

**DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
GLEN FILING NO. 11 & 12**

THIS DECLARATION (hereinafter called the “Declaration”), made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by GLEN DEVELOPMENT COMPANY, a Colorado corporation, GLEN INVESTMENT GROUP NO. VII, LLC, a Colorado limited liability company, and GLEN INVESTMENT GROUP NO. VIII, LLC, a Colorado limited liability company (hereinafter collectively called the “Declarant”) for itself, its successors and assigns.

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property described on Exhibit “A” attached hereto and incorporated herein (hereinafter called the “Property”), and

WHEREAS, the Declarant desires to submit the Property to the covenants, terms and provisions hereof, and does not submit the Property to the Colorado Common Interest Ownership Act (C.R.S., §38-33.3-101, et seq., hereinafter called the “CCIOA”).

NOW, THEREFORE, the Declarant hereby declares that all of the Property, as hereinafter described, with all appurtenances, facilities and Improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of the Property and all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns.

**ARTICLE I  
DEFINITIONS**

Section 1.1 “Association” shall mean and refer to GLEN FILING NO. 11 & 12 HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation, organized under the laws of the State of Colorado, its successors and assigns. “Association Governing Documents” shall mean and refer to this Declaration, the Association’s Articles of Incorporation, Bylaws and Rules.

Section 1.2 “Owner” means any person, corporation, partnership, association, contract seller or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one or more Lots. The term “Owner” shall include any grantee, transferee, heir, successor,

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personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee as herein defined, or other person or entity having an ownership interest in any Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 1.3 “Property” shall mean and refer to that certain real property described on Exhibit “A” hereto and incorporated herein by this reference, together with all appurtenances thereto and all Improvements now or hereafter thereon. “Property” shall include any real property subsequently added to the Property as provided in Article XII of this Declaration.

Section 1.4 “Common Area” shall mean and refer to that certain real property which may be described on Exhibit “B” hereto and any property subsequently designated as “Common Area” which may be owned or controlled by the Association, together with all appurtenances thereto and all Improvements now or hereafter thereon and all common property, if any, owned by the Association in connection therewith.

Section 1.5 “Home” shall mean the residential dwelling structure and other Improvements constructed upon any Lot.

Section 1.6 “Lot” shall mean and refer to any of the Lots shown on any recorded Plat of the Property, together with all appurtenances thereto and Improvements now or hereafter thereon.

Section 1.7 “Declarant” shall mean and refer to Glen Development Company, a Colorado corporation, Glen Investment Group No. VII, LLC, a Colorado limited liability company, and Glen Investment Group No. VIII, LLC, a Colorado limited liability company, its agents, employees, contractors, successors and assigns to whom it expressly transfers in writing all or any part of its rights as Declarant hereunder, and its authorized representative(s).

Section 1.8 “Member” shall mean and refer to every person or entity who holds membership in the Association.

Section 1.9 “Mortgage” means and refers to any mortgage, deed of trust or other assignment or comparable security instrument recorded in the real property records of the office of the Clerk and Recorder of the County in which the Property is located, and by which a Lot or any part thereof is encumbered.

Section 1.10 “First Mortgage” shall mean a Mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general *ad valorem* tax liens and special assessments). “First Mortgage” means a Mortgage whose encumbrance is a First Mortgage.

Section 1.11 “Mortgagee” means any person or entity, or any successor or assign thereof, which holds or owns a Mortgage. The term shall also include the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not, but if not recorded, then written notice thereof shall be delivered to the Board.

Section 1.12 “Architectural Control Committee” or “Committee” shall mean the committee of three (3) or more persons appointed by the Declarant or the Board to review and approve the plans for all Improvements constructed on the Property.

Section 1.13 “Improvements” shall mean and refer to all buildings, structures and any appurtenances thereto or components thereof of every type or kind, including buildings, outbuildings, swimming pools, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, concrete, paving, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, mailboxes, exterior tanks, solar equipment, satellite dishes, and exterior air conditioning and water softener fixtures, and any alterations, changes or modifications to the foregoing. “Improvements” shall also mean an excavation or fill the volume of which exceeds two (2) cubic yards, and any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

Section 1.14 “Plat” shall mean and refer to any plat which is at this time or subsequently recorded for Glen at Widefield Subdivision Filing No. 11 or for Filing No. 12, recorded in the real property records of El Paso County, Colorado. The term “Plat” shall include any recorded plats for any portion of the Property and plat notes, as well as any amendments, corrections or supplements thereto, all of which are incorporated herein by this reference. The Plat Notes are specifically incorporated herein by this reference.

Section 1.15 “Detention Basin” shall mean and refer to the area so designated on the plat. A detention basin (“Detention Basin”) is included in the Property. A “Private Detention Basin/Stormwater Quality Best Management Practice Maintenance Agreement and Easement” (“Detention Basin Agreement”) between and among the Declarant, the Metro District, and the Board of County Commissioners of El Paso County, Colorado, is recorded at Reception No. \_\_\_\_\_ in the records of the Clerk and Recorder of El Paso County, Colorado. The provisions of the Detention Basin Agreement are incorporated herein by this reference. The Metro District’s duties include managing, operating, cleaning, maintaining, and repairing the Detention

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Basin, administering and enforcing the covenants, conditions, restrictions, agreements, reservations and easements contained in the Detention Basin Agreement and levying, collecting and enforcing the assessments, charges, and liens imposed under the Detention Basin Agreement. The Declarant, its successors and assigns, hereby covenants to construct the Detention Basin pursuant to the Detention Basin Agreement. Should Declarant, its developer or builder successor and assigns fail to construct the Detention Basin as provided in the Detention Basin Agreement, the Metro District shall construct the Detention Basin as provided therein.

Section 1.16 "Metro District" shall mean and refer to the Glen Metropolitan District #3.

## ARTICLE II MEMBERSHIP AND VOTING RIGHTS

Section 2.1 MEMBERSHIP. The following shall be members of the Association: The Declarant and every Owner of a Lot which is subject to assessment hereunder. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership.

Section 2.2 CLASSES OF MEMBERSHIP. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and each membership shall be entitled to one (1) vote for each Lot owned, provided, however, notwithstanding any provision of the Declaration, Articles of Incorporation or Bylaws, the Class A Members shall not have any voting or other rights until the Class B membership ceases. When more than one person holds an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to exercise all voting rights of membership until December 31, 2038, unless sooner terminated when the Declarant consents thereto in writing.

Section 2.3 NON-LIABILITY OF ASSOCIATION AND OTHERS. The Board of Directors, the officers of the Association and the Declarant, including the officers, directors, employees, agents, and representatives of the Declarant, but not including without its written consent, any independent contractors or managing agents, shall not be liable in damages or otherwise to any person whatsoever for any act or omission done as an officer, director, agent or representative on behalf of the Association, except for willful misconduct done in bad faith or gross negligence and

he/she shall be indemnified from all such liability as provided in the Association's Articles of Incorporation and/or Bylaws.

### ARTICLE III COVENANT FOR ASSESSMENTS

Section 3.1 CREATION OF THE OBLIGATION FOR ASSESSMENTS. Except as otherwise provided herein, each Owner, for each Lot owned within the Property, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fees, fines, and other sums which are described in this Declaration and which shall be both a personal obligation of the Owner and a lien against his Lot as provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to them and/or their Lot. The personal obligation for delinquent assessments and sums shall not pass to an Owner's successors in title or interest. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees and other sums provided for herein by nonuse of the Property or the facilities contained therein, by abandonment or leasing of his Lot, or by asserting any claims or defenses against the Association, the Declarant or any other person or entity.

Section 3.2 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to promote the recreation, health, and welfare of the Owners, including the Declarant and any builders or other Protected Parties as defined herein.

Section 3.3 ANNUAL ASSESSMENTS. The annual assessments shall specifically include the following common expenses:

- (a) expenses of management and maintenance of the Common Area, including any Common Area subsequently conveyed or assigned by Declarant, if any, and such other maintenance or other expense, such as street lighting, as the Board determines in its discretion is appropriate;
- (b) taxes and special assessments;
- (c) premiums for all insurance which the Association is required or permitted to maintain;
- (d) wages for Association employees;
- (e) legal and accounting fees;
- (f) any deficit remaining from a previous assessment year;

(g) a working capital fund; and

(h) any other costs, expenses and fees which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

The Association shall also have authority, to the extent it deems proper, to provide any other services requested by particular Owners, but only on a contract basis under which those Owners pay the cost thereof. The Association may enter into cooperative arrangements for provision of services with other homeowner associations in the surrounding area and may assume responsibility for that part of the cost fairly attributable to the Property.

Section 3.4 LIMIT ON ANNUAL ASSESSMENTS. For the year in which the first Lot is conveyed to an Owner, the maximum annual assessment shall be One Hundred Dollars (\$100.00).

(a) For all subsequent calendar years, the maximum annual assessment may be increased each year, without a vote of the membership, not more than the rise, if any, of the most recent annual Consumer Price Index (published by the Department of Labor, Washington, D.C. or any comparable successor index for Housing-General Shelter-Homeowners Costs, and fuel and other utilities) for the Denver metropolitan area. The percentage increase shall cumulate from the first year.

(b) For all subsequent calendar years, the maximum annual assessment may also be increased above the limitation which is set forth in paragraph (a) above, by the procedure set forth in Section 3.5 of this Article III.

(c) The Association's Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(d) Notwithstanding any provision of this Declaration or otherwise, the annual average common expense assessment of each Lot, exclusive of optional user fees and any insurance premiums paid by the Association, shall never exceed Four Hundred Dollars (\$400.00), as adjusted pursuant to C.R.S., §38-33.3-116(3), and, therefore, the Association and the Property are subject only to C.R.S., §38-33.3-105, 38-33.3-106 and 38-33.3-107 and are not subject to any other provisions of the CCIOA (C.R.S., §38-33.3-101, et seq.), unless the Members amend this Declaration, with Declarant's prior written consent, to make such Act applicable to the Association and the Property.

Section 3.5 PROCEDURE FOR ASSESSMENT INCREASE UNDER SECTION 3.4. Any assessment requiring a vote of the Members under Section 3.4(b) of this Article III shall require the assent of a majority (51%) of the votes of Members who are voting in person or by proxy at a meeting duly called for that purpose. Written notice of any meeting called for the purpose of taking such

action shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast thirty percent (30%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3.6 RATE OF ASSESSMENT. Except as provided herein, annual assessments must be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association, provided, however, notwithstanding any contrary provision of this Declaration, the Articles of Incorporation, or the Bylaws, the annual and special Assessments hereunder shall not commence upon any Lot, whether owned by the Declarant or any other Owner, unless and until a Home has been fully completed on that Lot, which shall require a final inspection by the Regional Building Department or comparable governmental entity and the installation of carpeting in the Home, but upon full completion of the Home, the Lot and its Owner shall be liable to pay full Assessments as provided in this Declaration.

Section 3.7 ASSESSMENT PROCEDURES.

(a) Annual Assessments. No later than thirty (30) days before the beginning of each annual assessment period, the Board of Directors of the Association should set the total annual assessment based upon advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during the following assessment year. That annual assessment shall be payable for each assessment year by April 1 of that year, unless the Board otherwise directs. The Association should cause to be prepared, delivered or mailed to each Owner, at least thirty (30) days in advance of each annual assessment period, a payment statement setting forth the annual assessment. The annual assessments provided for herein shall commence, as to a particular Lot, as set forth in Section 3.6 of this Declaration.

(b) Notice. Failure of the Board to give timely notice of any assessment as provided herein shall not affect the liability of the Owner or his Lot for such assessment, but if notice is not given, the date when payments shall be due shall be deferred to a date after such notice is given.

Section 3.8 CERTIFICATE OF PAYMENT. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance, but only as to the Association's claims regarding assessment liens arising under this Declaration.

Section 3.9 EFFECT OF NONPAYMENT OF ASSESSMENTS - REMEDIES OF THE ASSOCIATION.

(a) General. Any assessment which is not paid when due shall be delinquent, and, in addition to other remedies, the Association may impose a late charge/administrative fee not to exceed an amount set forth in the Association's Bylaws. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's Lot, and/or may suspend the delinquent Owner's right to vote. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorneys' fee to be fixed by the court, together with the expenses, late charges and costs of the action.

(b) Lien. Any unpaid assessment, charge, fee or other sums assessed against an Owner or his Lot, including with interest thereon at the rate of eighteen percent (18%) per annum, a late/administrative charge as set forth in the Association's Bylaws or other sum, court costs and all other collection costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien, in favor of the Association, upon the Lot against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, the late charge, the expenses, the costs, the attorneys' fees, and then to the assessment payment first due. The Board may enforce such lien by filing with the Clerk and Recorder of the County in which the Property is located a statement of lien with respect to the Lot, setting forth the description of the Lot, the name of the Association, and the amount of delinquent assessments then owing. The lien statement may be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof shall be mailed to the Owner of the Lot. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorneys' fees, administrative charges and interest have been fully paid or otherwise satisfied. Thirty (30) days following the mailing of such notice, the Board may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from suing the Owner personally liable therefor or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums, which are not fully paid when due.

(c) Authority. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such sums and charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien.

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The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners, shall have the power to bid at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, if acquired by the Association at the foreclosure sale or by deed in lieu of foreclosure.

Section 3.10 SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money loan evidenced by a First Mortgage of record (including deed of trust) and to any executory land sales contract wherein the Administrator of Veterans Affairs (Department of Veterans Affairs) is seller, whether such contract is owned by the Department of Veterans Affairs or its assigns, and whether such contract is recorded or not. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that sale or transfer of any Lot pursuant to foreclosure of any such mortgage or any such executory land sales contract, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of assessment charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract, provided, however, the lien for assessments shall not be extinguished nor subordinate to the First Mortgage or land sales contract described above to the extent of an amount the greater of: (a) an amount equal to the assessments arising during the six (6) months prior to the institution of foreclosure or deed in lieu, together with attorneys' fees and other costs of collection and charges, or (b) an amount equal to assessments arising for the next calendar year and subsequent years. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture of any such executory land sale contract shall relieve any Lot from liability for any assessment charges thereafter becoming due nor from the lien thereof.

Section 3.11 NOTICE TO MORTGAGEES AND INSPECTION OF BOOKS. Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under this Declaration and/or the Bylaws of the Association, which is not cured within sixty (60) days, after the Board of Directors has actual knowledge thereof, and the First Mortgages may, at its option but without any obligation, cure such default. The Association shall grant to each First Mortgagee the right to examine the books and records of the Association at any reasonable time.

Section 3.12 HOMESTEAD. The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead or other exemption as against said assessment lien.

Section 3.13 EXEMPT PROPERTY. All property dedicated to and accepted by any governmental entity or by any metropolitan district, water district or other local public authority shall be exempt from the assessments created herein.

ARTICLE IV  
COMMON AREA, INSURANCE, DAMAGE AND MERGER

Section 4.1 TITLE TO THE COMMON AREA. Subject to the limitations and restrictions of this Declaration, title to the Common Area, if any, shall be conveyed in fee simple, free and clear of all encumbrances except easements or other rights of record, by the Declarant to the Association, prior to Declarant's sale of the last Lot in the Property, provided, however, if all or part of any Common Area consists of easements or other areas controlled by the Association, those areas shall be assigned or otherwise transferred by Declarant, rather than conveyed in fee simple. Notwithstanding any provision hereof, the recording of this Declaration does not obligate the Declarant to create, convey or transfer any area as a Common Area and provided further, Declarant reserves the right in the future to withdraw any portion of any Common Area and/or to convey real property or grant easements to the Association, which shall be obligated to accept any such deeds or easements from Declarant as an addition to the Common Area.

Section 4.2 NON-DIVISION OF COMMON AREA. Except as provided in Sections 4.1 and 4.4 hereof, the Common Area shall remain undivided and shall not be subject to partition. By the acceptance of its deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Area. Each Owner specifically agrees not to institute any action therefor. Further, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. A violation of this provision or other provisions of this Declaration shall entitle the Association to collect personally, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the Association incurs in connection therewith. It is agreed by all Owners that the foregoing restrictions are necessary to preserve the rights of all Owners regarding the operation and management of the Common Area. Nothing contained herein shall be construed as a limitation of the right of legal partition of a Lot between the Owners thereof, but such legal partition shall not affect any other Lot, nor shall any such partition sever any part thereof from such Lot as a whole.

Section 4.3 ASSOCIATION MAINTENANCE OF COMMON AREAS. The Association shall provide all repair, replacement, improvement and maintenance of the Common Area and all improvements located thereon, including, if applicable, any signage, landscaping, any drainage/detention facilities or other facilities or public improvements to the extent applicable (to include replacement as may be necessary), light fixtures (if any), or other improvements located on the Common Area. The Association shall maintain and be responsible for keeping the common

drainage areas and structures clear and free of silt to ensure the areas drain properly and maintain all landscaping and structures in an attractive condition equal to or better than their condition at the time this Declaration is recorded. Notwithstanding any provision of the Association Governing Documents, the Metro District, rather than the Association, shall be responsible for the duties set forth in the Detention Basin Agreement, which include managing, operating, cleaning, maintaining, and repairing the Detention Basin; administering and enforcing the covenants, conditions, restrictions, agreements, reservations and easements contained in the Detention Basin Agreement; and levying, collecting and enforcing the assessments, charges, and liens imposed under the Detention Basin Agreement.

Section 4.4 OWNERS COMMON AREA EASEMENT OF ENJOYMENT. Subject to the limitations and restrictions of this Declaration, every Owner shall have an equal, non-exclusive right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot without the necessity of additional reference. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to enforce the restrictions contained in this Declaration and to promulgate and publish Rules which every Owner, his family members, guests, tenants, and contractors shall strictly comply with, including the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area if deemed necessary;

(b) The right of the Association, as provided in its Articles or Bylaws, to suspend an Owner's voting and other rights and the right to the use of the Common Area for any period during which such Owner is in default under this Declaration or the Rules, including the nonpayment of any assessment levied by the Association, and to make such suspensions for a period not to exceed sixty (60) days for any infraction of its published Rules;

(c) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area;

(d) The right of the Declarant or the Association to grant easements and/or similar rights for utilities, access and related rights and to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes, subject to such conditions as may be imposed by the public entity; provided, however, notwithstanding any provision of this Declaration to the contrary, Declarant reserves the right to construct improvements on the Common Area and to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Common Area and the Property for the purpose of installing, maintaining, repairing and replacing any utilities or related services, including any gas, electric, water or sewer line, wells, mains or laterals, any telephone and cable television lines, any heating or cooling installations, any master television antenna system, any drainage or detention/retention areas, or for other public purposes

consistent with the intended use of the Property under this Declaration. The foregoing easements shall include the right of ingress and egress, the right to erect and maintain the necessary pipes, wires, poles and other equipment and the right to enter into agreements relating to such utility service and easements, all of which shall be binding upon the Association and the Owners. Should any person or party furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the Property without conflicting with the terms hereof. The foregoing easements shall be in addition to any other recorded easements on the Property, including any easements granted in any recorded subdivision Plat. The rights reserved herein for Declarant shall pass to the Association when the Declarant no longer owns any Lot or real property in the Property, and any and all of the covenants, terms, provisions, rights and duties arising from such easements granted by the Declarant and any related agreements shall thereupon pass to the Association and be assumed by it in place of the Declarant;

(e) The right of the Association as set forth in the Association's Articles of Incorporation and Bylaws, including to borrow money for the purpose of improving the Common Area and, subject to this Declaration, to mortgage said property as security for any such loan; and

(f) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure.

Section 4.5 DELEGATION AND USE. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests, or contract purchasers who reside on his Lot. Each Owner shall, to the extent permitted by law, be liable for any damage done to the Common Area by his family, tenants, guests, or contract purchasers and for any breach of the Declaration and/or the Association's Rules by such persons.

Section 4.6 NON-DEDICATION OF COMMON AREA. Declarant, in recording this Declaration, has designated certain areas of land as Common Area intended for the common use and enjoyment of Owners for various purposes. The Common Area is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration.

Section 4.7 COMMON INSURANCE. Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall obtain and maintain at all times, to the extent reasonably obtainable in the sole discretion of the Board, insurance policies covering the following risks:

(a) Property. Property insurance on the Common Area for fire and broad form covered causes of loss; the total amount of insurance must be not less than the full current, insurable replacement cost of the insured property, less applicable deductibles, at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Such insurance must include all personal property owned by the Association and any Improvements and fixtures located upon the Common Area. Such insurance as maintained by the Association pursuant to this Section shall afford protection against at least the following:

(i) loss or damage by fire and all other hazards that are covered by the standard extended coverage endorsement, including endorsements for vandalism and malicious mischief, and

(ii) all other perils customarily covered for similar types of Projects, including those covered by the standard “all risk” and “replacement cost” endorsements and such other endorsement as the Board determines are reasonable.

(b) Public Liability. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area and Association operations, as deemed sufficient in the judgment of the Board but not less than any amount specified herein, insuring the Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant’s capacity as an Owner and Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area. The insurance shall cover claims of one or more insured parties against other insured parties. Such insurance shall be in such amounts as the Board of Directors of the Association may from time to time determine, but not in an amount less than One Million Dollars (\$1,000,000.00) per occurrence covering claims for personal injury, bodily injury and/or for property damage. To the extent reasonably obtainable, coverage shall include liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, and activities in connection with the ownership, operation, maintenance or other use of the Common Area by the Association, its officers, directors, agents, employees, representatives and the Owners, off-premises employee coverage, water damage liability, contractual liability, bailee’s liability for property of others, and any legal liability that results from lawsuits related to employment contracts to which the Association is a party.

(c) Workmen’s Compensation. Workmen’s Compensation and employer’s liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance. The Association shall purchase, in an amount equal to the maximum amount of funds in the Association's custody at any one time, but not less than the sum of three (3) months' assessments on the entire Association, plus reserves, blanket fidelity insurance covering losses resulting from dishonest or fraudulent acts or omissions committed by the Association's directors, managers, including any person employed as an independent contractor for the purpose of managing the Association and any employee thereof, trustees, employees, volunteers, or anyone who manages the funds collected and held for the benefit of the Owners, provided, however, any managing agent which handles funds for the Association should be covered by its own fidelity insurance policy, which must provide the same coverage required of the Association. Such policy shall also cover destruction or disappearance of money or securities and forgery. Such policy shall cover any person or entity handling funds of the Association, including employees of the professional manager which should also be covered by its own fidelity bond and submit evidence thereof to the Association. Such fidelity coverage or bonds shall name the Association as the named insured and as obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(e) Officers' and Directors' Personal Liability Insurance. To the extent obtainable, appropriate officers' and directors' personal liability insurance shall be obtained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

(f) Other Insurance. In addition, the Board of Directors may obtain any other insurance against such other risks, of a similar or dissimilar nature, which the Board shall deem appropriate with respect to the Property.

#### Section 4.8 FORM OF INSURANCE.

(a) All insurance shall be carried in blanket policy form, shall name the Association as the insured and shall provide that the proceeds shall be paid to the Association for the benefit of and in trust for the Association, the Owners and their First Mortgagees, as their interests may appear, shall additionally insure and identify the interest of each Owner and the First Mortgagee, and shall provide a standard, non-contributory mortgage clause in favor of each First Mortgagee which has given the Association notice of its lien. Each Owner shall be an insured person under such policy with respect to liability arising out of such Owner's interest in the Common Area.

(b) To the extent possible, all insurance policies shall:

(i) be obtained from responsible companies duly authorized and licensed to do insurance business in the State of Colorado, and having at least a "B" general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide;

(ii) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, its Owners and members of their households;

(iii) provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees and agents;

(iv) provide for a waiver of any defense based on co-insurance;

(v) provide that the policy of insurance shall not be permitted to lapse, be terminated, canceled or materially or substantially changed or modified without at least thirty (30) days' prior written notice to the Association, the Owners and the First Mortgagees which have given notice of their liens;

(vi) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(vii) provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance;

(viii) provide that no assessments therefor may be made against First Mortgagees and any such assessments made against others shall not become a lien on the Property superior to the First Mortgagee; and

(ix) may contain such deductible provisions as the Board deems consistent with good business practice and as are consistent with the requirements of First Mortgagees and any secondary lenders purchasing First Mortgages.

Section 4.9 DAMAGE OR DESTRUCTION OF COMMON AREA. Any portion of the Common Area, which is damaged or destroyed and which is insured pursuant to this Declaration, shall be repaired or replaced promptly by the Association.

Section 4.10 MERGER, DISSOLUTION OR CONSOLIDATION. Subject to the requirements of the Declaration, the Association may be dissolved, merged or consolidated as provided by the Colorado Revised Nonprofit Corporation Act (C.R.S., §7-121-101, et seq., as now enacted or subsequently amended or codified). Upon dissolution of the Association other than incident to a merger or consolidation, the assets of the Association shall be distributed and transferred as the Members may direct, subject to the requirements, limitations and other provisions of the

Declaration. In such event, the assets may be granted, conveyed and assigned to any public agency, nonprofit corporation, association, trust or other organization to be devoted to purposes similar to those for which the Association was created. The surviving entity in any such merger or consolidation shall be the Association for purposes of this Declaration.

**ARTICLE V**  
**ADDITIONAL RESTRICTIONS**

**Section 5.1 RESTRICTION UPON ASSOCIATION AND OWNERS.** Unless at least two-thirds (2/3) of the First Mortgagees (based upon one (1) vote for each First Mortgage owned or held) and two-thirds (2/3) of the Members of each class have given their prior written approval, the Association shall not be empowered or entitled to do any of the following:

- (a) by act or omission, seek to abandon or terminate this Declaration or enforcement thereof, as set forth in this Declaration;
- (b) by act or omission, seek to abandon partition, subdivide, encumber, sell or transfer any of the Common Area or other real property owned by the Association, if any;
- (c) fail to maintain full, current replacement cost fire and extended insurance coverage on the Common Area or other real property owned by the Association, to the extent required under this Declaration;
- (d) use hazard insurance proceeds for loss to the Association's Improvements for other than repair, replacement or reconstruction of such Improvements as herein provided; or
- (e) approve the merger, consolidation or dissolution of the Association; or
- (f) notwithstanding any provision hereof or otherwise, threaten, file or pursue any lawsuit and/or arbitration against the Declarant, its agents, employees, shareholders, successors or assigns, for any claim, demand, liability, obligation or matter whatsoever regarding any construction matter and/or defect, any environmental matter, any physical condition, any governmental requirement, drainage or detention facilities, if any, any condition affecting the value or use, and any other matters related to any of the foregoing in connection with the Property, any Lots, any Homes and/or the Common Area.

**Section 5.2 IMPLIED APPROVAL BY MORTGAGEE.** Any matter requiring Mortgagee approval will be assumed when that Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Any First



Mortgagee shall be given notice of any proposed action requiring its consent, if the First Mortgagor has sent a written request to the Association, stating both its name and address and the Lot number or address of the Lot on which it has (or insures or guarantees) the Mortgage.

Section 5.3 EXEMPTION OF DECLARANT RIGHTS. Notwithstanding any provision of the Association Governing Documents, the Declarant may, in its sole discretion, exercise any and all rights, privileges and interests of the Declarant under the Association Governing Documents, including Section 11.13 of this Declaration, without any vote or written consent of Owners, Mortgagees or any other person or entity.

ARTICLE VI  
EXEMPTION FROM COLORADO COMMON INTEREST OWNERSHIP ACT

Section 6.1 EXEMPTION FROM CCIOA. Declarant hereby claims that this Declaration and the Property are exempt from the provisions of the CCIOA (C.R.S., §38-33.3-101, et seq.) pursuant to the provisions of C.R.S., §38-33.3-116 which exempt planned communities from the provisions of the CCIOA if the annual average common expense liability of each Lot restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, shall not exceed Four Hundred Dollars (\$400.00), as adjusted pursuant to §38-33.3-116(3). Declarant has incorporated that limitation on annual average common expenses in Section 3.4(d) of this Declaration. If the amount of the permissible average annual common expense liability is increased under the CCIOA to exceed \$400.00, then this Section and Section 3.4(d) shall be automatically amended accordingly to such higher amount. Notwithstanding this exemption, this Declaration and the Property are subject to the provisions of C.R.S., §38-33.3-105, 38-33.3-106, and 38-33.3-107 of the CCIOA, but are not subject to any other provision of the CCIOA.

ARTICLE VII  
GENERAL RESTRICTIONS

All real property within the Property shall be owned, held, conveyed, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

Section 7.1 ARCHITECTURAL CONTROL COMMITTEE APPROVAL. The size of Homes to be located upon Lots and all plans and specifications, including the size, height, location, design, exterior colors and materials, of all Improvements, drives, walks, fences, grading and landscaping must be approved in writing by the Architectural Control Committee prior to commencement of any construction, other than construction to be performed by Declarant. Any plans and specifications submitted to the Committee shall be deemed rejected unless an approval in writing is mailed to the applicant within sixty (60) days after the date of submission. Any change in exterior appearance or new construction of Improvements upon any Lots shall require the prior

written approval of the Committee. The Association's Board of Directors shall appoint and/or remove the Committee and may establish Rules, fees and procedures for architectural review, including appeals from any decision by the Committee.

Section 7.2 NEW CONSTRUCTION.

(a) All Improvements and Homes shall be of new construction, and no existing or prefabricated dwelling unit shall be moved onto any Lot. No Improvement or other building or structure (including playhouses, storage sheds and windmills) may be moved onto a Lot without the prior written approval of the Committee. No building materials shall be stored on any Lot except temporarily during continuous construction of an Improvement or its repair, alteration or replacement. A structure shall not be occupied in the course of original construction until all required certificates of occupancy have been issued by the appropriate governmental authorities. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed. No trailer, mobile home, tent or shack or other temporary building, Improvement or structure shall be placed upon any part of the Property, except that temporary structures necessary for storage of tools and equipment and for office space for architects, engineers, salesmen, builders, foremen and similar persons during actual construction may be maintained with the prior approval of the Committee, such approval to include nature, size, location and maximum duration of such structure.

(b) This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner, including the Declarant, provided that when completed such Improvements shall in all ways conform to this Declaration. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence, is in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto, and conforms to usual construction practices in the area. This Declaration shall not prevent or limit the right of Declarant or other builders to whom it sells Lots to excavate and grade, to construct and alter drainage patterns and to maintain model homes and construction, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing, anywhere on the Property; provided, however, that no such activities shall be carried on in such a way as to create a health hazard or unreasonably interfere with the use and enjoyment by any Owner or his family of their residence.

(c) In the event of any dispute, a temporary waiver of the applicable provision, including any provision prohibiting temporary structures, may be granted by the Committee, provided that

such waiver shall be only for the reasonable period of such construction. Such waiver may, but need not, be recorded or in recordable form.

(d) All utilities except lighting standards and customary service devices for access, control or use of utilities shall be installed underground, unless approved otherwise by the Committee.

Section 7.3 ASSIGNMENT BY DECLARANT. Any other provision of this Declaration to the contrary notwithstanding, Declarant may assign in whole or in part any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity and may permit the participation in whole or in part by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

Section 7.4 RECONSTRUCTION OF DAMAGED OR DESTROYED IMPROVEMENTS. Any Improvement within the Property which is damaged or destroyed, in whole or in part, by any cause whatsoever shall be repaired or reconstructed or all debris removed and the Lot restored to a slightly condition within six (6) months after the damage or destruction occurs. All reconstruction and exterior repair shall be approved by the Committee prior to commencement of repair or reconstruction. In the event the repair or reconstruction is not commenced or the Lot is not restored to a slightly condition within such six (6) month period, the Association may remove debris and bring the Lot to a slightly condition and the owner of the Lot shall be liable to the Association for all of the costs thereof.

Section 7.5 LANDSCAPING, SOILS AND ENVIRONMENTAL MATTERS AND DRAINAGE FACILITIES.

A. THE PROVISIONS OF THIS SECTION 7.5, SECTION 7.6 AND SECTION 7.7 SHALL APPLY TO THE DECLARANT AS WELL AS THE BUILDERS DESIGNATED BY DECLARANT, ANY AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS DESIGNATED BY THE DECLARANT AND/OR DESIGNATED BUILDERS (COLLECTIVELY THE "PROTECTED PARTIES"). THE ASSOCIATION AND THE OWNERS SHALL INDEMNIFY THE DECLARANT FROM ANY LIABILITY, CLAIMS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, RESULTING FROM ANY BREACH OF THIS ARTICLE VII.

B. THE ASSOCIATION SHALL REQUIRE EACH OWNER TO MAINTAIN ALL LANDSCAPING, DRAINAGE, AND SPRINKLER SYSTEMS UPON THEIR LOT IN A NEAT, ATTRACTIVE CONDITION AS DETERMINED BY THE ASSOCIATION'S BOARD OF DIRECTORS IN ITS SOLE DISCRETION, AND IN SUCH A FASHION THAT THE SOIL SURROUNDING THE FOUNDATIONS OF THE HOMES AND OTHER IMPROVEMENTS

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SHALL NOT BECOME SO IMPREGNATED WITH WATER THAT THEY CAUSE EXPANSION OF OR SHIFTING OF THE SOILS SUPPORTING THE IMPROVEMENTS OR OTHER DAMAGE TO THE IMPROVEMENTS AND DO NOT IMPEDE THE PROPER FUNCTIONING DRAINAGE, LANDSCAPING, OR SPRINKLER SYSTEMS AS ORIGINALLY INSTALLED. SUCH MAINTENANCE SHALL INCLUDE, WHERE NECESSARY, THE REMOVAL OR REPLACEMENT OF IMPROPERLY FUNCTIONING GUTTERS, DOWNSPOUTS, LANDSCAPING, DRAINAGE, OR SPRINKLER SYSTEM ELEMENTS AND SHALL ALSO INCLUDE REGRADING AND RESURFACING WHERE NECESSARY TO PROVIDE FOR ADEQUATE DRAINAGE AND PREVENTING ANY PONDING OR CHANGES IN LANDSCAPING IN SUCH A WAY AS TO ENDANGER THE STRUCTURAL INTEGRITY OR THE STABILITY OF ANY OF THE LANDSCAPING, WALKWAYS, WALKS, DRAINAGE OR SPRINKLER SYSTEMS, OR THE OTHER IMPROVEMENTS UPON THE LOT.

C. OWNERS ACKNOWLEDGE AND AGREE THAT CERTAIN PHYSICAL AND/OR ENVIRONMENTAL CONDITIONS, INCLUDING GROUND WATER, SHALLOW BEDROCK, COLLAPSIBLE SOILS, UNSTABLE SLOPES, MOLD, LEAD, ASBESTOS, RADON GAS, AIRCRAFT NOISE AND HAZARDS, OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES OR CONDITIONS, MAY AFFECT THE PROPERTY AND THAT THE DECLARANT AND ANY PROTECTED PARTY DO NOT WARRANT AND DISCLAIM ANY LIABILITY FOR ANY EXISTING OR FUTURE SUCH CONDITIONS AND ANY OTHER SOIL, ECOLOGICAL OR ENVIRONMENTAL CONDITIONS AFFECTING THE PROPERTY. THE LOTS MAY BE ADVERSELY IMPACTED BY POSSIBLE RADIO TOWERS INSTALLATION ON AN ADJACENT PARCEL; EACH PURCHASER OF A LOT SHOULD FAMILIARIZE HIMSELF/HERSELF WITH THIS POTENTIALITY AND RAMIFICATION THEREOF. THE FOLLOWING REPORTS MAY HAVE BEEN SUBMITTED AND MAY BE ON FILE AT THE EL PASO COUNTY DEVELOPMENT SERVICES DEPARTMENT: SOILS AND GEOLOGICAL STUDY; WATER AVAILABILITY STUDY; DRAINAGE REPORT; WILDFIRE HAZARD REPORT; NATURAL FEATURES REPORT; EROSION CONTROL REPORT; MUNICIPAL AIRPORT REPORT; AND ANY OTHER REPORTS DESCRIBED IN THE RECORDS OF EL PASO COUNTY OR IN THE PLAT. OWNERS ACKNOWLEDGE THAT NO ENVIRONMENTAL REPORTS WERE GIVEN TO THEM BUT THAT THEY WERE ADVISED AND GIVEN A FULL OPPORTUNITY TO INSPECT ANY AND ALL REPORTS AND DOCUMENTS FILED WITH EL PASO COUNTY AND ANY GOVERNMENTAL ENTITY, AS WELL AS THE PROPERTY, HOMES AND IMPROVEMENTS IF THEY SO DESIRED. BY ACCEPTANCE OF A DEED TO A HOME, EACH OWNER ACCEPTS THE PHYSICAL AND/OR ENVIRONMENTAL CONDITION OF THE PROPERTY AND ACKNOWLEDGES A FULL, ADEQUATE OPPORTUNITY TO CONDUCT ANY INSPECTIONS AND RELEASES AND INDEMNIFIES THE DECLARANT AND ANY PROTECTED PARTY FROM ANY FAILURE TO UNDERTAKE SUCH INSPECTIONS. IN

ADDITION, OWNERS UNDERSTAND THAT THE SOIL IN THE COLORADO AREA CONTAINS CLAY AND OTHER SUBSTANCES WHICH MAY CAUSE IT TO SWELL WHEN WET AND SO CAN CAUSE EARTH MOVEMENT AROUND A BUILDING'S FOUNDATION. DECLARANT AND ANY PROTECTED PARTY HAVE NOT ASSUMED OR UNDERTAKEN ANY OBLIGATION WHATSOEVER TO REMEDY OR AMELIORATE ANY PHYSICAL AND/OR ENVIRONMENTAL CONDITION OF THE PROPERTY, REGARDLESS OF ANY REPORT, RECOMMENDATION OR OTHER INFORMATION. OWNERS, FOR THEMSELVES, THEIR HEIRS, SUCCESSORS, ASSIGNS AND THEIR ASSOCIATION, WAIVE AND RELEASE THE DECLARANT AND ANY PROTECTED PARTY FROM ALL CLAIMS, LIABILITIES, LAWSUITS AND OTHER MATTERS ARISING FROM OR RELATED TO ANY PHYSICAL AND/OR ENVIRONMENTAL CONDITION OF THE PROPERTY.

D. THE U.S. ENVIRONMENTAL PROTECTION AGENCY ("EPA") AND COLORADO DEPARTMENT OF HEALTH STATE THAT EXPOSURE TO ELEVATED LEVELS OF RADON GAS CAN BE INJURIOUS TO OCCUPANTS' HEALTH. ANY TEST TO MEASURE THE LEVEL OF RADON GAS CAN ONLY SHOW THE LEVEL AT A PARTICULAR TIME UNDER THE CIRCUMSTANCES OCCURRING AT THE TIME OF TESTING. DECLARANT AND ANY PROTECTED PARTY ARE NOT QUALIFIED TO MEASURE RADON GAS OR TO EVALUATE ALL ASPECTS OF THIS COMPLEX AREA OF CONCERN. PRIOR OR SUBSEQUENT TO CLOSING OF THE OWNER'S PURCHASE OF THE HOME, THE OWNER MAY WISH TO TEST FOR THE PRESENCE OF RADON GAS AND TO PURCHASE OR INSTALL DEVICES THAT MAY BE RECOMMENDED BY QUALIFIED RADON SPECIALISTS. THE DECLARANT AND ANY PROTECTED PARTY EXPRESSLY DISCLAIM, AND THE OWNER AND THE ASSOCIATION AGREE TO WAIVE AND RELEASE THE DECLARANT AND ANY PROTECTED PARTY, FROM ANY CLAIMS OF LIABILITY OR RESPONSIBILITY WITH RESPECT TO RADON GAS AND RELATED MATTERS AND TO HOLD HARMLESS FROM ANY CLAIMS OR LIABILITY AGAINST THE DECLARANT AND ANY PROTECTED PARTY WITH RESPECT TO RADON GAS AND RELATED MATTERS.

E. FIBERGLASS INSULATION (ALSO KNOWN AS GLASS WOOL) MAY BE USED FOR INSULATION OF HOMES. FIBERGLASS IN VARIOUS THICKNESSES AND VALUES IS USED IN THE AREAS OF WALLS, FLOOR TO CEILING ASSEMBLIES AND CEILING TO ROOF ASSEMBLIES OF HOMES TO PREVENT MOVEMENT OF HEAT AND TO REDUCE NOISE. THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES PRODUCED A REPORT THAT LISTS GLASS WOOL AS A SUBSTANCE "WHICH MAY BE REASONABLY ANTICIPATED TO BE A CARCINOGEN", BUT THAT REPORT MERELY IDENTIFIES SUBSTANCES SELECTED FOR FURTHER STUDY BECAUSE OF POTENTIAL RISK. THE LISTING OF A SUBSTANCE IN THE REPORT IS NOT AN ASSESSMENT THAT

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THERE IS CAUSAL CONNECTION BETWEEN GLASS WOOL AND ILLNESS. THE OWNERS AND THE ASSOCIATION ACKNOWLEDGE THAT FIBERGLASS MAY BE USED IN THE WALL, THE CEILING AND FLOOR TO CEILING ASSEMBLIES, AND WAIVE ANY CLAIMS AGAINST THE DECLARANT AND ANY PROTECTED PARTY ARISING AS A RESULT OF THE USE OF FIBERGLASS INSULATION, AND AGREE TO HOLD DECLARANT AND ANY PROTECTED PARTY HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM THE EXISTENCE OF FIBERGLASS INSULATION IN THE HOME OR THE PROPERTY.

F. THE ASSOCIATION AND THE OWNERS AGREE: (I) TO DO NOTHING WHICH WOULD CHANGE THE GRADING OR LANDSCAPING SO AS TO CAUSE OR PERMIT POOR DRAINAGE OR OTHER DAMAGE TO THE HOMES AND IMPROVEMENTS; (II) TO PERFORM THE DRAINAGE OBLIGATIONS REQUIRED BY EL PASO COUNTY AND AS SHOWN ON THE PLAT(S); (III) TO ACCEPT THE SOIL CONDITIONS, LANDSCAPING, INSULATION, RADON, ECOLOGICAL AND ENVIRONMENTAL CONDITIONS, WHICH NOW OR HEREAFTER EXIST ON THE PROPERTY; AND (IV) TO RELEASE AND INDEMNIFY THE DECLARANT AND ANY PROTECTED PARTY FROM ANY LOSS, DAMAGE AND EXPENSE RESULTING FROM ANY OF THE FOREGOING. LOT OWNERS ARE RESPONSIBLE FOR MAINTAINING PROPER STORM DRAINAGE IN AND THROUGH THEIR LOTS.

Section 7.6 DISCLOSURES, DISCLAIMERS AND RELEASES.

A. NO REPRESENTATION, PROMISE OR WARRANTY HAS BEEN MADE BY DECLARANT AND ANY PROTECTED PARTY REGARDING THE DEVELOPMENT OF ADJACENT PROPERTIES, THE INVESTMENT POTENTIAL OF THE LOT OR HOME LOCATED THEREON, ANY ECONOMIC BENEFITS TO THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, TO BE DERIVED FROM THE MANAGERIAL OR OTHER EFFORTS OF DECLARANT AND ANY PROTECTED PARTY, OR ANY OTHER THIRD PARTY DESIGNATED OR ARRANGED BY THE DECLARANT AND ANY PROTECTED PARTY, RELATED TO THE OWNERSHIP OR RENTAL OF THE HOME, OR REGARDING THE CONTINUED EXISTENCE OF ANY VIEW FROM THE HOME. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, UNDERSTAND THAT DECLARANT AND ANY PROTECTED PARTY ARE UNDER NO OBLIGATION WITH RESPECT TO FUTURE PLANS, ZONING OR DEVELOPMENT OF ADDITIONAL PROPERTY IN THE AREA. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, UNDERSTAND THAT THE SIZES AND TYPE OF HOMES MAY CHANGE AT THE SOLE DISCRETION OF THE DECLARANT AND ANY PROTECTED PARTY, AND THAT THE SALES PRICES MAY DECREASE OR INCREASE AT THE SOLE DISCRETION OF THE DECLARANT AND ANY PROTECTED PARTY AND THAT PROPERTY OWNED BY DECLARANT OR PROTECTED PARTIES

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MAY BE REZONED AND DEVELOPED FOR FUTURE USES. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE NOT TO CONTEST OR OPPOSE ANY SUCH CHANGES, DECREASES, REZONING OR FUTURE DEVELOPMENT. THE FOLLOWING REPORTS MAY HAVE BEEN SUBMITTED AND MAY BE ON FILE AT THE EL PASO COUNTY DEVELOPMENT SERVICES DEPARTMENT: SOILS AND GEOLOGICAL STUDY; WATER AVAILABILITY STUDY; DRAINAGE REPORT; WILDFIRE HAZARD REPORT; NATURAL FEATURES REPORT; EROSION CONTROL REPORT; MUNICIPAL AIRPORT REPORT; AND ANY OTHER REPORTS DESCRIBED IN THE RECORDS OF EL PASO COUNTY OR IN THE PLAT.

B. BY ACQUIRING TITLE TO A HOME, THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT EXCEPT FOR ANY WRITTEN LIMITED WARRANTY, THE DECLARANT AND ANY PROTECTED PARTY MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE, INCLUDING ANY AS TO THE FITNESS, WORKMANLIKE CONSTRUCTION, MERCHANTABILITY, DESIGN, CONDITION, QUALITY, OR HABITABILITY OF THE HOME, THE PROPERTY, OR ANY COMMON AREAS RELATED THERETO OR ANY ELECTRICAL, PLUMBING, HEATING, GAS, WATER, SEWER, STRUCTURAL COMPONENTS, OR OTHER MECHANICAL OR UTILITY SYSTEMS OR COMPONENTS OR APPLIANCES OR FIXTURES RELATED THERETO. THE OWNERS AND THE ASSOCIATION ACCEPT THE FOREGOING DISCLAIMER OF WARRANTIES AND WAIVE, RELEASE AND INDEMNIFY THE DECLARANT AND ANY PROTECTED PARTY FROM ALL CLAIMS RELATED THERETO, TOGETHER WITH ANY CLAIMS FOR BODILY INJURY, PROPERTY DAMAGE AND INCIDENTAL OR CONSEQUENTIAL DAMAGES MADE BY ANY PERSON OR PARTY.

C. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS AND THE ASSOCIATION COVENANT AND AGREE THAT THE DECLARANT AND ANY PROTECTED PARTY SHALL NOT BE LIABLE FOR CLAIMS RELATING TO THE HOME OR TO THE COMMON AREA ARISING OR RELATING TO ANY DEFECT IN WORKMANSHIP OR IN ANY MATERIAL USED IN CONSTRUCTION UNLESS OTHERWISE PROVIDED IN A SPECIFIC WRITTEN LIMITED WARRANTY SIGNED BY THE DECLARANT. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS AND THE ASSOCIATION, EXPRESSLY WAIVE AND RELEASE ALL RIGHTS TO SUE FOR A DEFECT IN CONSTRUCTION OF THE HOME OR IMPROVEMENTS OR COMMON AREAS, OR ALL OF THE FOREGOING AND SHALL RELY SOLELY ON THE OWNER'S OWN INSPECTION AND EXAMINATION OF THE PROPERTY AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF THE DECLARANT AND ANY PROTECTED PARTY. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT THIS DECLARATION WAIVES AND/OR LIMITS RIGHTS AND REMEDIES

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THAT THE SALES PRICES OF THE LOTS AND HOMES ARE BASED IN PART UPON THE RELEASES, WAIVERS AND INDEMNITY CONTAINED IN THIS SECTION AND THE OTHER PROVISIONS OF THE DECLARATION.

D. THE TERMS AND PROVISIONS OF THIS ARTICLE VII INURE TO THE BENEFIT OF DECLARANT, ARE ENFORCEABLE BY DECLARANT, AND SHALL NOT EVER BE AMENDED, MODIFIED OR TERMINATED WITHOUT THE PRIOR WRITTEN CONSENT OF DECLARANT AND WITHOUT REGARD TO WHETHER DECLARANT OWNS ANY PORTION OF THE PROPERTY AT THE TIME OF SUCH AMENDMENT. BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE VII ARE A SIGNIFICANT INDUCEMENT TO THE DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE LOTS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE VII, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE LOTS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS.

Section 7.7 RESOLUTION OF DISPUTES.

A. DISPUTE RESOLUTION. ANY ACTION, DISPUTE, CLAIM OR CONTROVERSY BETWEEN ANY PERSON OR ENTITY (INCLUDING ANY OWNER AND/OR THE ASSOCIATION) AND THE DECLARANT OR ANY PROTECTED PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, OR WHETHER OR NOT CONCERNING AN INDIVIDUAL LOT OR THE COMMON AREAS MAY BE SUBMITTED BY THE DECLARANT AND/OR ANY PROTECTED PARTY, AT ITS OPTION, TO BE RESOLVED EITHER BY THE PROCEDURES AS SET FORTH IN THIS SECTION OR AS SET FORTH IN ANY AGREEMENT AND/OR STATUTE APPLICABLE, INCLUDING C.R.S., §13-20-802, ET SEQ., AND SHALL INCLUDE ALL DISPUTES ARISING OUT OF OR IN CONNECTION WITH THIS DECLARATION, ANY CONSTRUCTION UPON A LOT OR COMMON AREA, AND ANY RELATED AGREEMENTS OR INSTRUMENTS AND ANY TRANSACTION CONTEMPLATED HEREBY. IF SO SUBMITTED, SUCH DISPUTES SHALL BE RESOLVED AS FOLLOWS:

B. COVENANT TO ABIDE BY DISPUTE RESOLUTION. BY AN OWNER'S PURCHASE OF A LOT, THE OWNER ACKNOWLEDGES THAT HE/SHE IS AGREEING TO SUBMIT ALL DISPUTES ARISING OUT OF ANY ALLEGED CONSTRUCTION DEFECT WITHIN THE PROPERTY TO THE DISPUTE RESOLUTION PROCESS SET FORTH IN THIS DECLARATION, AND FURTHER THAT HE/SHE IS WAIVING CERTAIN RIGHTS, INCLUDING RIGHTS: (1) TO PROCEED IN ANY ACTION AGAINST DECLARANT OR ANY PROTECTED PARTY INCLUDING ITS RESPECTIVE FORMER OR PRESENT EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, PARTNERS, SUCCESSORS, ASSIGNS,

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SUBCONTRACTORS AND AFFILIATES IN ANY COURT; (2) TO A TRIAL BY JURY; AND (3) TO CERTAIN TYPES OF DAMAGES, INCLUDING EXEMPLARY DAMAGES, CONSEQUENTIAL DAMAGES AND DAMAGES FOR EMOTIONAL DISTRESS AND PAIN AND SUFFERING. THE OWNERS EXPRESSLY RECOGNIZE THE MANY BENEFITS OF ELECTING ALTERNATIVE DISPUTE RESOLUTION, INCLUDING POTENTIALLY REDUCED COSTS, AND FASTER RESOLUTION OF DISPUTES. THE DISPUTE RESOLUTION PROCESS CONSISTS OF THREE PHASES INCLUDING (1) INITIAL NOTIFICATION, (2) MEDIATION, AND (3) BINDING ARBITRATION AS DESCRIBED BELOW.

C. INITIAL NOTIFICATION. THE OWNER SHALL BE REQUIRED TO COMPLY WITH ANY NOTIFICATION AND/OR DISPUTE RESOLUTION PROCESS SET FORTH HEREIN AND/OR IN ANY APPLICABLE STATUTE, LIMITED WARRANTY (IF ANY), OR ANY APPLICABLE AGREEMENT BETWEEN DECLARANT AND/OR ANY PROTECTED PARTY AND ANY OWNER, HIS/HER HEIRS, SUCCESSORS, OR DECLARANT. SUCH NOTIFICATION SHALL INCLUDE AT LEAST A WRITTEN STATEMENT DELIVERED TO THE DECLARANT AND/OR ANY PROTECTED PARTY CONTAINING THE OWNER'S NAME AND ADDRESS, A DESCRIPTION OF THE OWNER'S CLAIM AND A REQUEST FOR SPECIFIC ACTION BY THE DECLARANT AND/OR ANY PROTECTED PARTY. FOLLOWING SUCH NOTIFICATION, THE DECLARANT AND/OR ANY PROTECTED PARTY MAY CONTACT THE OWNER TO SET UP AN INSPECTION AND SEEK TO RESOLVE THE DISPUTE BY MUTUAL CONSENT OR BY ANY REMEDY SET FORTH IN APPLICABLE STATUTE AND/OR LIMITED WARRANTY OR CONTRACTUAL AGREEMENT.

D. MEDIATION. IF A DISPUTE IS NOT RESOLVED AS PROVIDED ABOVE, OWNER AND DECLARANT AND/OR ANY PROTECTED PARTY SHALL FIRST PROCEED IN GOOD FAITH TO SUBMIT THE MATTER TO MEDIATION. MEDIATION IS A PROCESS IN WHICH THE PARTIES MEET WITH AN IMPARTIAL PERSON WHO HELPS TO RESOLVE THE DISPUTE FORMALLY AND CONFIDENTIALLY. MEDIATORS CANNOT IMPOSE BINDING DECISIONS. THE PARTIES TO THE DISPUTE MUST AGREE BEFORE ANY SETTLEMENT IS BINDING. DECLARANT WILL APPOINT A MEDIATOR FROM A LIST SUPPLIED BY THE AMERICAN ARBITRATION ASSOCIATION IN DENVER, COLORADO ("AAA"), AND THE PARTIES WILL SHARE EQUALLY IN THE COST OF SUCH MEDIATION. THE MEDIATION, UNLESS OTHERWISE AGREED, SHALL TERMINATE IN THE EVENT THAT THE ENTIRE DISPUTE IS NOT RESOLVED WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE WRITTEN NOTICE REQUESTING MEDIATION IS SENT BY THE DECLARANT AND/OR ANY PROTECTED PARTY TO THE OWNER.

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E. ARBITRATION. IF THE ABOVE PROCEDURE FAILS TO RESOLVE THE DISPUTE OR CLAIM OF DEFECT, THE DECLARANT AND/OR ANY PROTECTED PARTY MAY SUBMIT THE DISPUTE OR CLAIM OF DEFECT TO ARBITRATION BY WRITTEN NOTICE TO THE OWNER OR OTHER CLAIMANT UNDER THE FOLLOWING PROCEDURE, AND THE PARTIES SHALL THEN PROCEED TO BINDING ARBITRATION BEFORE A SINGLE ARBITRATOR AS FOLLOWS:

(a) ARBITRATION SHALL PROCEED UNDER TITLE 9 OF THE U.S. CODE, THE COLORADO UNIFORM ARBITRATION ACT, COLO. REV. STAT. 13-22-201, ET. SEQ., AND THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AAA AS THEN IN EFFECT. IN THE EVENT OF ANY INCONSISTENCY BETWEEN SUCH RULES AND THESE ARBITRATION PROVISIONS, THESE PROVISIONS SHALL SUPERSEDE SUCH RULES. ALL STATUTES OF LIMITATIONS THAT WOULD OTHERWISE BE APPLICABLE SHALL APPLY TO ANY ARBITRATION PROCEEDING UNDER THIS SECTION. SHOULD AN ACTION, DISPUTE, CLAIM OR CONTROVERSY BE BROUGHT AGAINST THE DECLARANT AND/OR ANY PROTECTED PARTY BY A THIRD PARTY WHO IS NOT BOUND BY A BINDING ARBITRATION PROVISION SIMILAR TO THE ARBITRATION PROVISION CONTAINED HEREIN, THE TERMS OF THIS SECTION SHALL APPLY TO SUCH ACTION, DISPUTE, CLAIM OR CONTROVERSY. LITIGATION, EXCEPT TO ENFORCE THE PROVISIONS HEREOF, SHALL NOT BE COMMENCED OR CONTINUED IF ARBITRATION HAS BEEN REQUESTED.

(b) THE DECLARANT AND/OR ANY PROTECTED PARTY SHALL SELECT THE ARBITRATOR FROM A LIST SUBMITTED BY THE AMERICAN ARBITRATION ASSOCIATION IN DENVER, COLORADO, OR ANY SUCCESSOR OR COMPARABLE ENTITY. THE ARBITRATOR SHALL BE KNOWLEDGEABLE IN THE SUBJECT MATTER OF THE DISPUTE AND HAVE NO SELF-INTEREST, BIAS OR RELATIONSHIP WITH THE DISPUTE OR THE PARTIES. ALL SUCH ARBITRATION SHALL BE HELD IN COLORADO SPRINGS, COLORADO, AND VENUE SHALL BE PROPER IN THE DISTRICT COURT FOR EL PASO COUNTY, COLORADO.

(c) THE PARTIES SHALL SHARE EQUALLY IN THE ARBITRATOR'S FEES AND EXPENSES. EACH PARTY TO THE ARBITRATION SHALL BEAR ALL OF ITS OWN COSTS INCURRED PRIOR TO AND DURING THE PROCEEDINGS. THIS SHALL INCLUDE THE FEES OF ITS ATTORNEY OR CONSULTANTS AND THE COSTS OF THE ARBITRATION PROCEEDING, INCLUDING ALL ANCILLARY COSTS, SUCH AS STENOGRAPHIC REPORTERS.

(d) THE PARTIES SHALL BE ENTITLED TO CONDUCT DISCOVERY AS IF THE DISPUTE WERE PENDING IN A DISTRICT COURT IN THE STATE OF COLORADO.

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IN ANY ARBITRATION PROCEEDING SUBJECT TO THESE PROVISIONS, THE ARBITRATOR IS SPECIFICALLY EMPOWERED TO DECIDE PRE-HEARING MOTIONS THAT ARE SUBSTANTIALLY SIMILAR TO PRE-HEARING MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY ADJUDICATION. A STENOGRAPHIC RECORD OF THE ARBITRATION SHALL BE MADE, PROVIDED THAT THE RECORD SHALL REMAIN CONFIDENTIAL EXCEPT AS MAY BE NECESSARY FOR POST-HEARING MOTIONS AND APPEALS. THE ARBITRATOR'S DECISION SHALL CONTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW TO THE EXTENT APPLICABLE AND THE ARBITRATOR SHALL HAVE THE AUTHORITY TO RULE ON ALL POST-HEARING MOTIONS IN THE SAME MANNER AS A TRIAL JUDGE. THE STATEMENT OF DECISION OF THE ARBITRATOR UPON ALL OF THE ISSUES CONSIDERED BY THE ARBITRATOR IS CONCLUSIVE, FINAL AND BINDING UPON THE PARTIES, AND UPON FILING OF THE STATEMENT OF DECISION, WITH THE CLERK OF THE COURT, OR WITH THE JUDGE WHERE THERE IS NO CLERK, JUDGMENT MAY BE ENTERED THEREON. JUDGMENT UPON ANY AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED BY ANY STATE OR FEDERAL COURT, AS APPROPRIATE. THE DECISION OF THE ARBITRATOR SHALL BE FINAL, AND NOT APPEALABLE, EXCEPT AS PROVIDED UNDER C.R.S., §13-22-201, ET. SEQ.

F. STANDARDS OF CONSTRUCTION. IF ANY CLAIM REGARDING DEFECTS IN CONSTRUCTION IS MADE, EACH CLAIM SHALL BE SPECIFIED WITH PARTICULARITY. EACH LOCATION OF ANY CLAIMED DEFECT MUST BE IDENTIFIED AND ALL EVIDENCE SUPPORTING EACH CLAIM, ALONG WITH ALL REPAIR METHODOLOGIES AND COSTS OF REPAIR, MUST BE PROVIDED BY THE CLAIMANT IN ADVANCE OF ANY MEDIATION HEREUNDER. IN ANY ARBITRATION OR ANY OTHER PROCEEDINGS, IT SHALL BE REBUTTABLY PRESUMED THAT ANY CONSTRUCTION DONE BY THE DECLARANT AND/OR ANY PROTECTED PARTY WAS NOT DEFECTIVE, THAT THE DECLARANT AND/OR ANY PROTECTED PARTY ADEQUATELY PERFORMED ITS OBLIGATIONS UNDER ITS CONTRACT, AND THAT THE DECLARANT AND/OR ANY PROTECTED PARTY WAS NOT NEGLIGENT IF THE DECLARANT AND/OR ANY PROTECTED PARTY'S PERFORMANCE WAS SUBSTANTIALLY IN ACCORDANCE WITH ANY OF THE FOLLOWING: (A) THE STANDARDS OF TRADE IN THE COLORADO SPRINGS, COLORADO AREA ON THE DATE HEREOF; OR (B) ANY APPLICABLE BUILDING CODE IN COLORADO SPRINGS, COLORADO ON THE DATE HEREOF; OR (C) ANY APPLICABLE NATIONAL ASSOCIATION OF HOME BUILDERS RESIDENTIAL CONSTRUCTION PERFORMANCE GUIDELINES. IN ANY SUCH PROCEEDINGS, EVIDENCE OF ANY SCIENTIFIC, ENGINEERING OR TECHNICAL ADVANCEMENTS OR OTHER KNOWLEDGE OR TECHNIQUES, OR ANY DESIGN THEORY OR PHILOSOPHY, OR ANY CONSTRUCTION OR TESTING KNOWLEDGE OR TECHNIQUES, WHERE SUCH ADVANCEMENTS WERE

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DISCOVERED SUBSEQUENT TO THE DATE HEREOF, SHALL NOT BE ADMISSIBLE FOR ANY PURPOSE.

G. ACKNOWLEDGMENT OF WAIVER OF RIGHT TO JURY TRIAL. BOTH DECLARANT AND/OR ANY PROTECTED PARTY AND THE OWNER UNDERSTAND THAT BY USING ARBITRATION TO RESOLVE DISPUTES THEY ARE GIVING UP ANY RIGHT THAT THEY MAY HAVE TO A JUDGE OR JURY TRIAL WITH REGARD TO ALL ISSUES CONCERNING THE LOT, THE COMMON AREAS, THE PROPERTY, THIS DECLARATION, AND MATTERS RELATED THERETO. BOTH OWNER AND DECLARANT AND/OR ANY PROTECTED PARTY ALSO WAIVE ANY RIGHT TO JURY TRIAL IN THE EVENT OF ANY LITIGATION.

## ARTICLE VIII USE RESTRICTIONS

Section 8.1 SINGLE-FAMILY USE ONLY. No Lot and no Home or Improvement on any Lot shall be used for any purpose other than for one (1) single-family residence. However, nothing in this Declaration shall prevent the rental of a Lot by the Owner thereof for residential purposes in accordance with this Declaration, as the same may be amended from time to time. No commune, cooperative, group home, half-way house, or similar type living arrangement shall be permitted on any Lot as determined by the Board in its sole discretion.

### Section 8.2 ANIMALS AND WILDLIFE.

(a) No animals shall be kept on any Lot except an aggregate of three (3) domesticated dogs or cats, and except domesticated birds and fish and other small domestic animals, and then only if kept as pets. All dogs shall be kept on a hand-held leash except when on their Owner's own Lot. No animal or other pet of any kind shall be permitted which might be dangerous or which makes an unreasonable amount of noise or odor or is a nuisance. No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept on any Lot. No poultry may be kept on any Lot. No rare, exotic or unusual animals or other pets (except non-dangerous birds and fish) shall be kept on any Lot without the prior written approval of the Board of the Association. Each Owner shall be responsible for cleaning up after his pet and for all damage to the Lot of any other Owner or Association Property caused by any pet in the possession of such Owner. The Board may adopt Rules, restrictions and prohibitions regarding animals and pets.

(b) Pets should not be allowed to roam free and fences should be installed to decrease or eliminate this problem. Dogs and cats chase or prey on various wildlife species. One benefit to keeping animals under control is that they are less likely to bother other people, be in roadways or become prey for mountain lions, bears, coyotes, foxes or owls. It is strongly encouraged that dog

kennels have a top enclosure, regardless of the height of the kennel. This helps prevent bears, mountain lions and coyotes from getting into the enclosure and causing injury or death to any pets.

(c) Feeding of all wildlife is prohibited, with the exception of songbirds. The use of bird feeders, suet feeders, and hummingbird feeders are discouraged. However, if feeders are used, they should be placed so they are inaccessible to bears, raccoons or skunks and other wildlife species that might cause damage or threaten human safety. It is illegal to feed big game including deer, elk, antelope, moose, bear, bighorn sheep and mountain lions. Pets should be fed inside or if pets are fed outside, feeding should occur only for a short period of time and food bowls returned afterwards to a secure site for storage. Pet food left outside attracts various wildlife which in turn attracts predators. Barbecue grills should be placed in a secure area when not in use. Barbecue grills can attract bears and other wildlife.

### Section 8.3 ANTENNAE AND OTHER STRUCTURES.

(a) No aerial or antenna for reception of radio or television or other electronic signal, microwave, satellite dish, or similar device shall be maintained on the roof of any building, nor shall any be maintained at any location on a Lot so as to be visible from adjacent streets, except that an Owner may install a small (34") satellite dish or similar device, but such dishes or devices should be installed in locations so as to be as unobtrusive as possible and shall comply with all federal laws and regulations and this Declaration, and the Board may adopt Rules which regulate, restrict and/or prohibit such dishes or devices to the extent allowed by law.

(b) No storage shed shall be erected or maintained on any Lot if its size exceeds ten (10) feet by twelve (12) feet or a height approved by the Architectural Control Committee but not to exceed a height of twelve (12) feet. Sheds shall be consistent with existing Homes as to roofing and siding and colors and types of materials, as determined by the Architectural Control Committee in its reasonable discretion. No towers of any type, including those for the purpose of generating electricity from wind, shall be erected or maintained on any Lot, except with the prior written approval of the Committee or as required by statute. Basketball hoops attached to the house are allowed upon the Lots so long as they are kept in an attractive condition and do not constitute a nuisance, but portable basketball hoops are prohibited.

Section 8.4 TRANSMITTERS. No electronic, radio, microwave or similar transmitter of any kind, other than garage door openers, shall be located or operated in or on any Improvement or on any Lot, except with the prior written approval of the Architectural Control Committee.

Section 8.5 GARAGES. The doors of any garage located on a Lot shall be kept closed at all times except when an automobile is entering into or exiting from such garage or when any person

is performing lawn maintenance work. Any conversion of garages into living areas shall require the prior written approval of the Committee.

Section 8.6 GARAGE SALES. No garage, patio, porch or lawn sale shall be held on any Lot, except that the Owner of any Lot may conduct such a sale if the items sold are only his own furniture and furnishings, not acquired for purpose of resale; any such sale shall be held at such time and in such manner as not to disturb any other resident of the area and such sale shall be held in full compliance with all applicable governmental ordinances, statutes, resolutions, rules and regulations.

Section 8.7 RESTRICTIONS ON PARKING. Each Owner for himself, members of his family, his agents, employees, invitees, licensees and lessees shall park any and all vehicles in the garage or driveway located on said Owner's Lot and not on the streets. Vehicles may be temporarily parked on the street during daylight hours, but vehicles shall not be parked on the street from midnight to 6:00 A.M., provided, however, the Board may grant written temporary exemptions from the foregoing prohibition after considering significant hardships or other very extenuating circumstances; such exemptions shall be in the sole, absolute discretion of the Board upon any terms or requirements which it may impose. Any vehicle parked on a Lot shall be parked only within the garage or driveway constructed by the Declarant or within a designated, additional parking area which has been approved in writing by the Architectural Control Committee. The Board of the Association may from time to time adopt and enforce restrictions or prohibitions on parking on the Lots and/or in public ways within the Property, and the Board may impose fines and other remedies for parking or vehicular violations. No stripped down, partially wrecked, unlicensed or junk motor vehicles, nor any mobile home, recreational vehicles, trucks or trailers, boats, or sizable parts thereof, nor commercial vehicles, nor any vehicle comparable to any of the foregoing as determined by the Board in its reasonable discretion, may be parked on any public or private streets within the Property or on any part of a Lot, except that a recreational vehicle may be so parked if approved fencing is erected to block its visibility from any adjoining street or Lot.

Section 8.8 RESTRICTION ON ACCESS. Vehicular access to and from any Lot shall be limited to driveways installed by Declarant or approved by the Committee. The Owners of all Lots are hereby specifically denied vehicular access to and from their Lots to any street or public ways, unless specifically permitted in writing otherwise by the Architectural Control Committee.

Section 8.9 ASSOCIATION ENFORCEMENT AUTHORITY. The Association shall have the authority to enforce the restrictions on use of Lots within the Property as set forth herein.

Section 8.10 EASEMENTS. Easements for the installation, repair, maintenance and replacement of utilities, television cables and drainage facilities over and across portions of the Lots are reserved as shown on the Plat. Within these easements, no Improvements, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation,

repair, maintenance and replacement of any utilities or cables or which may change the direction of flow or obstruct or retard the flow of water through the drainage channels located in the easements or through drainage channels stemming from said easements. Notwithstanding the foregoing, all easement areas located on each Lot and all Improvements constructed thereon shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible.

Section 8.11 NUISANCE. The Owner of any Lot shall not suffer or permit any noxious or offensive activity to be conducted, carried on or practiced thereon or within any Home or accessory building constructed thereon or otherwise use or employ such Lot and Improvements for any purpose that will constitute any annoyance to the neighborhood or a nuisance as provided by law, or that will detract from the residential value, reasonable enjoyment and quality of the Property or that will violate any law or statute.

Section 8.12 TRASH DISPOSAL, WEEDS AND LOT APPEARANCE. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. All such items shall be kept in approved sanitary containers located on the Lot; all trash containers, including garbage cans, shall be kept within an area which is not visible from any other Lot, except on the day of trash pickup. Trash should be kept indoors until the morning of trash pickup. It is recommended that Owners use bear-resistant trash containers. Bears, skunks, raccoons, and neighborhood dogs are attracted to garbage and do become habituated. It is illegal to leave trash unsecured except for the day of trash pickup. No exterior incinerator shall be permitted on any Lots. All equipment for the lawful storage or disposal of garbage and refuse shall be kept in a clean and sanitary condition. No weeds shall be permitted to grow upon any Lot at a height in excess of six (6) inches or as provided by applicable law, whichever is lesser. Further, the Owners of each Lot located within the Property shall use reasonable efforts in order to maintain their Lots in conformance with this Declaration, as well as in conformance with reasonable and accepted practices in order to maintain the overall beauty of the Property. Notwithstanding the foregoing to the contrary, during the construction of Homes and Improvements on Lots, Declarant and other contractors engaged in construction upon the Property may store building materials upon the Property.

Section 8.13 COMMERCIAL USAGE. No business building, machine shop or other industrial or commercial structure or building devoted to commercial or public enterprises shall be erected or used on any Lot. No business which has advertising signage on the Lot or which attracts any customers, employees or clients to a Lot or which is injurious or reasonably objectionable to neighboring Lots, shall be conducted or carried on or be practiced upon any Lot or within any Home or accessory building constructed thereon, except that the Declarant may exempt any buildings used by it, its successors, assigns or designees for use in developing and marketing the Property and Lots.

Section 8.14 PERMITTED ROOFING. Any and all roofing materials utilized for Improvements within the Property shall be restricted to asphalt shingles, or such other materials as may be approved by the Committee, and except that solar energy collectors or panels, if used, may be installed on the roof of any building or structure or in any exposed location, if harmoniously done and if approved by the Committee in its sole discretion.

Section 8.15 REPAIRS OF MOTOR VEHICLES. No motor vehicles, campers, trailers, boats or recreational vehicles shall be rebuilt or repaired upon any Lot or public street. Automobiles and pickup trucks may be repaired only in the garage.

Section 8.16 HEIGHT RESTRICTIONS. No Improvements, building or appurtenance shall exceed either the height permitted by applicable governmental requirements or Association Rules or twenty-five (25) feet in height, as measured in the Committee's sole discretion from the front elevation thereof, commencing from the top of the foundation, whichever is less, unless approved otherwise by the Committee.

Section 8.17 FENCES. In connection with the construction of a Home, a fence of natural wood (six (6) feet in height) shall be installed around the boundaries of the Lot, with pickets to be placed on the outside of the rails so as to provide a clean, uniform look around the entire exterior of the neighborhood; provided, however, no fence shall be installed in front yards, except that a wing fence of natural wood may be installed no closer than the front line of the Home. A single pedestrian access gate, no wider than four (4) feet, may be installed on a front wing fence to allow for access to a rear yard. Any other gate(s) must be approved in writing by the Committee prior to installation. No changes to any fence or any new or replacement fence shall be installed without the prior review and written approval of the Committee as required by this Declaration. No fencing or other Improvement shall be installed by an Owner on any corner Lot within any sight triangle as described by the recorded Plat or otherwise imposed by the Committee. Fences, other than those around the immediate Home and serving to protect landscaped trees and shrubs, should be designed so as not to impair wildlife movements. Ornamental fences with sharp vertical points or projections extending beyond the top rail should be strongly discouraged. Wildlife-friendly design recommendations can be provided by Colorado Parks and Wildlife upon request.

Section 8.18 SIGHT TRIANGLE. All corner Lots will be platted with a Sight Visibility and Public Improvements Easement as shown in the "Typical Public Improvement Easement" detail of the Plat. No obstructions greater than thirty (30") inches in height above flow line elevation of the adjacent roadway are allowed within such area. The sole responsibility for maintenance and ownership of such area is vested with individual Lot Owners.

Section 8.19 LANDSCAPING. An Owner shall fully, completely, install landscaping upon that Owner's Lot within six (6) months of that Owner's obtaining title to the Lot, unless extended in



writing by the Board in its sole discretion. All landscaping by an Owner shall require prior written approval by the Architectural Control Committee pursuant to Article VII of this Declaration and shall comply with all other requirements of this Declaration, including Section 7.5 hereof. When landscaping Lots, it is strongly recommended that native vegetation should be considered because such vegetation is less likely to be attractive to wildlife. Planting of trees and shrubs that are attractive to native ungulates should incorporate the use of materials that will prevent access and damage (fencing, tree guards, trunk guards, etc.) Native herbaceous vegetation (grasses and forbs) should be maintained in Common Areas and mowing strongly discouraged except as required around the immediate vicinity of the Home and as necessary to control noxious weeds. Mowing of large expanses on Common Areas outside the immediate Home renders those areas useless to small mammals, songbirds, and other non-game wildlife species.

## ARTICLE IX FURTHER SUBDIVISION, EASEMENTS

Section 9.1 FURTHER SUBDIVISION. Except as hereinafter provided, no Lot shall be divided or subdivided, nor may any easement, right-of-way or other interest therein less than the whole, other than a leasehold estate or interest in or to the Lot or an easement across the Lot in question to serve only said Lot or the Improvements located thereon, be conveyed by the Owner of said Lot, nor shall any two (2) or more Lots be combined into a single parcel. Notwithstanding the foregoing, however, while the Declarant is the Owner thereof, Declarant may further divide and subdivide any portion of the Property or any Lot, may convey any easements, right-of-way or other interest less than the whole and may combine any two (2) or more Lots into a single parcel. Nothing herein shall prohibit transfer or sale of any Lot to more than one person to be held by them as tenants in common or joint tenants or prohibit the granting of any Mortgage. Nothing herein shall prohibit easements created by any recorded subdivision Plats for utilities, drainage or vehicular or pedestrian ingress and egress.

Section 9.2 PAYMENT OF THE COST OF UTILITIES AND SERVICES. Each Lot is subject to all easements for gas, electric, telephone, cable television, water, sewer and other lines as are necessary to provide service by any utility or other company or public, governmental or quasi-governmental entity for such purposes. Each Owner shall be billed separately and shall pay as billed for all electric, gas, telephone, cable television and other utilities and services supplied to said Owner's Lot and the Improvements located thereon.

Section 9.3 GOVERNMENTAL EASEMENTS. A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter servicing the Property, to enter upon all streets, roads and driveways located in the Property, and upon the Common Area, in the performance of their duties. Each Lot is also subject to any and all governmental easements, including any aviation easements

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and other easements, avigation restrictions and requirements, described in the Plat. The Declarant, for itself and the Metro District and El Paso County and their respective successors and assigns, hereby reserves an easement and right to enter upon any Lot or easement, detention area, or related area for the purpose of fulfilling the Detention Basin Agreement described above.

Section 9.4 EASEMENT DEEMED CREATED. All conveyances of Lots hereafter made shall be construed to grant and reserve such reciprocal easements, uses and rights as are provided in this Declaration, even though no specific reference to such easements, uses or rights appears in any such conveyance.

## ARTICLE X MISCELLANEOUS

Section 10.1 INTERPRETATION. The provisions of this Declaration and the Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property as set forth in this Declaration.

Section 10.2 VIOLATION AND NUISANCE. Every act or omission whereby any provision of the Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated by any Owner, by the Declarant, or the Board of the Association, whether or not the relief sought is for negative or affirmative action. However, only Declarant or the Board of the Association and the duly authorized agents of any of them may enforce by self-help any of the provisions of this Declaration, and then only if such self-help is preceded by reasonable notice to the Owner in question.

Section 10.3 VIOLATION OF LAW. Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any Lot within the Property is hereby declared to be a violation of this Declaration and subject to all enforcement rights and remedies set forth herein. Following the completion of construction by the Declarant, its agents, successors and assigns, all construction and other activities by Owners, their family members, guests and contractors shall comply with all laws, ordinances and regulations, including the conditions and requirements of the recorded Plat and the documents referenced therein for the Property, which Plat and documents are incorporated herein by this reference.

## ARTICLE XI GENERAL PROVISIONS

Section 11.1 ACCEPTANCE OF PROVISIONS OF ALL DOCUMENTS. The conveyance or encumbrance of a Lot or the Improvements thereon shall be deemed to include the

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acceptance of all provisions of this Declaration, the Articles of Incorporation of the Association and the Association's Bylaws and Rules, all of which shall be binding upon each Owner, his heirs, personal representatives, family, guests, tenants, successors, assigns, and everyone having an interest in the Lot without the necessity of inclusion of an express provision in the instrument of conveyance or encumbrance.

Section 11.2 ENFORCEMENT. The Association, the Declarant (only so long as the Declarant owns any Lot) or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and to recover any and all attorneys' fees, costs and expenses in any such successful enforcement. Failure by the Association, the Declarant or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition to all other remedies, the Board of Directors shall have the right, after notice and an opportunity of hearing, to impose upon any Owner a fine for any breach by that Owner of the provisions of this Declaration, the Bylaws and/or the Association's Rules, which fine shall not exceed the amount, if any, set forth in the Association's Rules. All rights and remedies provided in this Declaration are distinct and cumulative to any other right or remedy hereunder or afforded by law or equity, and may be exercised concurrently, independently or successively. Any person or party enforcing this Declaration shall be entitled to recover costs and attorneys' fees from the violator thereof.

Section 11.3 NON-WAIVER. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of any such provision. The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by law and may be exercised concurrently, independently or successively without effect or impairment upon one another. Owners shall not assert any claim or defense of waiver, estoppel or unreasonableness in any court action seeking to enforce this Declaration.

Section 11.4 CUMULATIVE. Each of these covenants is cumulative and independent and is to be construed without reference to any other provision dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 11.5 SEVERABILITY. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 11.6 CONFLICTS OF PROVISIONS. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, or the Rules, this Declaration shall control as determined by the Board in its sole discretion.

Section 11.7 DURATION AND AMENDMENT. Each and every provision of this Declaration shall be binding upon each and every Owner, his heirs, successors, assigns and personal representatives and shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be amended, modified or terminated by an instrument signed by not less than sixty-seven percent (67%) of the Members of Class A and sixty-seven percent (67%) of the Members of Class B, if applicable, whose signatures are duly certified by the Association's President, but only the amendment and certification need to be recorded in the office of the Clerk and Recorder of the County in which the Property is located; provided, however, (a) that any section in this Declaration which requires a particular percentage of Owners and/or Mortgagees may be amended only by written consent of that percentage of those parties, but the Association's President may certify such consents, (b) notwithstanding any contrary provision, until December 31, 2038, any amendment which adds, amends, terminates, or modifies any provision of this Declaration shall require Declarant's prior written consent, and (c) that notwithstanding any contrary provisions, until December 31, 2038, the Declarant hereby reserves the right to make such amendments, without vote of the Owners or Mortgagees as may be allowed by Section 11.13 of this Declaration, or as may be required by primary or secondary lending institutions or agencies, or insurers or as may be required to induce such organizations to make, purchase, sell, insure or guarantee First Mortgagees covering any portion of the Property, or as may be required to correct any technical or typographical or clerical error, and each Owner and each Mortgagee by accepting a deed, mortgage or other instrument affecting a Lot, and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a consent to the reservation of the power to the Declarant to make, execute and record any such amendments. No action to challenge the validity of an amendment adopted pursuant to this Declaration may be brought more than one (1) year after the amendment is recorded and is absolutely barred after the expiration of said one (1) year.

Section 11.8 REGISTRATION BY OWNER OF MAILING ADDRESS. Each Owner shall register his mailing address with the Association, and except for assessment billings, meeting notices, and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to the registered agent of the Association at his address filed with the Secretary of State of Colorado, together with a copy addressed to the President of the Association at his registered address.

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Section 11.9 NUMBER, GENDER AND TERMS. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. The terms “including” or “include” shall mean respectively “including without limitation” or “include without limitation”.

Section 11.10 CAPTIONS. The captions to the Articles and Sections are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of the Declaration nor the intent or any provisions hereof.

Section 11.11 BOARD TO RESOLVE AMBIGUITIES. If any doubt or question shall arise concerning the true intent or meaning of any of this Declaration, the Board of Directors of the Association shall, by resolution, determine the proper construction of the provision in question, and such resolution shall fix and establish the meaning, effect and application of the provision and its decision be final, conclusive and binding on all persons and parties, except for the Declarant and as to the Declarant’s rights hereunder.

Section 11.12 GOVERNING LAW. This Declaration of Covenants, Conditions and Restrictions shall be governed by, and construed in accordance with, the statutes and laws of the State of Colorado.

Section 11.13 DECLARANT RIGHTS. For a period of time which shall continue until December 31, 2038, the Declarant hereby reserves and shall have the following rights, which may be exercised without approval of any Owner, Mortgagee, or the Association, in Declarant’s sole and exclusive discretion:

- A. The right to complete or make Improvements indicated on the Plats or maps; and
- B. The right to subdivide the Property and/or the Lots, to relocate boundaries between Lots, to convert Common Area into Lots, to convert any part of the Property into Common Area, and to execute and record any document or writing as the Declarant deems appropriate to implement such rights; and
- C. The right to maintain signs on the Property and to advertise the Property; and
- D. The right to use and permit others to use easements through the Common Areas as may be reasonably necessary for the purpose of making Improvements within the Property or performing other rights under the Declaration; and

E. The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes, including streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Property; and

F. The right to execute, deliver and record any document relating to its rights under this Declaration and/or any planning document to enter into, establish, execute, amend, and/or otherwise deal with contracts, assignments, and agreements for the use, lease, repair, maintenance or regulation of any portion of the Property or Expansion Property on behalf of itself, the Association and/or the Owners; and

G. The right to exercise its voting rights as the sole voting Member of the Association, and/or to appoint or remove any officer or director of the Association or any member of the Architectural Control Committee; and

H. The right to amend the Declaration and/or the Articles of Incorporation and/or the Bylaws and/or Rules of the Association in connection with the exercise of any rights of Declarant, or to correct any clerical or technical errors or ambiguity, or as requested by Mortgagee, or as desirable in connection with the annexation, withdrawal, subdivision and development of all or any portion of the Property or Expansion Property (including the imposition of various duties, restrictions, easements, assessments and charges as to all or any portion of the Property or Expansion Property, or as otherwise desired by Declarant to add or withdraw any real property from the Property; and

I. The right to amend the Plat and/or any other planning document in connection with the exercise of any development rights or other rights, including any platting or replatting of the Property or Expansion Property; and

J. The right to withdraw all or any portion of the Property, including any Common Area, from the provisions of any or all of the Association Governing Documents; such withdrawal may be accomplished by Declarant recording a document, in its sole discretion, stating the provisions of such withdrawal, and upon such withdrawal, any or all provisions of the Association Governing Documents shall be terminated upon such recording and of no further use and effect as to the withdrawn property, unless otherwise provided by Declarant in the withdrawal document in Declarant's sole discretion.

K. The right to transfer, assign or delegate any right reserved or granted by this Declaration, law or statute to any person or party to the fullest extent permitted under this Declaration, law or statute; and.

L. The right to add additional real property to this Declaration as provided by Article XII of this Declaration; and

M. Any and all other rights of Declarant as set forth in this Declaration, by law or statute; in the event of any conflict, the broadest right granted and/or reserved by Declarant shall prevail.

## ARTICLE XII POSSIBLE EXPANSION PROPERTY

Section 12.1 RIGHT TO EXPAND. For a period continuing until December 31, 2038, Declarant reserves the right to expand this Project, without the approval of the Owners or First Mortgagees, to include additional land and one or more additional buildings located upon all or any part of the real property described on Exhibit "C" hereto (the "Expansion Property"). By accepting a deed to a Lot, each Owner hereby grants to Declarant a right to expand the Project and to modify the Owner's Proportionate Share and right, title and interest in the Common Area accordingly, as set forth in this Article XII, and to assign and allocate Common Areas and to exercise any and all development rights, special Declarant rights and other rights described herein. Any such expansion shall be subject only to this Article XII and shall not make or constitute any amendment or modification in this Declaration except as provided in this Article XII.

Section 12.2 PROCEDURE FOR EXPANSION. Such expansion may be accomplished by the filing for record by Declarant with the Clerk and Recorder of the county in which the Project is located, no later than December 31, 2038, an amendment or amendments to this Declaration containing a legal description of the land area to be added to the Project, together with any supplemental Plats which may be required hereby, whether by new plat or certification. Any such amendment or amendments to this Declaration shall also contain a listing of the number of Lots to be contained in the expanded portion of the Project and shall assign an identifying number to each new Lot thereby created, and shall describe any Common Areas. The expansion may be accomplished in "phases" by successive amendments.

### Section 12.3 EFFECT OF EXPANSION.

(a) In the event of such expansion, the definitions used in this Declaration shall automatically be expanded to encompass and refer to the Project as so expanded; e.g., "Property" shall mean the real property described on Exhibit "A" hereto plus any additional real property added by any amendment to this Declaration; similarly, "Lots" shall include those areas located within the real property described on Exhibit "A" hereto, as well as those so designated on any amendment or supplemental Plat relating to any real property which is annexed pursuant to this Article XII. References to this Declaration shall mean this Declaration as so amended. Every Owner of a Lot in the area shall, by virtue of such ownership and upon recordation of the amendment, be a member of

the Association and shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other Association member. The recording with the Clerk and Recorder of the county in which the Property is located of an amendment to this Declaration incident to any expansion shall operate automatically to grant, transfer and convey to all of the Owners of the Lots, located within the Property and the part of the Expansion Property added thereby, their respective, appurtenant, undivided rights, titles, interests, privileges, duties and obligations in and to both the existing Common Area and the new Common Area, if any, added to the Property as a result of such expansion; provided, however, assessments for Lots within the annexed area shall commence as set forth in this Declaration, but no part of the Expansion Property shall be subject to assessments or any provision of this Declaration until the annexation of that part is completed in accordance with this Article XII.

(b) Upon recording of the amendment or amendments to Declaration and any supplemental Plat with the Clerk and Recorder of the county in which the Project is located, the additional Lots and Common Areas shall be subject to the provisions of this Declaration.

(c) Until the expansion is accomplished by recording the amendment(s) to this Declaration and supplemental Plat(s), the Expansion Property and any Improvements constructed thereon shall not be subject to this Declaration in any way whatsoever, including consideration for the purpose of apportioning assessments or determining voting rights or privileges. If such expansion does not occur, nothing contained in this Declaration or otherwise shall restrict, impair, hinder, encumber or burden, in any way whatsoever, Declarant's, or its successors' or assigns' sole and complete right, title and interest to the Expansion Property and any Improvements constructed thereon. The Declarant alone shall be liable for all expenses of the Expansion Property unless and until annexed hereunder, and shall be entitled to any income and proceeds therefrom. The Declarant's right to annex, and other development rights, may be exercised at different times and as to different portions of the Expansion Property, and so no assurances are made hereby regarding the boundaries of any portion of real property which may be annexed hereunder nor the order in which said portion may be annexed. If the Declarant exercises any right to annex additional portions, the Declarant is not required to exercise any development rights to any and all portions of the remaining Expansion Property. Any development right of the Declarant may be exercised with respect to different portions of real estate at different times, and no assurances are made in regard to the boundaries of those portions or regulating the order in which those portions may be subjected to the exercise of any development right. If any development right is exercised in any portion of the real estate subject to that right, that development right is not required to be exercised in all or any portion of the remainder of that real estate. Any portion of the Expansion Property may be designated as general or limited areas or elements as shown by the Plat or map which has been or will be recorded regarding that portion.



IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal as of the day and year first written above.

GLEN DEVELOPMENT COMPANY,  
a Colorado corporation

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

STATE OF COLORADO    )  
  )    ss.  
COUNTY OF EL PASO    )

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as President of Glen Development Company, a Colorado corporation.

Witness my hand and official seal.

{ S E A L }

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

GLEN INVESTMENT GROUP NO. VII, LLC,  
a Colorado limited liability company

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

STATE OF COLORADO    )  
  )  
COUNTY OF EL PASO    )       ss.

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_ as President of Glen Investment Group No. VII, LLC,  
a Colorado limited liability company.

Witness my hand and official seal.

{ S E A L }

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

GLEN INVESTMENT GROUP NO. VIII, LLC,  
a Colorado limited liability company

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

STATE OF COLORADO    )  
                                  )     ss.  
COUNTY OF EL PASO    )

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
\_\_\_\_\_ as President of Glen Investment Group No. VIII, LLC,  
a Colorado limited liability company.

Witness my hand and official seal.

{ S E A L }

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT "A"**

**Legal Description of Property**

See attached.

**EXHIBIT "B"**

**Common Areas**

See attached.

**EXHIBIT “C”**

**Expansion Property**

See attached.