA/NSPS Land Title Survey prepared by Aztec Consultants, Inc. under Job No. 21423-10 and dated April 5, 2023.

Mineral Quitclaim Deed, to Bradley Marksheffel, LLC, recorded January 1, 2022, at Reception Number 222005060.