



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HAY CREEK VALLEY**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HAY CREEK VALLEY (“**Declaration**”) is made as of the date set forth below by Randall O’Leary and Andrea O’Leary, as individuals (collectively, “**Declarant**”).

**PREAMBLE**

WHEREAS, Declarant is the owner of certain real property located in El Paso, Colorado, more particularly described on the attached **Exhibit A** (the “**Property**”);

WHEREAS, Declarant is or may become the owner of certain real property located in El Paso County, Colorado, more particularly described on the attached **Exhibit B** (the “**Expansion Property**”);

WHEREAS, Declarant intends to create a planned community on the Property, and Declarant wishes for the Property to become a part of such planned community;

WHEREAS, Declarant reserves the right to annex all or portions of the Expansion Property into said planned community from time to time; and

WHEREAS, the Property will be conveyed subject to the protective covenants, conditions and restrictions as hereinafter set forth.

NOW THEREFORE, Declarant hereby submits the Property, together with all rights and appurtenances thereto and improvements thereon, to the terms and provisions hereof and of the Colorado Common Interest Ownership Act (the “**Act**”) in order to form a planned community called “Hay Creek Valley.” Declarant hereby declares that all of said Property shall be held and conveyed subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be for the protection of the value of the Property and for the benefit of any Person having any right, title or interest in the Property. Said covenants, conditions and restrictions shall be deemed to run with the land and shall be a burden and a benefit to any Person acquiring such interest, their grantees, heirs, legal representatives, successors and assigns, and acceptance of such interest by any such Person shall constitute such Person’s agreement to be bound by the same.

THE TERMS AND PROVISIONS OF THIS DECLARATION REQUIRING ALTERNATIVE DISPUTE RESOLUTION FOR CONSTRUCTION DEFECT CLAIMS INURE TO THE BENEFIT OF DECLARANT AND THE DEVELOPMENT PARTIES (AS DEFINED IN SECTION 16.1 BELOW), ARE ENFORCEABLE BY DECLARANT AND SHALL NOT BE AMENDED OR TERMINATED FOR A PERIOD OF 20 YEARS FROM THE DATE THIS DECLARATION IS RECORDED WITH THE CLERK AND RECORDER WITHOUT THE WRITTEN CONSENT OF DECLARANT, WITHOUT REGARD TO WHETHER DECLARANT OWNS ANY PORTION OF THE PROJECT AT THE TIME OF SUCH AMENDMENT/TERMINATION. BY TAKING TITLE TO A LOT, ALL OWNERS AND THE ASSOCIATION ACKNOWLEDGE AND AGREE THAT

DECLARATION PROVISIONS REQUIRING ALTERNATIVE DISPUTE RESOLUTION OF CONSTRUCTION DEFECT CLAIMS ARE A SIGNIFICANT INDUCEMENT TO THE DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE LOTS AND THAT IN THE ABSENCE OF THE ALTERNATIVE DISPUTE RESOLUTION PROVISIONS CONTAINED IN THIS DECLARATION, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE LOTS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS.

## **ARTICLE ONE DEFINITIONS**

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 “**Act**” means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, *et seq.*

1.2 “**Agency**” means any agency or corporation such as the U.S. Department of Housing and Urban Development (“**HUD**”), U.S. Veterans’ Administration (“**VA**”), Federal National Mortgage Association (“**FNMA**”) or the Federal Home Loan Mortgage Corporation (“**FHLMC**”) that purchases or insures residential mortgages.

1.3 “**Allocated Interests**” means the Common Expense Liability and the votes in the Association that are allocated to each of the Lots in the Project. The formulas used to establish the Allocated Interests are as follows:

(a) *Common Expense Liability.* Subject to Article 5 below, all Common Expenses shall be levied against Lots on the basis of a fraction, the numerator of which is one and the denominator of which is the total number of Lots then within the Project.

(b) *Votes.* Owners shall be entitled to one vote for each Lot owned within the Project.

1.4 “**Articles**” means the Articles of Incorporation of the Association.

1.5 “**Assessments**” means the (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, (d) Fines and (e) Costs of Enforcement levied pursuant to this Declaration.

1.6 “**Assessment Lien**” means the statutory lien on a Lot for any Assessment levied against that Lot, as described in Section 5.7 below.

1.7 “**Association**” means Hay Creek Preserve Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

1.8 “**Board**” means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association or appointed by Declarant as provided in Section 4.7 below.

1.9 “**Budget**” means the annual budget of the Association prepared and adopted in accordance with Section 4.9 below.

1.10 “**Bylaws**” means the Bylaws which are adopted by the Board for the regulation and management of the Association.

1.11 “**Clerk and Recorder**” means the office of the Clerk and Recorder in the County.

1.12 “**Common Areas**” means any real property (including all improvements located thereon), which is owned by the Association for the common use and enjoyment of the Owners unless otherwise provided herein.

1.13 “**Common Expense Assessments**” means the funds required to be paid by each Owner in payment of such Owner’s Common Expense Liability as more fully defined in Section 5.2 below.

1.14 “**Common Expense Liability**” means the liability for the Common Expense Assessments allocated to each Lot and determined in accordance with that Lot’s Allocated Interests as set forth in Section 1.3(a) above.

1.15 “**Common Expenses**” means expenditures made by or liabilities incurred by or on behalf of the Association, together with allocations to reserve funds.

1.16 “**Costs of Enforcement**” means all fees, late charges, interest and expenses, including receivers’ fees, reasonable attorneys’ fees and costs incurred by the Association in connection with the collection of Assessments, and the enforcement of the terms, conditions and obligations of the Governing Documents. Costs of Enforcement are collectible and enforceable as Assessments.

1.17 “**County**” means El Paso County, Colorado.

1.18 “**Declarant**” means Randall O’Leary and Andrea O’Leary, as individuals, and their successors and assigns. A Person shall be deemed a “successor and assign” of Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of the Declarant under this Declaration which are specifically designated in the recorded instrument.

1.19 “**Declarant Rights**” means, in addition to any right or combination of rights reserved by Declarant in this Declaration related thereto or as reserved to Declarant in the Act, the right to: (a) subdivide Lots or convert Lots into Common Areas; (b) reserve, grant, create, modify and use easements over, across, under or through the Property; and (c) the right to move any Lot line(s) on Lot(s) owned by Declarant, for the purpose of accommodating Improvements which are constructed or may be constructed.

1.20 “**Declaration**” means this Declaration and any supplements and amendments thereto recorded with the Clerk and Recorder.

1.21 “**Detention Basin**” means the detention basins and related best management practices contemplated in the Detention Basin/BMP Agreement.

1.22 “**Detention Basin/BMP Agreement**” means that certain Private Detention Basin / Stormwater Quality Best Management Practice Maintenance Agreement and Easement dated \_\_\_\_\_, 202\_ by and between the Declarant, the Association, and the Board of County Commissioners of El Paso County, Colorado, which agreement was duly adopted by the Association as an obligation of the Association, is incorporated herein in its entirety, and touches and concerns each and every Lot.

1.23 “**Eligible Mortgagee**” means a holder, insurer or guarantor of a First Mortgage who has delivered a written request to the Association containing its name, address, the legal description and the address of the Lot encumbered by its First Mortgage, requesting that the Association notify them on any proposed action requiring the consent of the specified percentage of Eligible Mortgagees.

1.24 “**Fines**” means those fines described in Section 5.4(d) below.

1.25 “**First Mortgage**” means any Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

1.26 “**Governing Documents**” means this Declaration, the Plat, the Articles, the Bylaws and the Rules, if any (and any other documents promulgated by the Board), as they may be amended or supplemented from time to time.

1.27 “**Guest**” means (a) any Person who resides with an Owner within the Project, (b) a guest or invitee of an Owner, (c) an occupant or tenant of a Home within the Project, and any members of his or her household, invitee or cohabitant of any such Person, or (d) a contract purchaser.

1.28 “**Home**” means a dwelling constructed on a Lot.

1.29 “**Improvements**” means:

(a) all exterior improvements, structures and any appurtenances thereto or components thereof of every type or kind; and

(b) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, and change of drainage pattern; and

(c) all landscaping and hardscaping features, including, but not limited to, buildings, outbuildings, patios, patio covers, awnings, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, private drives, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees,

shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, cooling, heating and water softening equipment; and

(d) any change, alteration, modification, expansion, or addition to any previously approved Improvement, including any change of exterior appearance, finish material, color or texture.

1.30 “**Individual Assessments**” means those Assessments defined in Section 5.4(c) below.

1.31 “**Lot**” means those portions of the Property designated as a single family lot on the Plat. Each Lot constitutes a “Unit” as defined in the Act.

1.32 “**Lots That May Be Created**” means twenty-seven (27) Lots, including those Lots which may be included if all of the real property described on **Exhibit B** is annexed into the Project and made subject to this Declaration.

1.33 “**Managing Agent**” means any one or more persons employed by the Association who is engaged to perform any of the duties, powers or functions of the Association.

1.34 “**Member**” means each Owner.

1.35 “**Mortgage**” means any mortgage, deed of trust or other document conveying any Lot or interest therein to a Mortgagee, but only as security for payment of a debt or obligation and not intended to initially convey fee simple title thereof.

1.36 “**Mortgagee**” means any Person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such Person under such Mortgage.

1.37 “**Notice and Hearing**” means a written notice and an opportunity for a hearing before the Board in the manner provided for in the Bylaws.

1.38 “**Owner**” means a Person who owns a Lot, but excluding contract for deed vendors, mortgagees, and other secured parties within the meaning of the Act. The term "Owner" includes, without limitation, contract for deed vendees and holders of a life estate..

1.39 “**Owner’s Agent**” means any agent, contractor, employee, family member, licensee or Guest of an Owner.

1.40 “**Period of Declarant Control**” means that period of time as defined in Section 4.7 below.

1.41 “**Person**” means a natural person, a corporation, a partnership, an association, a trustee, a limited liability company, a joint venture, or any other entity recognized as being capable of owning real property under Colorado law.

1.42 “**Plat**” means the plat of Hay Creek Valley, recorded with the Clerk and Recorder of El Paso County, Colorado on \_\_\_\_\_, at Reception No. \_\_\_\_\_, and any supplements or amendments thereto.

1.43 “**Project**” means the common interest community created by this Declaration and as shown on the Plat consisting of the Property, and such additional property that may be annexed into the common interest community pursuant to Article Eleven below.

1.44 “**Rules**” means the rules and regulations adopted by the Board for the regulation and management of the Project, if any, as amended from time to time.

1.45 “**Special Assessments**” means those Assessments defined in Section 5.4(b) below.

## ARTICLE TWO SCOPE OF THE DECLARATION

2.1 Property Subject to this Declaration. Declarant as the owner of title to the Property, does hereby subject the Property to the provisions of this Declaration thereby creating a planned community.

2.2 Conveyances Subject to this Declaration. All covenants, conditions and restrictions which are granted or created by this Declaration shall be deemed to be covenants appurtenant to and running with the land and shall at all times inure to the benefit of and be binding on any Person having any interest in the Project, their respective heirs, successors, personal representatives or assigns, except as otherwise provided herein.

Any instrument recorded subsequent to this Declaration and purporting to establish and affect any interest in the Project shall be subject to the provisions of this Declaration despite any failure to make reference thereto.

2.3 Owner’s Rights Subject to Governing Documents. Each Owner shall own their Lot subject to the provisions of the Governing Documents.

2.4 Initial Lots/Common Areas. The initial number of Lots within the Project is twenty-seven (27). The initial Common Areas within the Project (if any) are Tract A, Tract B, Tract C, and Tract D as depicted on the Plat. Declarant reserves the right, but not the obligation, to add and/or create additional Lots and/or Common Areas by the expansion of the Project in accordance with Article Eleven below.

2.5 Identification and Boundaries of Lots. The identification number and boundaries of each Lot s as shown on the Plat.

### **ARTICLE THREE COMMON AREAS**

3.1 Transfer of Title to the Common Areas. Upon the annexation of Common Areas into the Project (if any), Declarant will convey title thereto to the Association. Any property conveyed to the Association shall be conveyed free and clear of all monetary liens and monetary encumbrances (other than the lien of real estate taxes not then due and payable), but otherwise subject to all covenants, conditions, easements and restrictions of record.

3.2 Owner's Rights in the Common Areas. Subject to use restrictions contained herein, or in any other recorded instrument affecting the Project, or promulgated by the Association, every Owner and their Guests shall have the right and easement of use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with title to the Lot to such Owner; *provided, however*, that the right to use and enjoyment of any Limited Common Areas are limited to the Owners of the Lots to which such Limited Common Areas are allocated pursuant to this Declaration. Each Owner's right to own and use their Lot and the Common Areas shall also be subject to the Declarant Rights reserved herein and the following rights of the Board:

(a) To borrow money to improve the Common Areas and to mortgage said Common Areas as security for any such loan; *provided, however*, that the Association may not subject any portion of the Common Areas to a security interest unless approved by (i) Owners to which at least 67% of the votes in the Association are allocated, including 67% of the votes allocated to Lots not owned by Declarant, and (ii) all Owners to which any Limited Common Area is allocated agree in order to subject that Limited Common Area to a security interest, as more fully set forth in §312 of the Act.

(b) To convey or dedicate all or any part of the said Common Areas for such purposes and subject to such conditions as may be agreed to by (i) the Owners to which at least 67% of the votes in the Association are allocated, including 67% of the votes allocated to Lots not owned by Declarant, and (ii) all Owners of any Limited Common Area conveyed or dedicated as more fully set forth in §312 of the Act. The granting of permits, licenses and easements shall not be deemed a conveyance or dedication within the meaning of this Section 3.2(b).

(c) To promulgate and adopt Rules with which each Owner and their Guests shall strictly comply.

(d) To suspend the voting rights of an Owner for any period during which any Assessment remains unpaid or for any violation of a Governing Document.

(e) To take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

(f) To enter into, make, grant, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way for the use of Common Areas by Owners, Guests and any other Persons for any purpose the Board may deem to be useful, beneficial or otherwise appropriate.

(g) To close or limit the use of the said Common Areas temporarily while maintaining, repairing or replacing Common Areas.

(h) To make such use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.

(i) The rights granted to the Board in Section 4.2 below.

3.3 Delegation of Use. Any Owner may delegate their right of enjoyment of the Common Areas to their Guests subject to limitations created by the Board.

#### **ARTICLE FOUR THE ASSOCIATION**

4.1 Name. The name of the Association is Hay Creek Preserve Homeowners Association, Inc., and it is a Colorado nonprofit corporation.

4.2 Purposes and Powers. The Association, through its Board, shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Areas and keep the same in an attractive and desirable condition for the use and enjoyment of all of the Owners and their Guests. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management rights. The Board shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Association, including, but not limited to, the following:

(a) *Attorney-in-Fact*. The Board is hereby irrevocably appointed attorney-in-fact for each Owner in order (i) to manage, control and deal with the interest of each Owner in the Common Areas, so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, and (ii) to deal with the Project upon its destruction, condemnation or obsolescence as hereinafter provided.

Acceptance of any interest in any Lot shall constitute an appointment of the Board as attorney-in-fact as provided above and hereinafter. The Board shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Project and to perform all of the duties required of it.

(b) *Contracts, Easements, and Other Agreements*. Subject to Section 4.10 below, the Board shall have the right to enter into, grant, perform, enforce, cancel and vacate any contracts, easements, licenses, leases, agreements, and/or rights-of-way, for the use of Common Areas by Owners, Guests or any other Persons, including, without limitation, the general public.

Any of such contracts, easements, licenses, leases, agreements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board, without

the necessity of the consent thereto, or joinder therein, of the Owners, Mortgagees or any other Person.

(c) *Other Association Functions.* The Board may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Owners on a self-supporting, Common Expense Assessment or Special Assessment basis.

(d) *Implied Rights.* The Board shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, including, without limitation, the Act and the Colorado Revised Nonprofit Act (the “**Nonprofit Act**”), or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.3 Board/Managing Agent. The affairs of the Association shall be managed by the Board. By resolution, the Board may delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.

4.4 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Owners set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws.

4.5 Membership. Members of the Association shall be every record Owner of a Lot subject to this Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Where more than one Person holds an interest in any Lot, all such Persons shall be Members but there shall be only one vote per Lot.

The membership of the Association at all times shall consist exclusively of all Owners or, following termination of the Project, of all former Owners entitled to distributions of the proceeds under §218 of the Act, or their heirs, personal representatives, successors or assigns.

4.6 Voting Rights. The Association shall have one class of voting membership. Owners shall be entitled to one vote in the Association for each Lot owned within the Project.

4.7 Declarant Control of the Association. Subject to the provisions of Section 4.8 below, there is a “**Period of Declarant Control**” during which period Declarant may appoint and remove any officer of the Association or any member of the Board. The Period of Declarant Control starts upon the recording of this Declaration and terminates no later than the earlier of:

(a) 60 days after conveyance by Declarant of 75% of the Lots That May Be Created to Owners other than a Declarant;

(b) 2 years after the last conveyance of a Lot by a Declarant in the ordinary course of business; or

- (c) 2 years after any right to add new Lots to the Project was last exercised by Declarant.

Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the Period of Declarant Control in a recorded instrument executed by Declarant. In that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Board, as described in such recorded instrument, be approved by Declarant before they become effective.

4.8 Election by Owners. Not later than 60 days after the conveyance of 25% of the Lots That May Be Created to Owners other than a Declarant, at least one member and not less than 25% of the members of the Board must be elected by Owners other than Declarant.

Not later than 60 days after conveyance of 50% of the Lots That May Be Created to Owners other than a Declarant, not less than 33 1/3% of the members of the Board must be elected by Owners other than Declarant.

Not later than the termination of the Period of Declarant Control, Owners shall elect a Board consisting of three (3) members, at least a majority of whom must be Owners other than Declarant. The Board shall elect/appoint the officers of the Association.

4.9 Budget.

(a) *Annual Budget.* Within 90 days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, including posting the proposed budget on the Association's website (if any), a summary of the Budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the Budget within a reasonable time after delivery of the summary.

Unless at the meeting Owners to which at least a majority of all of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. In the event the Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent Budget adopted by the Board.

(b) *Amended Budget.* If the Board deems it necessary or advisable to amend a Budget that has been ratified by the Owners pursuant to Section 4.9(a) above, the Board may adopt a proposed amendment to the Budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall be a reasonable time after the delivery of the summary of the proposed amendment. Unless at that meeting Owners to which at least a majority of the votes in the Association are allocated reject the amended Budget, the amended Budget shall be deemed ratified whether or not a quorum is present.

4.10 Association Agreements. Any agreement for professional management of the Project, or any contract providing for services of Declarant, may be terminated without penalty to the

Association at any time after termination of the Period of Declarant Control, upon not less than 90 days' notice to the other party.

4.11 Indemnification. Each officer of the Association, each director of the Board and each member of the Committee shall be indemnified by the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been an officer of the Association, director of the Board or member of the Committee, or any settlements thereof, whether or not he or she is an officer of the Association, director of the Board or member of the Committee at the time such expenses are incurred, to the full extent permitted by Colorado law and as further set forth in the Bylaws. In the event of any conflict between the terms of this Section 4.11 and the Bylaws, the Bylaws shall control.

## **ARTICLE FIVE ASSESSMENTS**

5.1 Obligation. Each Owner shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, (d) Fines and (e) Costs of Enforcement, which shall be a continuing lien upon the Lot against which each such Assessment is levied. The phrase "personally obligated" as used herein and in other provisions of this Declaration, is not intended, and shall not convey personal liability on the members and/or shareholders of a corporation or limited liability company, including, without limitation, with respect to Declarant.

The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without notice or demand and without setoff or deduction. All Owners of each Lot shall be jointly and personally liable to the Association for the payment of all Assessments attributable to their Lot.

Each Assessment against a Lot is the personal obligation of the Person(s) who owned the Lot at the time the Assessment became due and shall also pass to successors in title. *By acceptance of a deed for a Lot, each Lot purchaser thereby consents to assume the foregoing joint obligation for all Assessments due against the Lot pursuant to this Section 5.1.*

The omission or failure of the Board to levy Assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay Assessments.

No Owner may waive or otherwise escape liability for the payment of Assessments by the non-use of the Common Areas or the abandonment of such Owner's Lot.

5.2 Purpose of the Common Expense Assessments. The Common Expense Assessments levied by the Association shall be used for the purpose of promoting the welfare and interests of the Owners, including, but not limited to (a) providing for the administration and management of the Project, (b) providing for the inspection, upkeep, cleaning, operation, improvement, repair, maintenance and

reconstruction of the Common Areas and the Detention Basin (and other areas required by this Declaration), including, but not limited to, the maintenance required in Article Ten below, (c) providing the insurance required by Article Eight below, (d) creating a reasonable and adequate contingency or other reserve or surplus funds for insurance deductibles and general, routine maintenance, repairs and replacement of the Common Areas on a periodic basis, as needed, and (e) satisfying any other purpose reasonable, necessary or incidental to such purposes.

5.3 Date of Commencement of Common Expense Assessments; Declarant's Right of Offset. The Common Expense Assessment shall commence as to the Lots no later than 60 days after the first Lot is conveyed to an Owner other than a Declarant. Until the commencement of the collection of the Common Expense Assessment, Declarant shall pay all of the expenses incurred and paid for by the Association. Declarant may at any time advance operating funds to the Association. Declarant shall be entitled to offset such amounts so paid or advanced as a credit against future Common Expense Assessments payable by Declarant.

5.4 Levy of Assessments.

(a) *Common Expense Assessments.* Common Expense Assessments shall be levied based upon the Budget's cash requirements. The Common Expense Liability shall be allocated among all Lots in accordance with each Lot's Common Expense Liability as set forth in Section 1.3(a) above and shall commence in accordance with Section 5.3 above.

To the extent that any Common Expenses, or a portion thereof benefit fewer than all Owners, such expenses may be assessed exclusively against the Lots benefited as provided in §315(3)(b) of the Act, as determined by the Board. For example, in the event that a Lot subjected to this Declaration is not (and has never been) occupied, the Board may determine to charge the Owner of such Lot an Assessment less than its Common Expense Liability described in Section 1.3(a).

(b) *Special Assessments.* In addition to the other Assessments authorized herein, the Board, subject to the requirements set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense, including, but not be limited to, the cost of any construction, reconstruction, improvement, repair or replacement of the Common Areas, or for the funding of any operating deficit incurred by the Association provided that, except as otherwise set forth herein, any such Assessment shall have the approval of Owners to whom at least a majority of the votes in the Association are allocated. Any such Special Assessment shall be levied against each Lot in accordance with that Lot's Common Expense Liability determined in accordance with Section 1.3(a) above, subject to §315(3)(b) of the Act and Section 5.3 above.

(c) *Individual Assessments.* The Board shall have the right to individually levy upon any Owner(s) amounts as provided for by this Declaration. Individual Assessments may be levied at any time as required and are exempt from any voting requirements by the Owners required by other Assessments called for under this Declaration.

(d) *Fines.* The Board shall have the right to levy a Fine against an Owner(s) for violations of the Governing Documents. No such Fine shall be levied until the Owner(s) to be

charged has been given a Notice and Hearing. Fines may be levied in a reasonable amount as determined from time to time by the Board in its discretion and uniformly applied. Fines may be levied at any time as required and are exempt from any voting requirements of the Owners required by other Assessments called for under the Declaration.

5.5 Due Date. Special Assessments, Individual Assessments, Costs of Enforcement and Fines shall be due and payable as established by the Board. Common Expense Assessments shall be due and payable in monthly installments, in advance, or in such frequency as the Board determines in its discretion from time to time. Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

5.6 Remedies for Nonpayment of Assessments. If any Assessment is not fully paid within 10 days after the same becomes due and payable, then interest shall accrue at the default rate set by the Board on any amount of the Assessment in default accruing from the due date until the date of payment, and the Board may also assess a late fee in an amount as determined in the Board's discretion. In addition, the Board may in its sole discretion:

(a) Accelerate and declare immediately due and payable all unpaid installments of any Assessment payable for the balance of the fiscal year during which such default occurred;

(b) Bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due; and/or

(c) Proceed to foreclose its Assessment Lien against the Lot pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages, subject to the last paragraph of Section 5.7 below.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving its Assessment Lien. The Association may require reimbursement for Costs of Enforcement without the necessity of commencing a legal proceeding.

5.7 Assessment Lien. The Association is hereby granted a lien ("Assessment Lien") against each Lot for any Assessment levied by the Board. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due. The Assessment Lien shall be superior to all other liens and encumbrances on a Lot except as set forth in §316 of the Act. No sale, deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve an Owner from continuing liability for any Assessment thereafter becoming due, nor from the lien thereof.

Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments under this Article Five is required. However, the Board may prepare, and record with the Clerk and Recorder, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the cost thereof shall be considered a Cost of Enforcement.

The Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

Notwithstanding the foregoing provisions of this Section 5.7, in order to comply with §316(11)(a) of the Act, the Association may not foreclose its lien against a Lot unless (a) the amount of Assessments and other amounts due to the Association is equal to or greater than 6 months' worth of Common Expense Assessments against the Lot, and (b) there is a recorded vote of the Board authorizing the foreclosure of the specific Lot being foreclosed. The Board authority to initiate a foreclosure cannot be delegated to the Managing Agent, an attorney or any other Person, nor can the Association have a policy of automatically requiring foreclosure when an Owner becomes six months delinquent.

5.8 Surplus Funds. Any surplus funds of the Association remaining at the close of the Association's fiscal year after payment of the Association's expenses and funding reserves may be retained by the Association as unallocated reserves and need not be credited to the Owners to reduce their future Assessment liability.

5.9 New Member Fee.

(a) As an additional funding source, in addition to any administrative or transfer fee collected to cover administrative costs of membership transfer, the Association shall collect a non-refundable "**New Member Fee**" in amount equal to 2 months of the then Common Expense Assessment upon each transfer of title to a Lot, other than exempt transfers as set forth in Section 5.9(b) below. The New Member Fee shall be charged to, and payable by, the grantee of the Lot, to the Association at the closing of the transfer, and shall be secured by the Association's Assessment Lien. Amounts paid pursuant to this Section 5.9 do not constitute advance payments of Common Expense Assessments and do not relieve an Owner from making regular payments of Common Expense Assessments as they become due. In the event that Declarant makes such payment on behalf of any Owner, such amount shall be reimbursable to Declarant by such Owner upon the conveyance of title to the Lot to such Owner by Declarant.

(b) Notwithstanding the above, no New Member Fee shall be levied upon transfer of title to a Lot:

- (i) to a Declarant;
- (ii) to the Association;
- (iii) by a co-Owner to any Person who was a co-Owner immediately prior to such transfer;

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

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

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

5.10 Certificate of Assessment Status. The Association shall furnish to an Owner or such Owner's Mortgagee(s) upon written request delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Managing Agent, if any, and if there is no Managing Agent then to the Board, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished within 14 calendar days after receipt of the request and is binding upon the Association, the Board and every Owner. If no statement is furnished to the Owner or Mortgagee(s), delivered personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party, then the Association shall have no right to assert an Assessment Lien upon the Lot for unpaid Assessments which were due as of the date of the request.

## **ARTICLE SIX USE RESTRICTIONS**

6.1 Limitations and Restrictions. All Lots and Common Areas shall be used and enjoyed subject to the following limitations and restrictions, and any other limitations and restrictions affecting the Project. Notwithstanding the foregoing, so long as Declarant owns a Lot within the Project, Declarant shall be exempt from the provisions of this Article Six to the extent that it impedes, in Declarant's sole discretion, its development, construction, marketing, sales or leasing activities.

6.2 Residential Use. Each Lot shall be used and occupied primarily as a residence. No industry, business, trade, occupation, or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted in on any Lot except as expressly provided herein. The foregoing shall not, however, be construed in such a manner as to prohibit: (i) an Owner from operating a home-based business as defined by C.R.S. § 38-33.3-106.5(1)(IV), subject to Rules and Regulations adopted by the Association, and provided the business does not negatively affect any other resident's quiet enjoyment of their home; or (ii) the Association from maintaining offices on the Property for management and related purposes.

6.3 Animals and Pets. No household pet or animal shall be allowed in or about the Project at any time without close supervision by an Owner. Owners shall be responsible for strict compliance with all laws related to pet ownership, including any regulation wholly excluding or limiting the number or type or breed of pets allowed, and each such Owner shall ensure that their pet does not interfere with other Owners' quiet use and enjoyment of the Project. Owners will be held responsible for any litter,

waste, mess, damage or offensive noises created by their pets. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pet(s).

6.4 Nuisances. No noxious or offensive activity shall be carried on upon any part of the Project, nor shall anything be done or placed on or in any part of the Project that is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Project and no improvements shall be made or constructed on any part of the Project that are or might be unsafe or hazardous to any Person or property. No sound shall be emitted on any part of the Project that is unreasonably loud or annoying. No Owner shall operate any machines, appliances, electronic devices, sound systems, accessories or equipment in such a manner as to cause an unreasonable disturbance to others or cause any damage to or overloading of any mechanical, electrical, plumbing, or any other system serving the Project. No odor that is unreasonably noxious or offensive to others shall be emitted on any part of the Project. Habitually barking, howling or yelping dogs shall be deemed a nuisance.

6.5 No Hazardous Activities. No activity shall be conducted on any portion of the Project which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Project and no open fires shall be lighted or permitted on any portion of the Project except in a contained barbecue unit while attended and in use for cooking purposes.

6.6 Compliance with Insurance Requirements. Except as may be approved in writing by the Board, nothing shall be done or kept on the Project which may result in an increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

6.7 Owner-Caused Damages. If, due to the act or neglect of an Owner or such Owner's Agent, loss or damage shall be caused to any Person or property within the Common Areas, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board from such Owner as an Individual Assessment. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Section 6.7 shall be made by the Board and shall be final.

6.8 Lease of a Home. An Owner shall have the right to lease their Home in its entirety; *provided, however*, that (i) all leases shall be in writing and shall provide that the lease is subject to the terms of the Governing Documents, which Governing Documents shall be provided to the lessee with the lease; (ii) a Home may be leased only for the uses provided for in this Declaration; and (iii) any failure of a lessee to comply with the terms of the Governing Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not the lease contains such a provision. As used herein, the term "lease" shall mean any agreement or arrangement for occupancy of the Home by persons other than the Owner.

The Board can adopt additional Rules regarding the foregoing provisions of this Article Six.

## ARTICLE SEVEN EASEMENTS

7.1 Generally. The Project shall be subject to all easements as shown or created on the Plat, those of record, those provided in the Act and those set forth in this Article Seven and in other provisions of this Declaration. The Board is hereby granted the right to establish from time to time utility and other easements, permits or licenses over the Common Areas for the best interest of the Association as a whole.

7.2 Utility Easements. There is hereby created and granted to Declarant, Owners, the Association and utility providers, a blanket easement on, over, in, under and through the Project for the installation, replacement, repair, operation and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity and satellite and cable systems. Said blanket easement includes future utility services not presently available to the Project that may be reasonably required in the future.

Should any utility company furnishing a service covered by the easement herein created request a specific easement by separate recordable document, Declarant shall have, and hereby reserves, the right and authority to grant such easement upon, across, over or under any part or all of the Project without conflicting with the terms hereof; *provided, however*, that such power shall cease upon termination of the Declarant Rights, at which time such reserved right shall vest in the Association.

The easements granted in this Section 7.2 shall in no way affect, avoid, extinguish or modify any other recorded easement(s) within the Project.

7.3 Easements for Association and Owners. The Board (its agents, employees, and contractors) is hereby granted an easement on, over, in, under and through each Lot to perform its obligations pursuant to this Declaration. Each Owner, and such Owner's Agents, is hereby granted a perpetual, non-exclusive right of ingress to and egress from the Owner's Lot, over and across the Common Areas, which right shall be appurtenant to the Owner's Lot, and which right shall be subject to limited and reasonable restrictions on the use of Common Areas set forth in writing by the Association, such as for closure for repairs and maintenance.

Each Owner, and such Owner's Agents, is hereby granted a perpetual, non-exclusive (a) right of pedestrian and vehicular ingress and egress over and across those portions of the private drives located within the Expansion Property that have been constructed but not yet annexed into the Project (if any), and (b) right to use any utilities and any storm detention facility components located within the Expansion Property that have been constructed to serve such Owner's Lot, but not yet annexed into the Project (if any). The foregoing easements shall automatically terminate at such time that the applicable private drive, utilities and/or storm detention facility component is annexed into the Project. In addition, an Owner shall have an easement for the location, use and support of any Party Wall shared with an improvement located on the Expansion Property until such time that the improvement is annexed into the Project (if ever).

7.4 Emergency Easements. A nonexclusive 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 Project, to enter upon any part of the Project in the performance of their duties.

7.5 Recording Data Regarding Easements. Pursuant to §205(m) of the Act, the recording data for certain recorded easements and licenses appurtenant thereto, or included in the Project or to which any portion of the Project is or may become subject to as of the date of the recording of this Declaration, if any, are identified on the attached Exhibit C.

7.6 Expansion Property Easement. Until such time (if ever) that all of the Expansion Property is annexed into the Project, the owner(s) of the Expansion Property shall have an easement over the Common Areas for (a) vehicular and pedestrian access, (b) construction purposes, and (c) the location, operation, maintenance repair and replacement of utilities serving the Expansion Property. In addition, the owner(s) of the Expansion Property shall have an easement for the location, use and support of any Party Wall shared with a Home then-within the Project. This Section 7.6 shall not be amended except with the written consent of the then-owner(s) of the Expansion Property.

7.7 Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be deemed appurtenant to the Lot owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

7.8 Easements for Encroachments. If any part of a Home (or any improvement constructed upon the Expansion Property) as originally constructed by Declarant including, without limitation, patios, downspouts, fences and window wells encroaches or shall hereafter encroach upon the Common Areas, or upon another Lot, the Owner of that Home (or Expansion Property) shall and does have an easement for the existence of such encroachment and for the maintenance of same. Such easements shall extend for whatever period of time the encroachment shall exist. Such encroachments shall not be considered to be encumbrances either upon the Common Areas or upon a Lot. Encroachments referred to herein include unintentional encroachments made by error in original construction of the Home (or any improvement constructed upon the Expansion Property), by the settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of a Home (or any improvement constructed upon the Expansion Property).

replacement undertaken shall be subject to the design review process described in Article Thirteen below.

(f) *Colorado Law Applicable*. To the extent not inconsistent with the terms and conditions of this Declaration, the general rules of law of the State of Colorado concerning Party Walls shall be applicable hereto.

## ARTICLE EIGHT INSURANCE

### 8.1 Association Insurance.

(a) *Required Coverage.* The Association, acting through the Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance if reasonably available or, if not reasonably available, the most nearly equivalent coverages as are reasonably available. All policies of insurance purchased by the Association shall adhere to current Agency requirements, including, but not limited to, the carrier of such insurance meeting current Agency rating requirements, and notwithstanding the provisions of this Article Eight, the Board shall purchase such insurance in conformance with such Agency requirements.

(i) The Association shall maintain blanket “all risk” property insurance in an amount not less than one hundred percent of the current replacement cost of the Common Areas. The Association’s insurance may exclude land, excavations, foundations and other items normally excluded from such property insurance policies and may provide for a deductible in an amount not to exceed a reasonable and prudent amount as determined by the Board.

(ii) Commercial general liability insurance, insuring the Association and the Owners against damage or injury caused by the negligence of the Association or any of its Owners, employees, agents or contractors while acting on its behalf. All Owners must be named as additional insureds for claims and liabilities arising in connection with the ownership, use or management of the Common Areas. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage.

(iii) Workers’ compensation insurance and employer’s liability insurance to the extent required by law.

(iv) Directors’ and officers’ liability coverage in an amount determined by the Board providing coverage for the members of the Board and having no exclusion for full coverage of Declarant appointed Board members.

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board’s business judgment but not less than 3 months’ Assessments plus all reserves on hand and containing a waiver of all defenses based upon the exclusion of Persons serving without compensation.

(vi) Such additional insurance as the Board determines advisable.

(b) *Policy Requirements.* All Association policies shall provide for a certificate of insurance to be furnished to the Association and upon request, to any Owner or Mortgagee. Premiums for all insurance maintained by the Association shall be a Common Expense and shall be included in

the Common Expense Assessment. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines after providing Notice and Hearing, that the loss is the result of the recklessness or willful misconduct of one or more Owners or an Owner's Agent, then the Association may specifically assess the full amount of such deductible against such Owner and their Lot as an Individual Assessment pursuant to Section 5.4(c) above. All insurance coverage obtained by the Association shall:

- (i) Be written with companies authorized to do business in the State of Colorado;
- (ii) Be written in the name of the Association as trustee for the Association and the Owners;
- (iii) Be written as a primary policy, not contributing with and not supplemental to the coverage that any Owner, Owner's Agent or Mortgagee may carry individually;
- (iv) Include an inflation guard endorsement, as applicable;
- (v) Include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) Include an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer on account of any curable defect or violation or any act or omission of any Owner, without prior written demand to the Association to cure the defect, violation, act or omission and allowance of a reasonable time to affect such cure;
- (vii) Include an endorsement precluding cancellation, invalidation or condition to recovery under the policy on account of any act or omission of any Owner, unless such Owner is acting within the scope of its authority on behalf of the Association; and
- (viii) Include an endorsement requiring at least 30-days prior written notice to the Association of any cancellation, substantial modification or non-renewal.

(c) *Other Policy Provisions.* In addition, the Association may use reasonable efforts to secure insurance policies that provide:

- (i) A waiver of subrogation as to any claims against the Board, the officers or employees of the Association;
- (ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) An endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) A cross liability provision; and

(v) A provision vesting in the Association exclusive authority to adjust losses; *provided, however*, no Mortgagee having an interest in such losses may be prohibited from participating in settlement negotiations, if any, related to such losses.

8.2 Separate Insurance. No Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation.

8.3 Owner Insurance. Each Owner, at their sole cost and expense, shall (a) carry property insurance on all portions of their Lot and all Improvements thereon, and (b) carry general liability insurance providing coverage for bodily injury and property damage for the benefit of the Owner in amounts and with coverage as are from time to time customarily maintained by prudent owners of similar property. Upon the request of any Owner, the Board shall have the right to confirm that another Owner(s) is carrying the insurance required by this Section 8.3.

## **ARTICLE NINE RESTORATION UPON DAMAGE OR DESTRUCTION/CONDEMNATION**

9.1 Duty to Restore Common Areas. In the event of damage or destruction to any portion of the Common Areas which is covered by insurance carried by the Association, the insurance proceeds shall be applied by the Board to reconstruction and repair. The Common Areas must be repaired and restored in accordance with either the original plans and specifications, or other plans and specifications which have been approved by the Board.

9.2 Use of Insurance Proceeds. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage to the Common Areas, the Board shall levy a Special Assessment in the aggregate amount of such insufficiency and shall proceed to make such repairs or reconstruction. If all of the damage to the Common Areas covered by the Association's insurance is not repaired or reconstructed, the insurance proceeds attributable to the damage shall be used to restore the damaged portion of the Common Areas to a condition compatible with the remainder of the Project and the remainder of the proceeds shall be distributed to the Association.

9.3 Condemnation. If a part of the Common Areas is acquired by condemnation, that portion of any award attributable to the Common Areas taken must be paid to the Association as attorney-in-fact to be held in trust for the use and benefit of the Association, the Owners and their Mortgagees, as their interests may appear. No Owner or any other party shall be entitled to priority over Mortgagees with respect to any distribution of a condemnation award.

9.4 Duty to Restore Homes. All damaged or destroyed Homes must be repaired and restored and done so in accordance with either the original plans and specifications, or other plans and

specifications which have been approved pursuant to the provisions of Article Thirteen below unless an Agency holding or insuring the applicable Mortgage requires a different application of the funds. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Home, the Owner of the damaged or destroyed Home shall be responsible for the payment of any amounts above the insurance proceeds necessary to repair and reconstruct the Home.

## **ARTICLE TEN MAINTENANCE**

10.1 Maintenance of Common Areas. The Association shall keep and maintain the Common Areas in an attractive, clean and functional condition and in good repair and may make necessary or desirable alterations or improvements thereon. Determination of whether the foregoing repair or maintenance is the obligation of the Association, or if the repair and maintenance is necessary, shall rest solely with the Board, which will also have the sole responsibility for determining the kind and type of materials used in such repair and maintenance. All Association maintenance, repair and replacement shall be undertaken in accordance with the maintenance manual(s) provided to the Association, if any.

10.2 Maintenance of the Lots. All Lot and Home maintenance (including snow and ice removal and landscape maintenance), repair and replacement shall be the obligation of the Owner of the Lot. All Owner maintenance, repair and replacement shall be undertaken in accordance with the maintenance manuals provided to each original Owner of a Lot, if any.

10.3 Owner's Failure to Maintain and Repair. In the event that a Lot or Home is not properly maintained and repaired by an Owner, and if the maintenance or repair responsibility for the unmaintained or unrepaired portion of the Lot or Home lies with the Owner of the Lot or Home, then the Board, after Notice and Hearing to the Owner (and after a determination by the Board that the condition of such Lot or Home negatively impacts other Owners or the value of other Lots or Homes within the Project) shall have the right to enter upon the Lot or Home to perform such work as is reasonably required to restore the Lot or Home to a condition of good order and repair and charge the cost thereof to such Owner as an Individual Assessment.

In addition to the foregoing, in the event that neighboring Owners disagree as to maintenance, repair and/or replacement of components shared by said Owners, then either Owner may bring the dispute to the Board whose decision as to said dispute shall be final and binding on the affected Owners.

10.4 Maintenance of the Drainage Pattern/Irrigation System. Except for changes resulting from the construction of Improvements undertaken by Declarant, there shall be no interference with the established drainage pattern initially established over any portion of the Project or the irrigation system installed within that Common Areas and/or a Lot (including systems and sprinklers), except as approved in writing by the Committee. The established drainage pattern may include the drainage pattern from the Common Areas over any Lots within the Project and from any Lot within the Project over the Common Areas or from any Lot over another Lot.

10.5 Maintenance of the Detention Basin/BMP(s). The Association shall inspect, clean, maintain and repair the Detention Basin.

10.6 Owner-Caused Damages. If, due to the act or neglect of an Owner or an Owner's Agent, loss or damage shall be caused to any Person or property within the Common Areas or another Lot (or within the Owner's own Lot), such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board, from such Owner as an Individual Assessment. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Section 10.5 shall be made by the Board and shall be final.

## **ARTICLE ELEVEN EXPANSION**

11.1 Reservation of Right to Expand. Declarant reserves the right (without in any way being bound) to enlarge the Project without the necessity of the consent or joinder thereto, by the Owners, the Association, any Mortgagee or any other Person, by submitting to the Project from time to time all or any portion of the Expansion Property. In addition to the foregoing, Declarant reserves the right to annex real estate (in addition to the Expansion Property) to the Project from such locations as Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Project pursuant to this sentence, and not described on Exhibit A or Exhibit B, does not exceed 10% of the total area described in Exhibit A and Exhibit B.

11.2 Supplemental Declarations. Such expansion must be accomplished by recording a supplement(s) to the Declaration with the Clerk and Recorder containing the legal description of the new real property to be included in such expansion. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.

11.3 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded. For example, "Lot," "Common Areas," "Property" and "Project" shall mean the Lots, Common Areas, Property and the Project described herein plus any additional Lots and Common Areas added by any supplement, and reference to this Declaration shall mean this Declaration as supplemented. The new Lots and Common Areas shall be subject to all the terms, covenants, conditions and restrictions of this Declaration, as amended and supplemented.

11.4 Interests on Enlargement. An Owner at the time of their purchase of a Lot which has been annexed into the Project by a supplement to this Declaration shall be a Member of the Association. Such Owner shall be entitled to the same non-exclusive use of the Common Areas and the same voting privileges as the Owners of the initial property brought into the Project and shall be subject to the same Assessments, except as otherwise provided herein or in any supplement/amendment to this Declaration.

Whenever any additional Lots are brought into the Project, the Common Expense Liability of each Owner after such addition will change and shall be reallocated in accordance with Section 1.3(a) above.

11.5 Termination of the Right of Expansion. The rights to expand the Project pursuant to the provisions of this Article Eleven shall terminate at the option of Declarant as set forth in a recorded instrument executed by Declarant, but in any event shall terminate without further act or deed in accordance with the limitations set forth in Section 12.3 below.

## **ARTICLE TWELVE DECLARANT RIGHTS**

12.1 Reservation. Notwithstanding any provision herein to the contrary, Declarant reserves for itself the following Declarant Rights which may be exercised without the necessity of the consent or joinder thereto, by the Owners, the Association, any Mortgagee or any other Person, where applicable, anywhere within the Project:

- (a) To complete any improvements shown on the Plat;
- (b) To exercise any Declarant Rights reserved or described herein and as provided by the Act;
- (c) To maintain business/sales offices, sales trailers, parking spaces, management offices, storage areas, construction yards, signage, advertisements and model homes upon the Common Areas or any Lot owned by Declarant;
- (d) To have and use, and to permit others to have and use, easements through the Common Areas as may be reasonably necessary for construction within the Project and for the purpose of discharging Declarant's obligations under the Act and this Declaration;
- (e) To amend the Declaration and/or the Plat in connection with the exercise of any Declarant Rights, including, but not limited to, amending the Plat in order to create additional Lots and subdivide Lots owned by Declarant;
- (f) To expand, without in any way being bound, the Project in phases from time to time, by adding to the Project any of the Expansion Property and/or other unspecified property, which may consist of additional Common Areas, Homes and/or Lots, in accordance with Article Eleven above;
- (g) To merge or consolidate the Project with a common interest community of the same form of ownership;
- (h) To appoint or remove any officer of the Association or a member of the Board during the Period of Declarant Control, subject to the provisions of Section 4.8 above;

(i) To designate certain Common Areas as Limited Common Areas by amendment to this Declaration;

(j) To modify, amend or revise plans for construction, location and design of any Common Area (including any Improvements located thereon);

(k) To grant and to have easements over the Common Areas to benefit any Lot and/or any property or portion of property that is contained within the Expansion Property whether or not such Expansion Property is annexed into the Project;

(l) To withdraw from the Project any Lot which has not been conveyed to a consumer by Declarant;

(m) The rights described in Article Sixteen below;

(n) To exercise any other “development rights” or “special declarant rights” as described in the Act; and

(o) To exercise any other Declarant Right created or implied by any other provisions of this Declaration or the Act.

12.2 Rights Transferable. Declarant Rights created or reserved under this Article Twelve for the benefit of Declarant may be transferred to any Person by Declarant by an instrument recorded with the Clerk and Recorder describing the Declarant Rights transferred. Such instrument shall be executed by the transferor Declarant and the transferee.

12.3 Limitations. Except as otherwise set forth in this Declaration (such as Article Sixteen below), Declarant Rights shall terminate at the option of Declarant as set forth in a recorded instrument executed by Declarant, but in any event such Declarant Rights shall terminate without further act or deed 15 years after the date of the recording of this Declaration.

In the event that the process of entitlement for Declarant to obtain building permits is placed on “hold” (e.g., moratorium, anti-growth legislation, etc.) for reasons beyond the control of Declarant, the time limitations set forth herein shall be extended for a period of time equivalent to the period of time such impediment to entitlement was in effect.

12.4 Interference with Declarant Rights. Neither the Association, the Board nor any Owner may take any action or adopt any rule or regulation that will interfere with or diminish Declarant Rights without the prior written consent of Declarant.

12.5 Declarant’s Easements. Declarant reserves for itself the right to (a) perform warranty work, and repair and construction work on Lots and Common Areas, (b) store materials in secure areas upon the Common Areas and/or Lots owned by Declarant, and (c) to control and have the right of access to work and repair until completion. All work performed by Declarant shall not require the consent or approval of the Board, Owners, Mortgagees or any other Person.

Declarant shall have an easement through the Common Areas as may be reasonably necessary for the purpose of discharging its obligations or exercising its rights, whether arising under the Act, reserved in this Article Twelve or reserved in other provisions of this Declaration. Notwithstanding any other provision of this Declaration (including, but not limited to, Section 12.3 above), the easements reserved herein shall remain in effect for the benefit of Declarant until the termination of all applicable warranty periods with respect to any particular Lot, Home or Common Areas.

12.6 Exercise of Rights. The exercise of any or all of the rights reserved to Declarant shall be at the sole option and discretion of Declarant. No assurances are made with respect to the boundaries of the Project or the parcels of real property that may be subject to Declarant Rights nor the order in which Declarant Rights may be exercised. Subject to Section 12.3 above, Declarant Rights may be exercised at any time and from time to time, and, if Declarant exercises any Declarant Rights, such rights may but need not, be exercised as to all or any other portion of the Project.

Notwithstanding anything in this Declaration to the contrary, no consent or agreement of, or notice to, the Association, any Owners, any Mortgagee or any other Person shall be required in order to allow Declarant to exercise any of its rights hereunder, provided such exercise otherwise complies with the applicable provisions of this Declaration and/or the Act.

### **ARTICLE THIRTEEN DESIGN REVIEW**

13.1 Generally. Other than Improvements originally constructed by Declarant, each Improvement must be constructed, and may thereafter be removed, altered, repaired or modified, in accordance with this Article Thirteen. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

13.2 Committee Approval of Improvements Required. Other than Improvements constructed by Declarant, subject to restrictions imposed by applicable law, approval by the Committee shall be required prior to the commencement of the construction, alteration, repair, modification, expansion, addition, removal, demolition or destruction of any Improvements on any portion of the Project. The purchase of any Lot within the Project does not grant any implied guarantee of approval of any Improvement to be located thereon by the Committee.

13.3 Membership of the Committee. A “**Committee**” shall be formed to review and approve or disapprove plans for Improvements. The Committee shall consist of up to 3 members, the initial number and the members of which shall be determined by Declarant in its sole discretion. Declarant shall have the continuing right to appoint and reappoint the members of the Committee, which right shall terminate at the option of Declarant, but in any event shall terminate without further act or deed upon the later of (a) Declarant no longer owning any portion of the Property or the Expansion Property, or (b) Declarant no longer owning any portion of the Property and its right to annex property into the

Project pursuant to Article Eleven above has expired, the provisions of Section 12.3 above notwithstanding. Thereafter, the Committee shall consist of 3 members, and the Board shall have the right to appoint the members of the Committee. Members of the Committee appointed by the Board must be Owners. Notwithstanding the foregoing, after the Declarant's right to appoint the Committee has expired, the Board may decide to act as the Committee.

Members of the Committee appointed by Declarant may be removed at any time by Declarant and shall serve until resignation or removal by Declarant. Members of the Committee appointed by the Board may be removed at any time by the Board and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

13.4 Address of the Committee. The address of the Committee shall be that of the principal office of the Association.

13.5 Submission of Plans/Design Review Fee. Prior to the commencement of work to accomplish any proposed Improvement, the Person proposing to make such Improvement ("Applicant") shall submit to the Committee, at its offices, or at such other place as the Committee may designate, such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Committee shall reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement. The Applicant shall also submit all approvals required of the applicable governmental agencies for the Improvements to be undertaken.

The Committee may, in its guidelines or rules, provide for the payment of a reasonable fee to accompany each request for approval of any proposed Improvement. The Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvements or that the fee shall be determined in any other manner, such as the estimated cost of the proposed Improvement. Said fee may be used to compensate any consultant as the Committee deems necessary to assist the Committee in the performance of its duties. Members of the Committee may be reimbursed for services rendered and for directly related out-of-pocket expenses.

Except as otherwise prohibited by law and except for Improvements constructed by Declarant, no Improvement of any kind shall be erected, altered, placed, or maintained within the Project unless and until the final plans, elevations, and specifications therefor have received written approval from the Committee as herein provided.

13.6 Delegation/Waiver. The Committee may, at its discretion, delegate to the Board any of the powers granted to it by this Article Thirteen by written notice to the Board, indicating what powers and authority are granted to the Board. Such delegation shall be effective from the date such notice is given.

The approval or consent of the Committee, any representative thereof, or the Board, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee, any representative thereof, or the Board,

as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

The Committee may waive or grant reasonable variances or adjustments to any provision of this Article Thirteen in the event there is a practical difficulty or unnecessary hardship.

13.7 Criteria for Approval. The Committee shall approve any proposed Improvement only if it deems in its reasonable discretion that (a) the Improvements in the location indicated will not be detrimental to the appearance of the surrounding areas of the Project as a whole, (b) that the appearance of the proposed Improvement will be in harmony with the surrounding areas of the Project, and (c) that the upkeep and maintenance of the proposed Improvement will not become a burden on the Association. Specific factors considered in approving plans include, among other things, conformity and harmony of exterior design, colors and materials with neighboring structures, relation of the proposed Improvements to the natural topography, adequacy of drainage, erosion control, easements and utilities, and such other information as may be requested by the Committee have been submitted to and approved in writing by the Committee.

13.8 Decision of the Committee. The decision of the Committee shall be made within forty-five (45) days after receipt by the Committee of all materials required by the Committee unless such time period is extended by mutual agreement of the Committee and the Applicant. The Committee's decision shall be in writing and, if the decision is not to approve a proposed Improvement, the reasons therefor shall be stated. The decision of the Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee. If the Committee fails to decide any application or request within forty-five (45) days after the complete submission of the plans, specifications, and materials and other information with respect thereto, then such application or request for approval shall be deemed to have been denied by the Committee.

A majority vote of the Committee shall constitute the action of the Committee.

The Committee shall report in writing to the Board all final actions of the Committee, if requested by the Board.

13.9 Appeal to the Board. If the Committee disapproves or imposes conditions on the approval of a proposed Improvement, the Applicant may appeal to the Board by giving written notice of such appeal to the Board and the Committee within 10 days after notice of such disapproval or conditional approval is given to the Applicant.

The Board shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant and the Committee and shall decide, with reasonable promptness, whether or not the proposed Improvement or the conditions imposed by the Committee shall be approved, disapproved or modified.

If the Committee approves a proposed Improvement, any Owner impacted by the Committee's decision may appeal the approval to the Board by giving written notice of such appeal to the Board, the Committee and the Applicant within 10 days after such approval.

The Board shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant, the Owner impacted and the Committee. The Board shall decide with reasonable promptness, whether or not the proposed Improvement's approval shall be upheld. The decision of the Board shall be final and binding on the parties concerned.

The appeal rights set forth in this Section 13.9 shall only be available after the period in which Declarant has the right to appoint the Committee has terminated.

13.10 Prosecution of Work after Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and as diligently as possible and in complete conformity with the approval given by the Committee, including the description of the proposed Improvement, any materials submitted to the Committee in connection with the proposed Improvement and any conditions imposed by the Committee. Failure to complete any proposed Improvement within the timeframe set forth in the approval, if any, shall constitute a violation of this Article Thirteen unless extended by the Committee.

13.11 Notice of Completion. Upon completion of the Improvement, the Applicant shall deliver a written "Notice of Completion" to the Committee. Until the date of receipt of a Notice of Completion, the Committee shall not be deemed to have notice of completion of any Improvement.

13.12 Inspection of Work. The Committee, or its duly authorized representative, shall have the right to inspect any Improvement prior to, and/or after completion; *provided, however*, the right of inspection shall terminate 30 days after the Committee receives a Notice of Completion from the Applicant.

13.13 Letter of Noncompliance. If, as a result of inspections or otherwise, the Committee or Board finds that any Improvement has been done without obtaining the approval of the Committee or Board, or was not done in substantial compliance with the approval of the Committee, including the description and materials furnished to, and any conditions imposed by, the Committee or Board, or was not completed within the timeframe set forth in the approval, if any, the Committee or Board shall notify the Applicant in writing of the noncompliance ("Letter of Noncompliance"); which notice shall be given, in any event, within 30 days after the Committee or Board has inspected the Improvement, but in no event no later than 30 days after the Committee's or Board's receipt of such Applicant's Notice of Completion. The Letter of Noncompliance shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

13.14 Failure of Committee to Act after Completion. If, for any reason other than the Applicant's act or neglect, the Committee fails to notify the Applicant of any noncompliance within 30 days after receipt by the Committee of a written Notice of Completion from the Applicant, the

Improvement shall be deemed to be in compliance if the Improvement was, in fact, completed as of the date of the Notice of Completion.

13.15 Appeal to the Board of a Finding of Noncompliance. If the Committee gives any Letter of Noncompliance, the Applicant may appeal to the Board by giving written notice of such appeal to the Board and the Committee within 10 days after receipt by the Applicant of the Letter of Noncompliance.

If, after a Letter of Noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Committee shall request a finding of noncompliance by the Board by giving written notice of such request to the Board and the Applicant within 30 days after delivery to the Applicant of a Letter of Noncompliance. In either event, the Board after Notice and Hearing shall decide, with reasonable promptness, whether or not there has been such noncompliance and, if so, the nature thereof.

The appeal rights set forth in this Section 13.16 shall only be available after the period in which Declarant has the right to appoint the Committee has terminated.

13.16 Correction of Noncompliance. If the Committee or the Board determines that a noncompliance exists, the Applicant shall remedy or remove the noncompliance within a period of not more than 30 days from the date of receipt by the Applicant of a Letter of Noncompliance or a decision of the Board (if a Letter of Noncompliance is appealed pursuant to Section 13.16 above). If the Applicant does not comply with the Letter of Noncompliance or the Board's ruling within such time period, the Committee or Board may, at its option, record a "Notice of Noncompliance" against the Lot on which the noncompliance exists, or may remove the non-complying Improvement or may otherwise remedy the noncompliance.

The Board may levy an Individual Assessment in accordance with Section 5.4(c) above against the Owner of such Lot for such costs and expenses incurred in enforcing this Section 13.17. The right of Declarant (during the period in which Declarant has the right to appoint the Committee) or the Board to remedy or remove any noncompliance shall be in addition to all other rights and remedies that Declarant or the Board may have at law, in equity or under the Governing Documents.

13.17 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder.

13.18 No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board shall constitute a waiver or estoppel with respect to future action by the Committee or the Board.

13.19 Estoppel Certificates. The Board shall, upon the reasonable request of any interested Person and after confirming any necessary facts with the Committee, furnish a certificate with respect to the approval or disapproval of any Improvement or with respect to whether any Improvement was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein. Notwithstanding the foregoing,

during the period that Declarant appoints the members of the Committee such certificate must come from Declarant and not the Board.

13.20 No Liability for Committee Action. There shall be no liability imposed on the Committee, any member of said Committee, any authorized representative of said Committee, the Association, any member of the Board or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Committee, if such party acted in good faith and without malice.

13.21 Exemptions for Declarant. So long as Declarant Rights exist (see Section 12.3 above), Declarant shall be exempt from the provisions of this Article Thirteen.

#### **ARTICLE FOURTEEN MORTGAGEE PROVISIONS**

14.1 Notice to Eligible Mortgagees. Eligible Mortgagees will be entitled to timely written notice of:

(a) any material condemnation loss or any casualty loss which affects a material portion of the Common Areas or the Lot on which the Eligible Mortgagee holds a Mortgage;

(b) any 60-day delinquency in the payment of Assessments or charges owed by the Owner of the Lot upon which the Eligible Mortgagee holds a Mortgage;

(c) any lapse, cancellation, or material modification of any mandatory insurance policy or fidelity bond maintained by the Association; and

(d) any termination of the common interest community in accordance with Section 17.4 below.

14.2 Action by Mortgagee. If this Declaration or any other Governing Document requires the approval of any Eligible Mortgagees then, the Association shall send a dated, written notice and a copy of any proposed amendment by certified or registered mail "return receipt" requested to such Eligible Mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof, or as otherwise delivered by such Eligible Mortgagee to the Association. An Eligible Mortgagee that does not deliver to the Association a negative response within 60 days after the date it receives proper notice shall be deemed to have approved the proposed amendment.

#### **ARTICLE FIFTEEN OWNER'S ACKNOWLEDGMENTS AND WAIVERS**

15.1 Security. NEITHER THE ASSOCIATION NOR DECLARANT WILL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROJECT, AND NEITHER THE ASSOCIATION NOR DECLARANT WILL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY,

INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, OR ACTS OF THIRD PARTIES. ALL OWNERS AND OWNER'S AGENTS ACKNOWLEDGE THAT THE ASSOCIATION AND DECLARANT ARE NOT INSURERS OF SECURITY AT THE PROJECT AND THAT EACH OWNER AND OWNER'S AGENT ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS, AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION AND DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER OR OWNER'S AGENT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

15.2 Other Properties. Each Owner, by acquiring a Lot, acknowledges that other properties are located adjacent to and in the general vicinity of the Project ("**Other Properties**") and that the Other Properties may be constructed and developed pursuant to the land uses permitted by the County's zoning ordinances, as well as any other governmental rules, regulations, or policies in effect now or in the future (collectively, "**Ordinances**"). Declarant does not make any representations concerning the planned uses of the Other Properties. Each Owner, by acquiring a Lot, further acknowledges that the zoning for the Project and the Other Properties is established and governed by the Ordinances. Any amendment to those Ordinances requires approval by the County. By acquiring a Lot, each Owner acknowledges that they have not relied upon any statements or representations regarding the Project or the Other Properties, including, without limitation, any representations made by Declarant (or any agent of Declarant).

15.3 Soils Condition.

(a) Acknowledgment. THE SOILS WITHIN COLORADO CONSIST OF BOTH EXPANSIVE SOILS AND LOW-DENSITY SOILS WHICH MAY ADVERSELY AFFECT THE INTEGRITY OF A LOT OR A COMMON AREA IF SUCH LOT OR COMMON AREA IS NOT PROPERLY MAINTAINED. EXPANSIVE SOILS CONTAIN CLAY MINERALS WHICH HAVE THE CHARACTERISTIC OF CHANGING VOLUME WITH THE ADDITION OR SUBTRACTION OF MOISTURE, THEREBY RESULTING IN SWELLING AND/OR SHRINKING SOILS. THE ADDITION OF MOISTURE TO LOW-DENSITY SOILS CAUSES A REALIGNMENT OF SOIL GRAINS, THEREBY RESULTING IN CONSOLIDATION AND/OR COLLAPSE OF THE SOILS.

(b) Waiver of Liability of Declarant. BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER HAS WAIVED AND WILL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF DAMAGES AGAINST DECLARANT FOR ANY LOSS OR DAMAGE TO ANY PORTION OF THE LOT OR THE COMMON AREAS CAUSED BY, RESULTING FROM OR IN ANY WAY CONNECTED WITH, SOIL CONDITIONS ON OR UNDER ANY COMMON AREAS, INCLUDING SPECIFICALLY THE PRESENCE OF EXPANSIVE SOILS.

15.4 Inspection by Others; Waiver of Post Inspection Liability. It is hereby expressly understood and agreed by all Owners upon acquiring a Lot that Declarant relies upon governmental inspectors and other qualified subcontractors and tradesmen to inspect the construction of the Lots and the Common Areas in order to verify compliance with construction plans and with any and all building code requirements applicable to residential construction. Declarant and each Owner further expressly understands and agrees that, with respect to the Lots and the Common Areas, upon compliance with the inspections required by the local building department and the issuance of a certificate of occupancy by the responsible governmental agency, Declarant will be deemed to have used its best efforts to construct such Lots and Common Areas in substantial compliance with the construction plans and all applicable building code requirements. EXCEPT AS OTHERWISE MAY BE PROVIDED IN A PURCHASE AND SALE CONTRACT OR OTHER WRITTEN AGREEMENT BETWEEN DECLARANT AND AN OWNER, EACH OWNER, BY ACQUIRING A LOT, HEREBY KNOWINGLY AND WILLINGLY WAIVES AS AGAINST DECLARANT AND ITS OWNERS, AGENTS AND CONTRACTORS ANY AND ALL DEMANDS, CLAIMS, ACTIONS AND CAUSES OF ACTION AND ALL LIABILITY, LOSSES, DAMAGE, COSTS OR EXPENSES THAT HAVE BEEN OR MAY BE INCURRED IN ASSOCIATION THEREWITH, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXEMPLARY DAMAGES, WHICH ARISE FROM OR ARE RELATED TO ANY NONCOMPLIANCE OF THE LOTS OR THE COMMON AREAS WITH CONSTRUCTION PLANS OR BUILDING CODE REQUIREMENTS, WHICH NONCOMPLIANCE IS NEITHER SUBSTANTIAL NOR MATERIAL IN NATURE AND WHICH NONCOMPLIANCE IS DISCOVERED AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR, RESPECTIVELY, SUCH LOTS OR COMMON AREAS; AND ANY SUCH NONCOMPLIANCE WILL BE DEEMED UNINTENTIONAL WITH RESPECT TO DECLARANT AND ITS OWNERS, AGENTS AND CONTRACTORS. TO THE EXTENT THAT ANY NONCOMPLIANCE WITH CODES OR WITH THE CONSTRUCTION PLANS IS DISCOVERED WITH REGARD TO ANY LOT OR THE COMMON AREAS, THE PROVISIONS OF ARTICLE SIXTEEN WILL GOVERN SUCH MATTER.

IN THE EVENT THAT ANY PROVISIONS IN THIS ARTICLE FIFTEEN CONFLICT WITH ANY APPLICABLE FEDERAL OR COLORADO STATUTES WHICH PROVIDE NON-WAIVABLE LEGAL RIGHTS, INCLUDING, WITHOUT LIMITATION, THE COLORADO CONSTRUCTION DEFECT ACTION REFORM ACT OR THE COLORADO CONSUMER PROTECTION ACT, THEN THE NON-WAIVABLE TERMS OF SUCH STATUTE SHALL CONTROL.

## **ARTICLE SIXTEEN DISPUTE RESOLUTION**

16.1 Definitions Applicable to this Article Sixteen. For purposes of this Article Sixteen only, the following terms have the following meanings:

- (a) “**AAA**” means the American Arbitration Association.
- (b) “**Claimant**” means any Party having a Claim.

(c) “**Claim**” means, except as excluded or exempted by the terms of this Article Sixteen (including Section 16.3 below), any claim, counterclaim, cross-claim, third-party claim, grievance or dispute between one Party and another, regardless of how it may have arisen or on what it might be based (including, but not limited to, damages, indemnity, subrogation or contribution), including, without limitation, disputes arising out of or related to, regardless of the theory of liability: (i) the interpretation, application or enforcement of any Governing Document or Limited Warranty; (ii) the location, size, planning, sale, marketing, development, design, construction, maintenance, repair and/or condition of the Lots, Homes, Common Areas and Project, including, without limitation, the soils of the Project; (iii) any statements, representations, promises, warranties, or other communications allegedly made by or on behalf of any Party relating to the foregoing; (iv) the Colorado Consumer Protection Act; and (v) damages or loss to, or the loss of, real or personal property or personal injury caused by a defect in the design or construction of the Lots, Homes, Common Areas and/or Project.

(d) “**Inspecting Party**” means a Party causing an inspection of the Subject Property to be made.

(e) “**Limited Warranty**” means a written limited warranty given to a Party related to a Lot.

(f) “**Party**” means each of the following: (i) architects, engineers, contractors, subcontractors, developers, Declarant and affiliates of Declarant, builders, builder vendors, engineers and inspectors performing or furnishing the design, supervision, inspection, construction or observation of construction of any improvement to real property that is a part of the Project or any other party responsible for any part of the design, construction, repair or maintenance of any portion of the Project, and any of such parties’ affiliates, and the officers, directors, partners, shareholders, members, managers, employees and servants of any of them (each a “**Development Party**” and collectively, the “**Development Parties**”); (ii) all Owners, Owner’s Agents, the Association (including its directors and committee members) and all other Persons subject to this Declaration, their officers, owners, employees and agents; and (iii) any Person not otherwise subject to this Declaration who agrees to submit to this Article Sixteen.

(g) “**Respondent**” means any Party against whom a Claimant asserts a Claim.

(h) “**Subject Property**” means the property and all improvements thereon regarding which a Party contends that a Claim pertains, and/or property and all improvements thereon being inspected and/or repaired under the inspection and correction right in Section 16.4 below.

(i) “**Termination of Mediation**” means a period of time expiring 20 days after a mediator has been agreed upon by the Parties or chosen by AAA if the Parties cannot agree, or within such other time as agreed to by the Claimant and Respondent in writing, and upon the expiration of which the Claimant and Respondent have not settled the Claim.

## 16.2 Intent of Parties; Applicability of Article; and Applicability of Statutes of Limitations.

(a) Each Party agrees to work towards amicably resolving disputes, without the emotional and financial costs of litigation. **Accordingly, each Party agrees to resolve all Claims only by using the procedures in this Article Sixteen (in the order set forth in Sections 16.4 and 16.5 below), and not litigation.** Further, each Party agrees that the procedures in this Article Sixteen shall be the sole and exclusive remedial process that each Party shall have for any Claim. Should any Party commence litigation or any other action against any other Party in violation of this Article Sixteen, such action shall be dismissed and such Party shall reimburse all costs and expenses, including attorneys' fees and court costs, incurred by the other Party in such litigation or action within 10 days after written demand.

(b) By accepting a deed for a Lot, each Owner agrees to be bound by and to comply with this Article Sixteen. The Association agrees to be bound by and to comply with this Article Sixteen.

(c) The Parties agree that no Claim may be commenced after the date set forth in an applicable Limited Warranty, and if the Claim is not covered by such Limited Warranty, then when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation and/or statute of repose or as otherwise limited by this Article Sixteen.

16.3 Exclusions from "Claim." Unless specifically exempted by this Article Sixteen, all Claims between any of the Parties shall be subject to the provisions of this Article Sixteen. Unless all Parties thereto otherwise agree in writing, "Claim" does not include the following and shall not be subject to the provisions of this Article Sixteen:

(a) Any action by the Association to enforce the provisions of the Governing Documents (other than this Article Sixteen) against an Owner or Owner's Agent;

(b) Any action by the Association to assess or collect any Assessments or to enforce or foreclose any Assessment Lien;

(c) Any claim, grievance or dispute under a Limited Warranty that itself contains binding alternative dispute resolution procedures that preclude litigation and that the Parties agree to utilize and be bound by as a final resolution of the Claim;

(d) Any action, suit or proceeding to compel arbitration of a Claim or to enforce any award or decision of an arbitration conducted in accordance with this Article Sixteen or to enforce the terms of any written settlement agreement of a Claim; and

(e) Any action pursuant to the provisions of this Declaration concerning mechanics liens.

16.4 Notice; Right to Inspect and Correct; Mediation. Before the earlier of, as applicable (a) the service of a Notice of Claim as described in Colorado's Construction Defect Action Reform Act ("**CDARA**"), or (ii) initiating arbitration under Section 16.5 below (each referred to herein as "**Commencing a Formal Claim**"), the Claimant shall first comply with the procedures set forth in this Section 16.4 in the order noted below.

(i) *Notice.* **First**, the Claimant shall provide notice to everyone Claimant contends contributed to the alleged problem. The notice shall state plainly and concisely:

The nature of the Claim, including all Persons involved and each Respondent's role in the Claim;

The legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

The specific relief and/or proposed remedy sought.

(ii) *Right to Inspect and Correct.* **Second**, if the Claim involves an alleged defect or damage to or duty to repair or replace any improvement or real property, then Claimant shall also provide Respondent, for a period of 60 days after delivery of the foregoing notice ("**Inspection/Correction Period**"), the right to access, inspect, correct the condition of, or redesign any portion of any improvement or real property allegedly containing a defect or damage or otherwise correct the alleged defect or damage. In exercising these inspection and correction rights, the Inspecting Party and Respondent shall:

(1) Act carefully to avoid unreasonable intrusion on, or harm, damage or costs to the other Party including using its best efforts to avoid causing any damage to, or interference with, any improvements on the Subject Property at issue;

(2) Attempt to minimize disruption or inconvenience to any Person who occupies the Subject Property;

(3) Remove daily all debris caused by the inspection and remaining on the Subject Property; and

(4) In a reasonable and timely manner, at the sole cost and expense of the Inspecting Party, promptly remove all equipment and materials from the Subject Property, repair and replace all damage, and restore the Subject Property to its pre-inspection condition unless the Subject Property is to be immediately repaired.

The Inspecting Party and Respondent shall not permit any lien arising from the inspection to attach to the Subject Property.

(iii) *Discussion of Claim.* **Third**, in the event that (1) by the end of the Inspection/Correction Period described above, Respondent has elected not to access, inspect, correct the condition of, or redesign any portion of any improvement or real property allegedly containing a defect or damage or otherwise correct the alleged defect or damage, (2) by the end of the Inspection/Correction Period, Claimant is unsatisfied with actions undertaken by Respondent under Section 16.4(ii) above, or (3) the Claim does not involve an alleged defect or damage to any improvement or real property, then before Commencing a Formal Claim against any Respondent, the Parties shall first make every reasonable effort to meet in person and confer to resolve the Claim

by good faith negotiation. The Parties shall seek to understand clearly the Claim and resolve as many aspects or issues as possible. Any Party may be represented by attorneys and independent consultants to assist such Party, including by attending all negotiations.

(iv) *Mediation.* **Fourth**, if the Parties cannot resolve the Claim through negotiations under Section 16.4(iii) above after attempting to do so for 15 days, Claimant shall have an additional 10 days to submit the Claim to mediation under the auspices of AAA under the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

(1) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have fully and finally waived the Claim for all purposes, such that Respondent shall be deemed released and discharged from all liability to Claimant for such Claim.

(2) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If mediation ends without a settlement, the mediator shall issue a notice of Termination of Mediation. This notice shall state that the Parties are at an impasse and the date that mediation was terminated.

(3) Each Party shall pay its own costs of the mediation, including its own attorneys' fees. Each Party shall share equally all of the mediator's charges. The mediation proceedings shall be conducted at a mutually agreeable location in the City.

(4) If the Parties resolve any Claim through negotiation or mediation under Section 16.4(iii) above or this Section 16.4(iv), and any Party later fails to comply with a written settlement agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such written agreement without the need to again comply with such procedures. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and costs.

#### 16.5 Commencing a Formal Claim.

(a) Only after receiving a notice of Termination of Mediation may a Claimant Commence a Formal Claim.

(b) Before the Association may Commence a Formal Claim, the Board must first also comply with the following:

(i) Provide written notice to all Owners and Respondent(s) calling a meeting to discuss the potential Claim ("**Homeowner Notice**"). The Homeowner Notice must be made in accordance with applicable State and local laws, including the Fort Collins Ordinance (defined below), and also included in such notice shall be the following if not already required by such laws:

(1) The Approval Deadline (defined below);

(2) If the Association were to prevail, what the Board expects that the Association may recover from the Respondent(s);

(3) Whether the Board intends to enter into a contingency fee arrangement with the attorneys' representing the Association, and how much of the amount the Association recovers from the Respondent(s) will be paid to the attorney(s). What the Board estimates that, in addition to attorney fees, the Association will incur for consultants, expert witnesses, depositions, filing fees, and other expenses of pursuing the Claim;

(4) If the Association makes a Claim and does not prevail, what the Board expects the Association will incur in witness and attorneys' fees and other costs;

(5) If the Association does not recover from the Respondent(s), what it may have to pay to repair or replace any claimed defective work;

(6) A statement that until any claimed defective work is repaired or replaced, or until the Claim is concluded, the market value of the affected Lots/Homes could be adversely affected;

(7) A statement that until any claimed defective work is repaired or replaced, or until the Claim is concluded, Owners of affected Lots/Homes may have difficulty refinancing and prospective buyers of the affected Lots/Homes may have difficulty obtaining financing. In addition, a statement that certain federal underwriting standards or regulations prevent refinancing or obtaining a new loan in projects where a construction defect is claimed. In addition, a statement that certain lenders as a matter of policy will not refinance or provide a new loan in projects where a construction defect is claimed;

(8) An estimate of the length of time it will take to reach a final resolution of the Claim (including appeals);

(9) How the Association intends to finance the pursuit of the Claim (i.e., Special Assessments);

(10) An affirmation from each Board member voting in favor of pursuing the Claim that the foregoing are true and correct; and

(11) Any statement desired to be included in the notice by any Board member voting against pursuing the Claim.

(ii) Require that repair estimates be given by contractors other than those recommended by the Association's attorneys.

(iii) The Association meeting must be held no earlier than 10 days and no later than 15 days after the date of the Homeowner Notice. At the meeting the Respondent(s) must have

an opportunity to address the Owners and the Board. Following the meeting and prior to the Association Commencing a Formal Claim, the Association must obtain the written approval to pursue the Claim from Owners of Lots to which a majority of the total votes in the Project (excluding votes allocated to Lots owned by Declarant if Declarant is a Respondent) are allocated. The Association must obtain such written Owner approval within 90 days after delivery of the Homeowner Notice or the Claim is deemed fully and finally released and may not be brought in any manner by the Association or the Owners ("Approval Deadline"). The votes of the Owners must be certified by an Association officer or agent, and written evidence of the certification shall be provided to the Respondent(s).

(c) Commencing a Formal Claim may only be accomplished by:

(i) If the Claim is governed by CDARA, delivering a Notice of Claim under CDARA to Respondent(s). If the Parties fail to reach agreement on an offer of settlement pursuant to CDARA's Notice of Claim process (C.R.S. §13-20-803.5) and the Claimant elects to proceed with the Claim, then the Claim may proceed only by way of the arbitration procedures set forth below, and not by way of litigation.

Final, binding arbitration of the Claim shall be conducted under the auspices of AAA and its Commercial or Construction Industry Arbitration Rules, as appropriate. Claimant must provide to Respondent a "Notice of Intent to Arbitrate," within 20 days after the conclusion of the offer of settlement procedures set forth in C.R.S. §13-20-803.5. If Claimant does not timely initiate final, binding arbitration of the Claim and timely provide a Notice of Intent to Arbitrate to Respondent(s), then Claimant shall be deemed to have fully and finally waived the Claim, and Respondent(s) shall be deemed fully and finally released and discharged from all liability to Claimant for such Claim.

(ii) If the Claim is not governed by CDARA, then only by the arbitration procedures set forth below, and not by way of litigation. Final, binding arbitration of the Claim shall be conducted under the auspices of AAA and its Commercial or Construction Industry Arbitration Rules, as appropriate, in which event Claimant shall provide to Respondent a "Notice of Intent to Arbitrate," within 20 days after receiving the notice of Termination of Mediation. If Claimant does not timely initiate final, binding arbitration of the Claim and timely provide a Notice of Intent to Arbitrate to Respondent(s), then Claimant shall be deemed to have fully and finally waived the Claim, and Respondent(s) shall be deemed fully and finally released and discharged from all liability to Claimant for such Claim.

(d) *Mandatory Arbitration Procedures.* The following arbitration procedures shall govern each arbitrated Claim:

(i) The arbitrator must be a person qualified to consider and resolve the Claim with the appropriate industry and/or legal experience.

(ii) No Person shall serve as the arbitrator where that Person has any financial or personal interest in the arbitration or any family, social or significant professional acquaintance with

any Party to the arbitration. Any Person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the arbitration (“**Arbitrator Disclosure**”). If any Party objects to the service of any arbitrator within 14 days after receipt of the Arbitrator’s Disclosure, such arbitrator shall be replaced in the same manner as the initial arbitrator was selected.

(iii) The arbitrator shall hold at least one hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted at a mutually agreeable location in the City.

(iv) The arbitration shall be presided over by a single arbitrator.

(v) Other than the deposition of experts and Claimant, no formal discovery shall be conducted without an order of the arbitrator or express written agreement of all Parties.

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

(vii) The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered no later than 14 days after the close of the hearing, unless otherwise agreed by the Parties. The arbitration award shall be in writing and shall be signed by the arbitrator.

(viii) The arbitrator determines all issues about whether a Claim is covered by this Article Sixteen. Notwithstanding anything herein to the contrary (including, but not limited to, Section 16.5(d)(ix) and Section 16.5(d)(x) below), if a Party contests the validity or scope of arbitration in court, the arbitrator or the court shall award reasonable attorneys’ fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party.

(ix) The arbitrator shall apply the substantive law of Colorado with regard to any remedy granted. The arbitrator may award injunctive relief or any other remedy available in Colorado but shall not have the power to award punitive damages, attorneys’ fees and/or costs to the prevailing Party. Except as set forth in Section 16.5(d)(viii) above, each Party is responsible for any fees and costs incurred by that Party. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court of competent jurisdiction. Notwithstanding the foregoing, if the remedy awarded by the arbitrator is substantially affected by the arbitrator’s failure to follow the substantive law of Colorado, a court may vacate or refuse to confirm the arbitrator’s award on that basis.

(x) The Parties shall pay their pro rata share of all arbitration fees and costs, including, without limitation, the costs for the arbitrator and their consultants.

(xi) The arbitrator shall have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants.

(xii) Except as may be required by law or for confirmation of an arbitration award, and except as otherwise provided in this Article Sixteen, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration without the prior written consent of all Parties to the arbitration.

16.6 Notice of Certain Claims. If a Claim includes a construction and/or design defect allegation, the Owner shall disclose the Claim and its details to his/her prospective purchasers and prospective Mortgagees.

16.7 Amendment. THE PROVISIONS OF THIS ARTICLE SIXTEEN INURE TO THE BENEFIT OF DECLARANT AND THE DEVELOPMENT PARTIES AND ALL OTHER PARTIES DESCRIBED IN THIS ARTICLE SIXTEEN, AND, NOTWITHSTANDING ANY OTHER PROVISION OF THIS DECLARATION, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF ARTICLE SEVENTEEN BELOW, SHALL NOT BE AMENDED OR TERMINATED FOR A PERIOD OF 20 YEARS FROM THE DATE THIS DECLARATION IS RECORDED WITH THE CLERK AND RECORDER WITHOUT THE WRITTEN AND RECORDED CONSENT OF DECLARANT, WITHOUT REGARD TO WHETHER DECLARANT OWNS ANY LOT/HOME AT THE TIME OF SUCH AMENDMENT/TERMINATION. BY TAKING TITLE TO A LOT/HOME, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE SIXTEEN ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S AND THE DEVELOPMENT PARTIES' WILLINGNESS TO DEVELOP AND SELL THE LOTS/HOMES AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE SIXTEEN, DECLARANT AND THE DEVELOPMENT PARTIES WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE LOTS/HOMES FOR THE PRICES PAID BY THE ORIGINAL BUYERS.

IN ANY EVENT, ANY AMENDMENT TO OR DELETION OF ALL OR ANY PORTION OF THIS ARTICLE SIXTEEN SHALL NOT APPLY TO CLAIMS BASED ON ALLEGED ACTS OR OMISSIONS THAT PREDATE SUCH AMENDMENT OR DELETION.

THE TERMS OF THIS SECTION 16.7 SHALL NOT BE LIMITED BY THE PROVISIONS OF SECTION 12.3 ABOVE OR ANY OTHER PROVISION OF THIS DECLARATION.

16.8 Waiver of Jury Trial. IN THE EVENT THAT A COURT FINDS THAT THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THIS ARTICLE SIXTEEN ARE UNENFORCEABLE AND AS A RESULT A PARTY IS ALLOWED TO BRING A CLAIM IN COURT, ALL PARTIES AGREE THAT ANY LAWSUIT, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT IN COURT SHALL BE TRIED ONLY BY A JUDGE AND NOT BY A JURY; AND EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND INTELLIGENTLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT.

16.9 Conflict with Laws. IN THE EVENT THAT ANY PROVISIONS OF THIS ARTICLE SIXTEEN CONFLICT WITH OR DO NOT CONTAIN THE REQUIREMENTS OF THE

CHAPTER 5, ARTICLE VIII OF THE FORT COLLINS MUNICIPAL CODE (“**FORT COLLINS ORDINANCE**”) AS APPLICABLE (INCLUDING THE REQUIREMENT THAT THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES CONTAINED BE CONSISTENT WITH THE REQUIREMENTS OF THE COLORADO UNIFORM ARBITRATION ACT), THEN THE PROVISIONS OF THIS ARTICLE SIXTEEN SHALL BE DEEMED REFORMED TO THE MINIMAL EXTENT NECESSARY TO BE CONSISTENT AND COMPLIANT WITH THE FORT COLLINS ORDINANCE.

IN THE EVENT THAT THE PROVISIONS OF THIS ARTICLE SIXTEEN CONFLICT WITH ANY OTHER MANDATORY PROVISIONS OF APPLICABLE LAW, THE PROVISIONS OF THIS ARTICLE SIXTEEN SHALL BE REVISED TO THE MINIMUM EXTENT NECESSARY TO COMPLY WITH THE MANDATORY PROVISIONS OF SUCH LAWS.

**ARTICLE SEVENTEEN  
DURATION, AMENDMENT, AND TERMINATION OF THE DECLARATION**

17.1 Duration. The covenants, restrictions and obligations of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Section 17.4 below.

17.2 Amendments by Owners. Except for amendments that may be undertaken by the Declarant hereunder or pursuant to the Act, and except as otherwise provided for in Section 17.5 below or otherwise herein or pursuant to the Act, this Declaration may be amended by the written agreement of Owners of Lots to which at least 67% of the votes in the Association are allocated.

Any such amendment shall be effective upon the recording of the amendment with the Clerk and Recorder together with a certificate certifying that the requisite number of Owners and Eligible Mortgagees (if applicable) have given their written consent (or deemed consent) to the amendment.

17.3 Amendments by Declarant. Declarant reserves the right to amend, without the consent of any Owner, the Association, any Mortgagee or any other Person, the Governing Documents at any time as follows:

- (a) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement;
- (b) To comply with any requirements, standards or guidelines of any Agency; and
- (c) To comply with any requirements of the Act or governmental agencies.

17.4 Termination. Notwithstanding Section 17.2 above, the Project may only be terminated upon the written agreement of: (a) Owners holding at least 67% of the vote in the Association; plus (b) Eligible Mortgagees representing 51% of the votes of Lots subject to such Mortgages, plus (c) Declarant for so long as it retains any Declarant Rights. Notwithstanding the foregoing, no

termination of the Project shall affect the provisions of Article Sixteen above which shall survive any termination of the Project for a period of 20 years from the date this Declaration is recorded with the Clerk and Recorder.

17.5 Consent Required. So long as Declarant has any benefits, rights or obligations under or pursuant to this Declaration or any of the other Governing Documents, any proposed amendment/termination of any provision of the Governing Documents that in any manner affects such benefits, rights or obligations (including, but not limited to, Article Sixteen above) shall require Declarant's prior written consent to such amendment/termination. Obtaining Declarant's consent shall be required for the time period set forth in Section 12.3 above; *provided, however*, such time period limitations on Declarant's consent shall not apply to amendments/termination of Article Sixteen which instead shall be governed by the provisions of said Article. Any amendment made without such prior written consent as required herein shall be null and void and shall have no effect.

## **ARTICLE EIGHTEEN GENERAL PROVISIONS**

18.1 Right of Action. Subject to the provisions of the Governing Documents (including, but not limited to, Article Sixteen above), the Association on behalf of itself or 2 or more aggrieved Owners shall be granted a right of action against any and all Owners for failure to comply with the provisions of the Governing Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Governing Documents. Subject to the provisions of the Governing Documents (including, but not limited to, Article Sixteen above), Owners shall have a right of action against the Association for failure to comply with the provisions of the Governing Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Governing Documents. In any action covered by this Section 18.1, the Association or any Owner shall have the right, but not the obligation, to enforce the Governing Documents by any proceeding at law or in equity, or by mediation or binding arbitration (and the prevailing party in any such action shall be entitled to reimbursement from the non-prevailing party for all reasonable costs and expenses, including attorneys' fees, in connection with such action), except to the extent that (a) the notice and hearing procedures set forth in the Bylaws apply, or (b) the procedures set forth in Article Sixteen of this Declaration apply, or (c) any other agreement between Declarant and an Owner(s) applies. Failure by the Association or by any Owner to enforce compliance with any provision of the Governing Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

Each Owner hereby irrevocably appoints the Board as the Owner's true and lawful attorney-in-fact for the purposes of submitting, executing and filing on behalf of Owners all documentation necessary to obtain all rezonings, site plans and/or replats that the Board feels necessary or prudent for the proper and effective operation of the Project. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying a portion of the Property shall constitute appointment of the Board as the grantee's attorney-in-fact, and the Board shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Board as attorney-in-fact. In no event shall the Board's exercise of the foregoing rights affect Declarant Rights reserved hereunder and in the event that Declarant still

retains Declarant Rights hereunder, the Board shall not exercise the foregoing rights without Declarant's prior written consent.

18.2 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association and each Owner and their heirs, personal representatives, successors and assigns.

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

18.4 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

18.5 Registration by Owner of Mailing Address; Notices. Each Owner shall register their mailing address with the Association. Except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail or as otherwise set forth in the Bylaws, all notices intended to be served upon an Owner pursuant to this Declaration, shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address or at the address of such Owner's Lot if there is no registered mailing address for such Owner on file at the Association.

All notices, demands or other notices intended to be served upon the Board or the Association shall be sent by certified mail, postage prepaid, to the Managing Agent, if any, and if there is no Managing Agent, then to the registered agent for the Association on file in the Office of the Secretary of State, State of Colorado.

18.6 Conflicting Provisions. The Governing Documents are intended to comply with the requirements of the Act and the Nonprofit Act (collectively, the "**Governing Acts**"). If there is any conflict between any provision of the Governing Documents and any mandatory provision of either of the Governing Acts, the mandatory provision of the applicable Governing Act shall control and neither Declarant, nor the Association shall have any liability for actions taken in conformity with such Governing Act. If there is any conflict between any provision of the Governing Documents and any permissive or non-mandatory provision of either of the Governing Acts, the provision of the Governing Documents shall control. In the event of any conflict between this Declaration and any other Governing Documents, this Declaration shall control, except as otherwise provided herein. In the event the Articles conflict with the Bylaws, the Articles shall control.

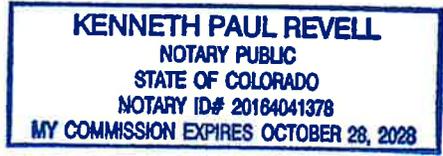
18.7 Captions. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

18.8 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the 20 day of DEL., 2024.

**RANDALL O'LEARY**  
*Randall O'Leary*

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



The foregoing instrument was acknowledged before me on this 20 day of DECEMBER, 2024 by Randall O'Leary, as Declarant.  
Witness my hand and official seal.

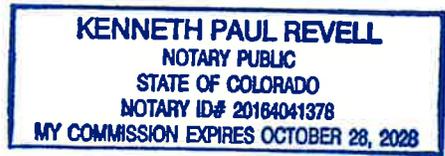
*Kenneth Revell*  
Notary Public  
My Commission Expires: 10/28/2028

**ANDREA O'LEARY**  
*Andrea O'Leary*

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

The foregoing instrument was acknowledged before me on this 20 day of December, 2024 by Andrea O'Leary, as Declarant.  
Witness my hand and official seal.

*Kenneth Revell*  
Notary Public  
My Commission Expires: 10/28/2028



## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 33 AND THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH/ PRINCIPAL MERIDIAN; COUNTY OF EL PASO, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 33, FROM WHICH THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 33 BEARS NORTH 89°38'17" EAST, A DISTANCE OF 2,684.46 FEET, WITH ALL BEARINGS HEREIN RELATIVE THERETO;

THENCE NORTH 00°25'17" WEST, ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 33, A DISTANCE OF 1,169.26 FEET;

THENCE THE FOLLOWING TWENTY-TWO (22) COURSES;

1. SOUTH 71°29'43" EAST, A DISTANCE OF 140.51 FEET;
2. NORTH 82°07'46" EAST, A DISTANCE OF 458.69 FEET;
3. NORTH 71°31'45" EAST, A DISTANCE OF 369.66 FEET;
4. NORTH 89°30'59" EAST, A DISTANCE OF 195.64 FEET;
5. NORTH 87°27'48" EAST, A DISTANCE OF 300.93 FEET;
6. SOUTH 81°25'26" EAST, A DISTANCE OF 208.57 FEET;
7. NORTH 66°51'51" EAST, A DISTANCE OF 197.45 FEET;
8. NORTH 70°47'03" EAST, A DISTANCE OF 178.13 FEET;
9. NORTH 66°11'16" EAST, A DISTANCE OF 170.15 FEET;
10. NORTH 71°47'12" EAST, A DISTANCE OF 403.02 FEET;
11. NORTH 84°26'00" EAST, A DISTANCE OF 169.75 FEET;
12. SOUTH 87°26'44" EAST, A DISTANCE OF 197.38 FEET;
13. NORTH 74°51'53" EAST, A DISTANCE OF 86.71 FEET;
14. NORTH 86°13'24" EAST, A DISTANCE OF 233.11 FEET;
15. NORTH 80°10'48" EAST, A DISTANCE OF 260.90 FEET;
16. NORTH 78°52'32" EAST, A DISTANCE OF 149.05 FEET;
17. NORTH 71°58'16" EAST, A DISTANCE OF 210.75 FEET;
18. NORTH 49°30'50" EAST, A DISTANCE OF 403.50 FEET;
19. NORTH 57°57'37" EAST, A DISTANCE OF 170.21 FEET;
20. NORTH 37°03'08" EAST, A DISTANCE OF 266.68 FEET;
21. NORTH 43°48'53" WEST, A DISTANCE OF 107.37 FEET;
22. NORTH 20°29'00" WEST, A DISTANCE OF 220.10 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST QUARTER OF SECTION 34;

THENCE NORTH 89°30'43" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 1,125.83 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 34;

THENCE SOUTH 00°28'46" WEST, ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER OF SECTION 34, A DISTANCE OF 2,654.48 FEET TO THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER;

THENCE SOUTH 89°38'45" WEST, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 2,683.98 FEET TO THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 33;

THENCE SOUTH 89°38'17" WEST, ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 33, A DISTANCE OF 2,684.46 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 214.622 ACRES, (9,348,924 SQUARE FEET), MORE OR LESS.

**EXHIBIT B**  
**EXPANSION PROPERTY**

None at this time.

## **EXHIBIT C**

### **EASEMENTS AND LICENSES BURDENING THE COMMUNITY**

1. All those listed on the Plat and incorporated into this Declaration by reference.