

AFTER RECORDING, RETURN TO:

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**EL PASO COUNTY CLERK AND RECORDER: INDEX IN  
GRANTEE INDICES UNDER FLYING HORSE NORTH AND  
FLYING HORSE NORTH HOMEOWNERS ASSOCIATION, INC., A  
COLORADO NONPROFIT CORPORATION AND UNDER  
GRANTOR, PRI #2 LLC, A COLORADO LIMITED LIABILITY  
COMPANY.**

**DECLARATION**

**of**

**Covenants, Conditions, Restrictions and Easements**

**for**

**FLYING HORSE NORTH**

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This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR FLYING HORSE NORTH is made effective as of \_\_\_\_\_, 2017 (“Declaration”), by **Elite Properties of America, Inc.**, a Colorado corporation (“Declarant”), with the consent of **PRI #2 LLC**, a Colorado limited liability company (“PRI2”), the owner of the Community Area described below, in order to create a common interest community pursuant to the Colorado Common Interest Ownership Act (“CCIOA”) Section 38-33.3-101, et seq., Colorado Revised Statutes.

**ARTICLE I**  
**GENERAL**

Section 1.1 Common Interest Community. The name of the common interest community created by this Declaration is “Flying Horse North.” Flying Horse North is a planned community as defined in CCIOA Section 38-33.3-103 (22).

Section 1.2 Property Affected. PRI2 is the owner of real property in El Paso County (the “County”), Colorado, more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the “Community Area”).

Section 1.3 Purposes of Declaration. The purpose of this Declaration is to: (a) further a common and general plan for those parcels of land that are part of the Community Area; (b) protect and enhance the quality, desirability and attractiveness of all property within the Community Area; (c) provide for the Association to hold, maintain and manage certain common properties and amenities in the Community Area and to perform certain functions for the benefit of owners of land within the Community Area; (d) define the duties, powers and rights of the Association; and (e) define certain duties, powers and rights of Owners.

Section 1.4 General Scheme and Plan of Community Area.

(a) Property Included. The Community Area created by this Declaration encompasses all of the property described in **Exhibit A**.

(b) Expansion Property. Declarant reserves the right to add all or portions of the real property described on **Exhibit B** attached hereto (the “Expansion Property”) to the Community Area. Declarant may elect to add all or portions of the Expansion Property to the Community Area from time to time. If none or only a portion of the Expansion Property is added to the Community Area pursuant to this Declaration, the validity of this Declaration shall not be affected, and this Declaration shall remain in full force and effect as to the real property then comprising the Community Area. **Unless and until a particular portion of the Expansion**

**Property is added to the Community Area, such portion of the Expansion Property shall not be a part of the Community Area and this Declaration shall not apply thereto.** The Community Area shall only include the property described on Exhibit A and those portions of the Expansion Property which have been added to the Community Area pursuant to the terms of this Declaration.

(c) Potential Hospitality Improvements and Use. Each Owner acknowledges that certain areas reflected as Lots on the Development Plan may be modified for use as a lodge or other hospitality related improvements at Declarant's election. Such areas will then be excluded from the Covenants.

(d) Wells. The overall plan is for the Community Area to be a single family, rural residential development with Lots of not less than two and one-half (2 ½) acres. The entire Community Area is intended to be developed as a first class community developed in accordance with the Community Guidelines, as amended from time to time. All Lots within the Community Area will be serviced by individual wells and non-evaporative septic systems to be installed and maintained by the individual Lot Owners within his Lot in accordance with all applicable governmental and regulatory requirements as well as on the term and conditions set forth in this Declaration.

Section 1.5 Declaration. Declarant, with the consent of PRI2, hereby declares that the Community Area, and each part thereof, shall, on and after the date this Declaration is recorded, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, easements, limitations, reservations, exceptions and other provisions set forth in this Declaration, all of which are declared to be a part of and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Community Area. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with Section 15.1 hereof, shall bind, be a charge upon and inure to the mutual benefit of: (a) all of the property within the Community Area and each part or parcel thereof; (b) Declarant and its successors and assigns; (c) the Association and its successors and assigns; and (d) all other Persons and entities having or acquiring any right, title or interest in any property which is part of the Community Area or any part or parcel thereof or any Improvement (defined in Section 1.6) thereon, and their encumbrancers, claimants, heirs, personal representatives, successors and assigns.

Section 1.6 Definitions. Unless otherwise expressly provided in this Declaration, the following words and phrases, whenever used in this Declaration, shall have the following meanings:

(a) Architectural Control Committee. "Architectural Control Committee," shall mean the applicable approving authority then in effect as described in Section 6.1 of this Declaration.

(b) Assessment. “Assessment” shall mean a “Common Assessment,” pursuant to Section 11.3, a “Special Assessment,” pursuant to Section 11.8, and/or a “Site Assessment,” pursuant to Section 11.9, as applicable.

(c) Association. “Association” shall mean Flying Horse North Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

(d) Association Documents. “Association Documents” shall mean the various operative documents of the Association, whether recorded or adopted at this time or as the same have been or may be amended, modified, supplemented, or otherwise changed from time to time, all of which are incorporated herein by this reference, and shall include the following:

(i) The Articles of Incorporation of the Association (the “Articles of Incorporation”);

(ii) The Bylaws of the Association (the “Bylaws”);

(iii) This Declaration and all amendments to this Declaration;

(iv) The Plat(s) for property within the Community Area;

(v) The Rules and Regulations;

(vi) The Development Plan;

(vii) Forest and Fire Management guidelines and rules adopted from time to time by the Association; and

(viii) The Community Standards and all amendments thereto as defined in Section 1.6.

(e) Association Property. “Association Property” or “Association Properties” shall mean all real and personal property, together with any and all Improvements now or hereafter located within the Community Area and appurtenances and rights thereto, hereafter owned by the Association or which the Association hereafter maintains, holds or uses for the common use and enjoyment of all of the Members as provided herein, without ownership thereof, and for other purposes as may be permitted by this Declaration. The Association Properties shall include the tracts of land within the Community Area identified on the Plats as real property improvements which will be owned and/or maintained by the Association. The Association Properties shall also include the Association’s rights in and to the Water Rights defined in Section 1.9 herein and any additional rights obtained by the Association and any well the Association election to construct within the Association Property. All of the Association Properties will be “common elements” as defined in CCIOA Section 38-33.3-103 (5) and will include all detention ponds, all wells, well related Improvements and all transmission lines created for the benefit of the Association or for the use of any Association Properties and/or that

will be located within Tracts within the Community Area to be owned and/or maintained by the Association.

The Association may, from time to time, be granted additional Association Properties, including portions of the Expansion Property which is hereafter annexed into the Community Area pursuant to Section 10.4 below. The Association shall be obligated to maintain all aspects of any Association Properties which are granted to it, other than those aspects which are specifically identified on the Plats or in the public record as being the obligation of another party. The Association will be responsible for enforcement of Lot site design, architectural design and landscape design review and maintenance standards on a case by case basis as further provided for in this Declaration and pursuant to the Development Plan. The Association shall be responsible for enforcement of compliance with the terms and conditions of the decree entered by the Water Court, Water Division No. 1, Case No. 16CW3190, approving a plan for augmentation allowing the use of Dawson aquifer groundwater by each Lot.

(f) Board. “Board” shall mean the Board of Directors of the Association.

(g) Community Area. “Community Area” shall mean the real property described on Exhibit A, together with any and all Improvements now or hereafter constructed on such real property and appurtenances and rights to such real property. If and when added by the Declarant, the Community Area shall also include those portions of the Expansion Property that have been made subject to this Declaration as provided in Sections 1.4 and 10.4 hereof. Other than the Expansion Property, the Community Area will not be expanded to include any other property without the written approval of a majority vote of the Owners in the Community Area. All or part of the Potential Hospitality Lots may be removed from the Community Area.

(h) Community Standards. “Community Standards” shall mean the Flying Horse North Design Guidelines, Community Regulations and other Rules and Regulations, as may be adopted from time to time by the Association.

(i) Declarant. “Declarant” shall mean Elite Properties of America, Inc., a Colorado corporation, its 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 Declarant under this Declaration which are specifically designated in the written instrument. Notwithstanding the foregoing, a successor to Declarant, by consolidation or merger shall automatically be deemed a successor or assign of Declarant under this Declaration.

(j) Declaration or Covenants. “Declaration” or “Covenants” shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Flying Horse North, in its entirety, including all attached exhibits and all subsequent amendments.

(k) Development Plan. “Development Plan” shall mean the Flying Horse North Preliminary Plan, as approved by the County, and all subsequent amendments thereto.

(l) Dwelling Unit. “Dwelling Unit” shall mean a custom built residential home on a Lot that is intended or used as a single family detached home. All other buildings on a Lot will be Outbuildings.

(m) Expansion Property. “Expansion Property” shall mean and refer to the real property described on Exhibit B attached hereto. The Expansion Property, together with all appurtenances thereto and all Improvements now or hereafter located thereon, may be annexed into the Community Area pursuant to Section 10.4 of this Declaration.

(n) First Mortgage. “First Mortgage” shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Office of the Clerk and Recorder of El Paso County pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

(o) First Mortgagee. “First Mortgagee” shall mean and refer to any Person named as a mortgagee or beneficiary under any First Mortgage or any successor to the interest of any such Person under such First Mortgage.

(p) Improvements. “Improvements” shall mean all structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, Outbuildings, guest quarters, concrete additions or pavers, gardens, swimming pools, hot tubs, basketball backboards and supporting structures, decks, porches, patios, patio covers or screening, awnings, painting or other finish material of any exterior surfaces or any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, fixtures, Landscaping, Revegetation hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, swamp coolers, solar equipment, and exterior air conditioning and water softener fixtures. “Improvements” shall also mean an excavation or fill the volume of which exceeds two cubic yards, and any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

(q) Landscape. “Landscape” shall mean a type of Improvement consisting of Revegetation and/or the treatment of ground surface with water flow control methods, reseeding, live plant materials, wood chips, crushed stone, decorative rocks, mulch materials, other decorative surfacing materials and the installation of art or historical farm implements to be that displayed on the Lot. For purpose of this definition, the word “Landscape” shall include all other forms of the word Landscape, such as “Landscaped” and “Landscaping.”

(r) Lot. “Lot” shall mean a parcel of land within the Community Area that is shown as a lot on the Plats upon which at least one Dwelling Unit may be constructed pursuant to County regulations, and that is not part of the Association Properties. Each Lot constitutes a “unit” as defined in CCIOA Section 38-33.3-103(30). Lots within the Community Area may, at the sole election of the Declarant, be categorized based on the Declarant’s determination of

similar Lot characteristics. There will not be more than four (4) categories of Lots. Each lot category may contain different Community Standards addressing, without limitation, architectural standards, living standards, Rules and Regulations, and required working capital. For illustration purposes only, Lots 74 through 80 Flying Horse North, Filing No. 1 are identified as the "Prairie Lots." The owners of the Prairie Lots, subject to Declarant obtaining sufficient water rights to allow domestic stock, will be permitted to have horses and potentially other domestic stock animals for personal/recreational use subject to Community Standards to be adopted that will be applicable only to the Prairie Lots.

(s) Lot Lines. Front, side and rear "Lot Lines" shall be as follows: a front Lot Line is each boundary line (whether one or more) between the Lot and any street, or right of way. A side Lot Line is any boundary line which meets and forms an angle with a street except that for a corner Lot with two front Lot Lines, the side Lot Line is the boundary which forms an angle with the street that affords the principal access to the Lot; all other Lot Lines are rear Lot Lines.

(t) Member. "Member" shall mean a member of the Association, who must also be an Owner. Membership in the Association shall be appurtenant to, and may not be severed from, ownership of a Lot.

(u) Outbuilding. "Outbuilding" shall mean any permanent building or structure, other than a Dwelling Unit, including without limitation, a detached automobile or RV garage, quest/family cottage, barn, stable, corral or similar large animal enclosure, shed, or greenhouse.

(v) Owner. "Owner" shall mean the record title holder, including Declarant, whether one or more Persons, of fee simple title to a Lot, including sellers under executory contracts under Colorado law.

(w) Person. "Person" shall mean a natural person, a corporation, a limited liability company, a partnership (including general, limited and limited liability partnerships) or any other public or private entity recognized as being capable of owning real property under Colorado law.

(x) Plats. "Plats" shall mean the plats that are the current plats of all or a portion of the Community Area, together with any supplemental plats recorded in the real property records of El Paso County, Colorado.

(y) Related User. "Related User" shall mean: (a) any Person who resides with an Owner within the Community Area; (b) a guest or invitee of an Owner; (c) an occupant, tenant or contract purchaser of any Dwelling Unit on a Lot; and (d) any family member, guest, employee, agent, representative, licensee, contractor, invitee or cohabitant of any of the foregoing Persons.

(z) Rules and Regulations. “Rules and Regulations” shall mean the rules and regulations, if any, adopted by the Board as provided in Section 8.9 of this Declaration and which shall, upon adoption, be part of the Community Standards.

Section 1.7 Fire Protection District. The Lots within the Community Area are serviced by a Fire Protection District. Each Owner is encouraged to determine which Fire Protection District services his Lot as different Lots within the Community Area may be located within different Fire Protection Districts.

Section 1.8 School District. The Lots within the Community Area are served by one (1) of two (2) potential School Districts. Each Owner is encouraged to investigate which School District services his or her Lot as different Lots within the Community Area are located within different School Districts.

Section 1.9 Water Rights. “Water Rights” consist of the Dawson aquifer not non-tributary groundwater and Laramie-Fox Hills aquifer non-tributary groundwater decreed in Case No. 94CW023(B), Water Division No. 1, the Dawson aquifer not non-tributary groundwater and Laramie-Fox Hills aquifer non-tributary groundwater decreed in Case No. 04CW098, Water Division No. 2, 208 acre-feet annually of Laramie-Fox Hills aquifer non-tributary groundwater decreed in Case No. 99CW218, Water Division No. 1, and the rights decreed in Case No. 16CW3190, Water Division No. 1, including the plan for augmentation decreed therein (the “Water Rights”). The water rights decreed in Case No. 04CW098 are owned by the Colorado State Land Board until February 27, 2048, at which time ownership will revert to the Association. Prior to this reversion, the water rights decreed in Case No. 04CW098 are available to the Association pursuant to Ground Water Production Lease No OT-109328.

## **ARTICLE 2 ASSOCIATION PROPERTY USE; RESTRICTIONS**

Section 2.1 Title to the Association Property. Subject to the limitations and restrictions of this Declaration, title to the Association Property shall be conveyed in fee simple, free and clear of all monetary encumbrances, by the Declarant to the Association, on or before the expiration of the Period of Declarant Control; such conveyance shall exclude all water rights, if any. The Association shall be obligated to accept title to each such Association Property when conveyed to it by Declarant.

Section 2.2 Non-Division of Association Property. The Association Property shall remain undivided and shall not be subject to partition. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Association Property. Each Owner specifically agrees not to institute any action therefor. Further, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall cause the Association to receive, jointly and severally, from the parties violating the same, the actual attorney fees, costs and other damages the Association incurs in connection therewith. It is agreed by all Owners that the foregoing

restrictions are necessary to preserve the rights of all Owners regarding the operation and management of the Association Property. Nothing contained herein shall be construed as a limitation of the right of legal partition of a Lot between the Owners thereof, but such legal partition shall not affect any other Lot, nor shall any such partition sever any part thereof from such Lot as a whole.

Section 2.3 Owners' Easement of Enjoyment. Subject to the limitations and restrictions of this Declaration, every Owner shall have an equal, nonexclusive right and easement of enjoyment in and to the Association Property, and such easement shall be appurtenant to and shall pass with the title to every Lot without the necessity of additional reference. No illegal activity may be conducted upon or within any part of the Association Property.

Section 2.4 Extent of Owners' Easement of Enjoyment. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to enforce the restrictions contained herein and to promulgate rules and regulations which every Owner and their Related Users shall strictly comply with, including, but not limited to, the right of the Association to establish reasonable charges for the use of all or a portion of the Association Property if deemed necessary. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Members to enhance further the overall rights of use and enjoyment of all Members, including without limitation, imposing limits on the times of use and numbers of guests permitted to use the Association Properties.

(b) The right of the Association, as provided in its Articles or Bylaws, to suspend an Owner's voting rights and the right to use the Association Property for any period during which such Owner is in default under this Declaration, including without limitation the non-payment of any assessment levied by the Association, and to make such suspensions for any infraction of its published Rules and Regulations;

(c) The right of the Association to consent to or otherwise cause the construction of additional Improvements on the Association Property or alteration or removal of any existing Improvements on the Association Property for the benefit of the Members of the Association and to close or limit the use of the Association Property while maintaining, repairing and making replacements in the Association Property. The Association shall have the right to grant easements under, over, across, through and upon the Association Property as long as the easements granted do not interfere with the use of a Lot;

(d) The right of the Association to dedicate or transfer all or any part of the Association Property to any public agency, authority, or utility for such purposes, subject to the provisions of hereof and CCIOA Section 38-33.3-312, and subject to such conditions as may be imposed by the public entity;

(e) The rights of the Association as set forth in the Association's Articles of Incorporation and Bylaws, including, without limitation, to borrow money for the purpose of

improving the Association Property and, subject to the provisions of CCIOA Section 38-33.3-312, to mortgage said property as security for any such loan;

(f) The right of the Declarant (until termination of the Period of Declarant Control) or the Association's Board (after termination of the Period of Declarant Control) to assign or allocate any part of the Association Property to be a limited common area, for the exclusive use of a particular Owner; and

(g) No Owner shall be allowed to use the Association Property to conduct business without the prior written permission of the Association.

Section 2.5 Delegation of Use. Subject to the provisions of this Declaration, including without limitation Section 5.26, and/or any Community Standard that may be established from time to time by the Association concerning the Association Property, any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Association Property and facilities to such Owner's Related Users. Each Owner shall, to the extent permitted by law, be liable for any damage done to the Association Property by such Owner's Related Users and for any breach of the Association's Rules and Regulations by such Persons.

Section 2.6 Non-Dedication of Association Property. Declarant, in recording this Declaration, has designated certain areas of land as Association Property intended for the common use and enjoyment of Owners. The Association Property, unless otherwise expressly set forth in this Declaration or in an applicable Plat, is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration.

Section 2.7 Community Area Parks. Each Owner acknowledges that there are no parks within the property that comprises the Community Area as of the recording date of this Declaration (the "Recording Date"). Each Owner further acknowledges that the Expansion Property contains two (2) areas (jointly, the "Parks" and respectively, the "North Park Land" and the "South Park Land") that may be annexed into this Declaration in the sole discretion of the Declarant and utilized as Association Property parks to be owned and maintained by the Association. Notwithstanding the Parks' status as Association Property, the Parks will be required at all times to be open to the public for use and not limited to use by the Owners and/or their Related Users. Each Owner acknowledges that the Parks, if annexed, will be conveyed to the Association in the condition and state that exists at the time a Park is conveyed by the Declarant to the Association with potential horse and/or mountain bike trails and/or other recreational park improvements of any kind or nature as Declarant may determine in its sole election. Each Owner further acknowledges that the Parks may not contain any developed park improvements. Owners are encouraged to investigate the location of these Parks and to determine what impact, if any, those trails may have on the Owner's Lot and its use.

Section 2.8 Equestrian Trails. Each Owner acknowledges that no equestrian trails exist within or adjoin the Community Area as of the Recording Date. A County equestrian trail that is open to the public abuts that portion of the Expansion Property reflected on attached **Exhibit C** (the "County Equestrian Trail"). Each Owner further acknowledges that if Declarant

elects in its sole discretion to annex that portion of the Expansion Property that abuts the north line of the Palmer Divide Subdivision, the Association Property may be expanded to include an equestrian trail in generally in the location reflected on **Exhibit C** (the Association Equestrian Trail”). The Association Equestrian Trail may be extended through either a Tract and/or an easement over utility easements in order to physically connect the Association Equestrian Trail to the respective Parks if and when the applicable Park is annexed into this Declaration. If and when the Expansion Property containing the Association Equestrian Trail is annexed into this Declaration, the Association Equestrian Trail will be owned and maintained by the Association and will constitute an Association Property. The Association Equestrian Trail will be open to the public and not limited to use by Owners and their Related Users. Owners are encouraged to investigate the location of these equestrian trails and to determine what impact, if any, those trails may have on the Owner’s Lot and its use.

Section 2.9 Water Rights Restrictions. The use of the Water Rights is restricted by the terms and conditions of the decrees entered in Case No. 94CW023(B), Water Division No. 1, Case No. 04CW098, Water Division No. 2, and Case N. 16CW3190, Water Division No. 1. These restrictions limit pumping to an average of 0.7 acre-feet per year per Lot, and irrigation is limited to a specific number of square feet within a Lot, as set forth in Section 5.9. Failure of an Owner to comply with the terms of the decrees described in this Section 2.9 may result in an order from the State Engineer to curtail, or eliminate pumping to curtail, or eliminate pumping from the Dawson aquifer.

### **ARTICLE 3 DECLARATION TO PRESERVE THE RESIDENTIAL CHARACTER OF THE COMMUNITY AREA**

Section 3.1 Property Uses. Except as otherwise provided in this Declaration, including without limitation this Article 3 and expressly subject to the restrictions contained in Article 5, all Lots in the Community Area will be used exclusively for private single family residential purposes as allowed by local zoning, control and regulations or this Declaration, based on the most restrictive standard. Occupancies will also be subject to the Community Standards as adopted by the Association from time to time. No business, profession or other activity conducted for gain shall be carried on or within any Lot or Dwelling Unit; provided that any uses that are permitted under the County home occupation regulations (the “Home Occupation provisions”) shall be permitted, subject to the Association Documents. If the Home Occupation provision is hereafter repealed, then for purposes of this Declaration and its enforcement, the provisions of the Home Occupation provision in effect on the Recording Date shall be incorporated herein as a part of this Declaration. Any violation of the Home Occupation provision shall be a violation of this Declaration. The Declarant or the Association shall have the right, from time to time, to establish Rules and Regulations regarding the use of a Dwelling Unit and any Outbuilding for any Home Occupation, including, without limitation, regarding increased traffic within the Community Area and/or the prohibition thereof if required in the Association’s reasonable judgment based upon the long term projection of available domestic water supplies for the Community Area and the Association’s Water Rights, including compliance with the terms and conditions of the decrees described in Section 1.9. Notwithstanding the above, commercial and business uses with any adverse external effect on

the nature, perception, operation or ambiance of the Community Area as a first class residential Community, as reasonably determined by the Board, are prohibited unless (i) approved in writing by the Association, (ii) specifically allowed by this Declaration, and (iii) allowed pursuant to restrictions of record and by local zoning ordinances and regulations. Human service establishments, including human service homes, human service residences, human service facilities and human service shelters, health care support facilities, hospices and youth homes (as each such term is defined by the County zoning regulations) and any other similar or dissimilar group home are each prohibited on a Lot and in the Community Area. Notwithstanding any other provision contained in this Section, each Owner acknowledges that Flying Horse North will be located adjacent to certain commercial activities, including without limitation, a golf course and potential hospitality improvements.

Section 3.2 Improvements/Outbuildings. No Dwelling Unit, Outbuilding or other Improvement shall be erected within the Community Area except as authorized by the Community Standards for the applicable category of Lot within the Community Area and as specifically approved by the Architectural Control Committee and other Improvements that Declarant or its designees are authorized to place or construct within the Community Area by the terms of this Declaration. No Improvement, other than a Dwelling Unit, and no trailer, mobile home, tent or other similar or dissimilar temporary quarters may be used for living purposes, other than an authorized and Association-approved Outbuilding. No Improvement may be placed on any Lot before completion of the Dwelling Unit upon such Lot except with the written permission of the Declarant or the Architectural Control Committee.

Section 3.3 Construction Type. All construction shall be new. No building previously used at another location nor any building or Improvement originally constructed as a mobile dwelling may be moved onto a Lot except as expressly provided in Section 3.7 for temporary construction, sales or administration buildings.

Section 3.4 Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of an approved Improvement or its alteration unless such building materials are stored in the garage on the Lot or otherwise enclosed and fully screened in a manner approved by the Architectural Control Committee.

Section 3.5 Substantial Completion. A Dwelling Unit shall not be occupied in the course of original construction until substantially completed and, if required by applicable law, until a Certificate of Occupancy has been issued by Regional Building and any other necessary governmental or quasi-governmental authority. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 3.6 Construction Completion. The exterior of all Dwelling Units must be completed within twelve (12) months after the commencement of construction. The Revegetation (defined below) and/or Landscaping of all disturbed areas of the Lot due to Dwelling Unit construction must be completed within six (6) months after the issuance of a Certificate of Occupancy for the Dwelling Unit. Nothing contained in this Section 3.6 shall limit the obligations in Section 5.9 of this Declaration. Construction of any Outbuilding or other Improvement on a Lot and applicable Revegetation and/or Landscaping must be completed

within nine (9) months after commencement of construction. The deadlines set forth above shall apply, except where such completion is impractical or would result in great hardship due to strikes, fires, national emergency or natural calamities and except if the Declarant or the Architectural Control Committee approves a longer period of construction due to unusual circumstances following timely application from an Owner each as determined in the discretion of the Declarant or the Architectural Control Committee. For purposes of this Section 3.6, “commencement of construction” for a Dwelling Unit is defined as the obtaining of necessary building permits and the excavation of earth for a foundation, and for all other Improvements is defined as the undertaking of any visible exterior work. For purposes of this Section 3.6, “Revegetation” is defined as repairing and reseeding all disturbed natural vegetated areas and installing Association approved methods for managing erosion resulting from any construction disturbance and installing and maintaining all such improvements following installation in an Association approved manner to ensure the flow of clean stormwater from and through the Lot. **Notwithstanding any other provision contained in this Declaration or the Community Standards, an Owner will be required to install all stormwater protections prior to commencement of any and all construction on his Lot.**

If construction, Landscaping and/or Revegetation is not completed within the above time periods or such later time approved by the Architectural Control Committee, or if construction shall cease for a period of forty-five (45) days without permission of the Architectural Control Committee, the Architectural Control Committee may give the Owner of the Improvements involved written notice of such fact, and if construction on such Improvement is not diligently commenced within thirty (30) days after such notice and thereafter diligently prosecuted to completion, the unfinished Improvement or unfinished portion thereof may be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner, including use of the Owner Assurance as provided for in the Association Documents.

Section 3.7 Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the permission of the Declarant or the Architectural Control Committee. Model homes may be used and exhibited as model homes and for public event purposes only by Declarant or with the permission of the Declarant or the Architectural Control Committee. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes.

Section 3.8 Construction Debris/Vehicles and Equipment. During the progress of construction, the Owner of a Lot shall use commercially reasonable efforts to ensure that the Lot is kept free of debris and trash, all of which shall be deposited in the trash container area. When construction is commenced upon a Lot, the Owner shall provide a trash container and cause it to be properly used and maintained during construction. Such trash containers must be placed within the Owner’s Lot unless the Declarant or the Architectural Control Committee, in its sole discretion, authorizes its location within the street. The Owner shall use commercially reasonable efforts to ensure that no construction materials, debris or trash shall be allowed on the property of others, and any materials, trash or debris blown off the Lot shall be promptly retrieved and disposed of properly. In addition, the Owner of a Lot shall cause all excess dirt which may be generated from excavation on the Lot to be removed from the Lot or street

following installation of the foundation for the Improvement and commencement of framing. All construction equipment, trailers and trucks must be kept within the applicable Lot. Each Owner shall be responsible for insuring that all construction equipment and trucks park on or otherwise utilize in any manner only the applicable Owner's Lot and not any other Lot, road or property within Flying Horse North. Each Owner further acknowledges that violations of this Article 3 will entitle the Association to utilize the applicable Owner Assurance.

Section 3.9 Drilling Structures. No derrick or other Improvement designed for use in or used for boring or drilling for oil or natural gas shall be permitted upon or above the surface of any Lot; neither shall any oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under any Lot. The foregoing is not intended to prohibit temporary drilling to obtain samples in connection with the investigation of soils or temporary drilling necessary in the construction of Improvements.

Section 3.10 Aircraft Noise Notice. Each Owner is hereby placed on notice that all property within the Community Area may be impacted by noise or other sensory effects of flight caused by aircraft operating into and out of the Colorado Springs Municipal Airport or used in the United States Air Force Academy's Airmanship Program.

Each Owner further acknowledges that each Plat of Community Property will contain certain Notices. Each Owner is encouraged to review the Plat.

Section 3.11 Forest Management. Each Owner acknowledges that the Community Area may be subject to fire and forest management guidelines as adopted from time to time by the Association, which guidelines, as adopted, will be part of the Community Standards.

Section 3.12 Horses and Other Non-Domestic Animals. Each Owner acknowledges that, expressly subject to Declarant obtaining sufficient water rights to allow domestic stock, horses and other domestic stock animals may be permitted within certain authorized Lots in the Community Area expressly subject to all applicable Community Standards.

Section 3.13 Mineral Exploration. No Lot within the Community Area shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind. The foregoing is not intended to prohibit temporary drilling to obtain samples in connection with the investigation of soils or temporary drilling necessary in the construction of Improvements.

Section 3.14 Water and Sanitary Facilities. Each Owner hereby acknowledges that the Lots within the Community Area will require the installation and applicable governmental approval of non-evaporative septic systems for sanitary sewer purposes. Each Owner further acknowledges that each Lot within the Community Area will require the installation and applicable governmental approval of a domestic water well for water service to the Dwelling Unit. The Water Rights associated with the well permit required to drill/install the domestic water wells are either owned by the Association or the Association has various other rights therein; Lot Owner shall receive a certificate evidencing Lot Owner's right to use a portion of the Water Rights. In addition to all applicable governmental requirements, each well, and the use,

operation and maintenance thereof, will be required to comply with the water restrictions and requirements contained in Article 18 of this Declaration and the terms and conditions in the decrees as described in Section 1.9 herein. In addition, each Owner hereby acknowledges that, although the Association will have the authority to administer and enforce the governmental requirements related to the Water Rights for the Community Area, including the Lots, as provided in this Declaration, each Owner will remain responsible for ensuring compliance with all governmental restriction and requirements related to such Water Rights, including meter readings three (3) each year. Each Owner further acknowledges that the Association shall have the right to install wells, it its discretion, within the Association Property for Association purposes.

#### **ARTICLE 4 DENSITY, SETBACK AND QUALITY STANDARDS**

Section 4.1 Limitation on Dwellings and Subdivisions. No more than one (1) Dwelling Unit shall be constructed or maintained within any Lot, together with the applicable number of permitted Outbuildings authorized for each category of Lots as provided for in the Community Standards. The Owner of any such Lot approved to construct and maintain an Outbuilding that has been approved by the Architectural Control Approval shall comply with all applicable County regulations, including without limitation any requirement evidencing the Owners commitment not to rent the Improvement. The exterior of all Outbuildings must be of the same materials as, or of comparable or compatible materials to, the Dwelling Unit on the Lot, as determined by the Declarant or the Architectural Control Committee. No Lot shall be replatted or otherwise subdivided without the approval of the Architectural Control Committee and applications for such approval will not be favored in the absence of extreme hardship. Lot Line adjustments that do not result in an increase in the number of Lots and which are made to accommodate building plans approved by the Architectural Control Committee may be approved by the Architectural Control Committee in its sole discretion. This section does not apply to and shall not restrict Declarant's rights under Article 10. An Owner will be solely responsible for obtaining all required governmental approvals for any such Lot line adjustments and approval by the Architectural Control Committee shall not remove that obligation.

Section 4.2 Setbacks and Centurms. All construction must conform to the setback requirements of the building code and zoning code, subdivision regulations and all other applicable governmental or quasi-governmental agencies having appropriate jurisdiction for front, rear and side Lot Lines, as of the date of commencement of construction. All Lots are subject to the minimum setbacks and easements for public utilities and drainage purposes as set forth in the Development Plan or the Plat. Owners acknowledge that each Owner is responsible for reviewing the Development Plan, Plat and other Community Standards applicable to the Owner's Lot to determine the specific requirements attributable to his Lot. In addition to the above restrictions and not in limitation thereof, Dwelling Units must be constructed in a manner that causes not less than 50% of the Dwelling Unit to be located within the Lot's building centrum as established by the Architectural Control Committee (the "Centrum"). Each Owner is encouraged to locate the Centrum for his or her Lot and determine the impact the Centrum will have on the Owner's location of the Dwelling Unit. If an owner desires to locate more than 50% of the Dwelling Unit outside of the Lot's Centrum, or select an alternative building site, the

Owner will have to apply to the Architectural Control Committee for approval setting forth the rationale for the request, the proposed new location, the distance of the Dwelling Unit's proposed location from each lot line, the proposed location of the Lot's well and septic system, the location of the Centruns for each neighboring Lot and the location of the each existing well and septic for each adjoining Lot. The Architectural Control Committee will grant, condition and/or deny the Centrum adjustment requested in its sole discretion.

Each Outbuilding to be located within a Lot shall be located no less than 200 feet from the Lot's Dwelling Unit and no closer than 50 feet any of the lot lines for the Lot in question.

Notwithstanding any other provision contained in this Section 4.2, no Dwelling Unit or Outbuilding shall be located in a manner that interferes with an existing well. Each Owner agrees that, in addition to the above restrictions, the location of an installed well will control over subsequently installed wells and existing wells will restrict the location of all subsequently installed facilities. Each Lot Owner waives any right to assert minimum spacing requirements between water wells.

Section 4.3 Floor Area. No Dwelling Unit shall be erected that, exclusive of basements below garden level, porches, patios, covered but unenclosed areas and garages, has a gross livable floor area less than 2,000 square feet. The minimum and maximum square footage of Outbuildings will be provided for in the Community Standards.

Section 4.4 Height Restrictions. The height of any Dwelling Unit, Outbuilding or other Improvement constructed or to be constructed on any Lot within the Community Area is hereby restricted and shall not exceed thirty-five feet (35') in height or such lower height as may be required by the County. Height shall be measured in accordance with the County's height standards and requirements.

Section 4.5 Exterior Colors and Materials. All exterior colors and materials, including roofing materials, used on Dwelling Units, Outbuilding and other Improvements shall be as determined by Declarant at the time of initial installation and thereafter must be as approved by the Architectural Control Committee, all in accordance with the Development Plan and the Community Standards. Acceptable materials and standards for approval may be as established from time to time by the Architectural Control Committee, all in accordance with the Development Plan.

Section 4.6 Antennae and Roof Projections; Satellite Dishes. Except as provided below in this Section 4.6, no aerial, antenna, or other device for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building, nor shall any such aerial, antenna or other device be mounted at any location so as to be visible from neighboring properties or adjacent streets. Plans for Improvements, other than FCC Protected Structures, as defined below, must be submitted to and approved by the Architectural Control Committee prior to installation. If the Architectural Control Committee disapproves such structure, the party requesting approval may modify its plans to eliminate the Architectural Control Committee's objections and resubmit them for approval. If any such aerial, antenna, satellite dish or other device is installed without the approval of the Architectural Control

Committee, the Architectural Control Committee shall have the rights set forth in this Declaration. Notwithstanding the above, a customer-end antenna that is (i) designed to receive direct broadcast satellite service that is one (1) meter or less in diameter, (ii) designed to receive video programming services via multiple distribution services that is one (1) meter or less in diameter or diagonal measurement, or (iii) designed to receive television broadcast signals, all as defined by the Federal Communications Commission or the Telecommunications Act of 1996, as may be amended from time to time (collectively, "FCC Protected Structures"), shall be permitted so long as the means, method and location of such antennae comply with the rules adopted from time to time by the Architectural Control Committee. No antenna used to transmit signals to, and/or receive signals from, multiple customer locations will be permitted. No unreasonable delay or unreasonable increase in the cost or installation or maintenance of an FCC Protected Structure shall be imposed by such rules, nor shall the rules prevent reception or otherwise make reception impossible for any Owner who shall seek to install an FCC Protected Structure, other than for health and safety reasons.

Nothing contained in this Declaration shall prohibit the Declarant or the Association from installing a communication tower(s) within any Association Property.

Section 4.7 Rebuilding or Restoration. If any Dwelling Unit, Outbuilding or other Improvement is destroyed in whole or in part by fire, windstorm or from any other cause or act of God, it must be rebuilt or all debris must be removed and the Lot restored to a slightly condition. Such rebuilding or restoration must be commenced within three (3) months after the damage or destruction occurs and thereafter diligently pursued to completion within a reasonable time, not to exceed eighteen (18) months after the date the damage occurred or such longer period of time as may be approved by the Architectural Control Committee due to unusual circumstances. If restoration, rebuilding or removal is not completed within the above time periods or such later time approved by the Architectural Control Committee, or if the restoration, rebuilding or removal shall cease for a period of sixty (60) days without permission of the Architectural Control Committee, the Architectural Control Committee will give the Owner of the Lot involved written notice of such fact, and if the restoration, rebuilding or removal of the Improvements is not diligently commenced within thirty (30) days after such notice, the damaged or destroyed Improvements shall be deemed a nuisance. The Association shall have the right thereafter to enter upon the Lot involved and remove the damaged or destroyed Improvements at the expense of the Owner. Such an entry and removal shall not be deemed a trespass and the Owner shall be liable for all costs incurred in connection with the removal.

Section 4.8 Fences/Golf Course Fence. The only fences (including, without limitation, privacy fences, animal pens, corrals, dog runs and other enclosures) permitted within the Community Area shall be fences constructed by the Declarant or the Association, the Golf Course Fences (as defined below), or those which have been approved by the Architectural Control Committee and that are consistent with the Development Plan and the Community Standards. Each Owner acknowledges that different fencing provisions may apply to different categories of Lots. Each Owner is responsible for reviewing the Community Standards applicable to his Lot to determine the specific requirements applicable to his Lot.

The height, location, color, and material of all fences, animal enclosures, corrals, dog runs, and other similar items must be approved by the Declarant or the Architectural Control Committee. Chain link, new barbed wire or similar wire fencing shall not be allowed. Each Owner acknowledges that the Community Area is intended to have a general open feeling and, as such, total fencing of a Lot or of a front yard is not permitted unless specifically authorized by the Declarant and/or the Architectural Control Committee. The Architectural Control Committee may establish from time to time standards for fences within the Community Area, which shall be enforced pursuant to the terms of this Declaration and subject to the Development Plan. All fences within the Community Area will be subject to the provisions contained in Section 4.9 of this Declaration.

Each Lot Owner that has a side and/or rear Lot Line that abuts the Golf Course acknowledge that the owner of the Golf Course may, in its discretion and on its determined schedule, install on the Golf Course property a cross buck fence along the side and/or rear Lot lines that adjoin the Golf Course (the "Golf Course Fence"). If installed, the owner of the Golf Course will be responsible for maintaining the Gold Course Fence. A Lot Owner will have the right to install Association approved fencing that will abut to the Golf Course Fence as further provided in Section 4.9. Each Owner who's Lot abuts a portion of the Golf Course Fence grants the Golf Course Owner an easement for the installation, maintenance, repair and replacement of the Golf Course Fence as provided for in Section 4.9.

Section 4.9 Boundary Fence. Declarant reserves the right (but shall not have the obligation) for it to construct or install, in its sole discretion, a wall and/or fence together with related Landscaping and slope easements (the "Boundary Fence") located generally from Highway 83 to the Section 36 boundary line. Nothing contained herein will require Boundary Fence to be constructed by Declarant and/or the Association. **The Boundary Fence, if installed by Declarant or the Association, shall thereafter be maintained and kept in good condition and repair by the Association and will be Association Property.**

The height, design, color and/or other aspect of the Boundary Fence or any other fence in the Community Area, including without limitation the Golf Couse Fence and/or the SC Fence (defined collectively as the "Fences" and individually, the "Fence") may not be increased, altered or modified by any Lot Owner adjacent to such fencing. Except as otherwise approved in writing by the Architectural Control Committee, any fence proposed to be installed on a Lot that abuts an approved Fence shall be required to conform, in addition to the overall fencing requirements set forth in Section 4.8 and this Section 4.9, to the fencing standards that may be established from time to time by the Architectural Control Committee for such additional Fences. No additions or attachments shall be made to any Fence, other than connecting rear and side Lot fences into the Fence at a location and of a design approved by the Architectural Control Committee and any connecting rear or side fence attaching to any Boundary Fence, Golf Course Fence and/or SC Fence shall be maintained by the Owner of the Lot on which the rear or side fence has been installed. No sign of any type shall be displayed from the any Fence, other than promotive sales signs for initial Lot or home sales by Declarant or Persons authorized by the Declarant or the Architectural Control Committee, and not for Lot resale or home sale or by an unauthorized home builders. Each Owner on whose Lot a Fence is installed or whose Lot is adjacent to a Fence hereby respectively grants the Declarant, the Association and the Golf

Course owner, as the applicable party with authority to install and responsibility to maintain the applicable Fence, an easement to install, maintain, repair and replace the applicable Fence. Entry on an applicable Lot by the Declarant, the Association, or Golf Course Owner regarding the Golf Course Fence in order to construct, maintain, repair and/or replace an applicable Fence shall not be deemed a trespass. Except in a case of an emergency, prior notice will be given to the applicable Lot Owner before any such entry by the Declarant or Association. Neither the Association, the Declarant, nor the owner of the Golf Course shall be liable for any loss, costs or damages to any applicable Lot Owner within the Community Area on account of its performance of such construction, maintenance, repair and/or replace, except for any such loss, cost or damage caused by the applicable Person's gross negligence or willful misconduct. The Declarant and/or Association may from time to time record in the real property records of the County, a map or other documentation confirming the location of the Boundary Fence, Golf Course Fence and/or SC Fence within the Community Area.

Section 4.10 Stagecoach Road Fence. Declarant reserves the right (but shall not have the obligation) for it to construct or install, in its sole discretion, cross buck or other similar type fence along the main collector roads within the Community Area from Highway 83 to Black Forest Road, which roads are commonly referred to as Stagecoach Road (the "SC Fence"). Declarant reserved an easement to install the SC Fence within applicable Lot and any Association Property at such reasonable locations as Declarant determines in its reasonable discretion. Nothing contained herein will require the SC Fence to be constructed by Declarant and/or the Association. **The SC Fence, if installed by Declarant or the Association, shall thereafter be maintained and kept in good condition and repair by the Association.** The Fence restrictions set forth in Section 4.9 shall apply to the SC Fence. Each Owner on whose Lot the SC Fence is located hereby grants the Association an easement for the existence and maintenance of the SC Fence as further provided for in Section 4.9 and to undertake the actions provided for in this Declaration. In the event a Lot Owner is obstructed from accessing his Lot by a portion of the SC Fence, the Lot Owner shall be responsible for obtaining Architectural Control Committee approval of any proposed removal of any portion of the SC Fence pursuant to the terms of this Declaration and the Owner shall be responsible for both the approved removal and for ensuring the stabilization of the remaining portion of the SC Fence.

Section 4.11 Underground Utilities. All utilities that will be installed within the Community Area after the date of execution of this Declaration, including electrical, telephone, and cable television service, and excepting lighting standards and customary service devices for access, control or use of utilities, shall be installed underground. The Declarant may grant approval for temporary aboveground utility lines as needed during construction.

Section 4.12 Garage and Driveway. The Dwelling Unit on each Lot shall include a **minimum of a two-car**, attached, fully enclosed garage or such equivalent garage arrangements as may be approved by the Architectural Control Committee. All driveways shall be improved with **concrete, asphalt or other hard surface materials specifically approved by the Declarant or Architectural Control Committee** unless otherwise approved by the Architectural Control Committee. Unless specifically approved by the Architectural Control Committee, no Lot shall contain more than one (1) driveway which directly accesses the garage from a public right of way or flag lot or flag lot stem. No additions, alterations, or modifications

(other than repairs or equivalent replacements) shall be permitted to be made to the garage or driveway following initial construction without Architectural Control Committee approval. Subject to Architectural Control Committee approval, trails to barns and Outbuildings will not be required to be improved with concrete, asphalt or other hard surface as required for driveways.

Section 4.13 Access Restriction. All Persons or entities having any interest in any of the Lots are required to and shall each arrange and maintain any drives, dwellings, or other Improvements so that ingress and egress to and from their respective Lots is exclusively from a publicly dedicated street and not through other private property or adjoining public lands, other than platted flag easements.

Section 4.14 Compliance with Building Codes. All construction must conform to the Regional building codes, zoning codes and subdivision regulations, the Plat, and the Development Plan which regulations and restrictions may vary from the provisions of this Declaration; provided, however, if this Declaration is more restrictive than such governmental codes and regulations, then the more restrictive provisions of this Declaration shall control.

Section 4.15 General Architectural Standards. Declarant shall have the right and authority to establish and amend specific architectural standards from time to time as provided in Section 6.2 hereof.

Section 4.16 County Tree Requirements. Each Owner is responsible for complying with County requirements, if any, regarding the required plating of trees along roadways adjacent to the Owner's Lot or in the front yard of the Lot as set forth in the Development Plan and/or the final Plat to the extent applicable to the Owner's Lot.

## **ARTICLE 5 LIVING ENVIRONMENT STANDARDS**

Section 5.1 Building and Grounds Maintenance. Each Owner shall maintain the exterior of the Dwelling Unit, Outbuildings and all other Improvements on his Lot in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Each Owner shall keep the vegetation, including turf, within his Lot trimmed and mowed and all Landscaping properly maintained. Each Owner hereby acknowledges that the requirement in this Declaration to maintain each Lot or any Improvement in "good condition" and "properly maintained" shall be based upon a standard of care which is appropriate for single family residential areas in the County that are of a comparable quality and nature and in accordance with the Development Plan, Plat and other Community Standard as determined by the Declarant or the Architectural Control Committee. If the Owner fails to properly perform such maintenance, Declarant or the Architectural Control Committee may, after giving thirty (30) days' written notice and at the Owners' expense, effect such repairs and maintenance as it deems necessary in its judgment to maintain the standards of the Community Area and assess the owner for the cost of such repairs and maintenance as a Site Assessment. Entry to effect such repairs and maintenance shall not be deemed a trespass, and the Owner shall be liable for all costs incurred in connection with the repairs and maintenance.

Section 5.2 Garage Doors. Garage doors shall be kept closed except when being used to permit ingress and egress to or from the garage.

Section 5.3 Outside Storage. When not in use, all equipment for the maintenance of a Lot or Dwelling Unit shall be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets unless otherwise approved by Declarant or the Architectural Control Committee based upon its determination that the storage is reasonable. Any historical farm implements desired to be displayed on the Lot will be evaluated as Landscaping and shall require the approval provided for in this Declaration and will not be prohibited by this Section.

Section 5.4 Clotheslines. No outdoor clothes poles, clotheslines or other facilities for drying or airing clothing or household goods shall be placed on any Lot, and no laundry or wash shall be dried or hung outside any Dwelling Unit or other Improvement.

Section 5.5 Swing Sets and Play Areas. No swing sets, jungle gyms, slides or other similar Improvements shall be installed on a Lot unless substantially screened in a manner permitted by the Community Standards or approved by the Architectural Control Committee prior to construction or installation of such Improvements.

Section 5.6 Refuse. No unsightly objects or materials, including but not limited to ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during refuse collections. After a period of two (2) weeks of continued violation of this Section 5.6, the Association or Declarant shall have the right to enter upon the Lot involved and remove such unsightly objects or materials at the expense of the Owner. Such an entry shall not be deemed a trespass, and the Owner shall be liable for all costs incurred relative thereto.

Section 5.7 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on within any Lot or in any Dwelling Unit or Outbuilding. Expressly excluding the activities described in Articles 3 and 10 of this Declaration, no annoying lights, sounds or odors shall be permitted to emanate from any Lot or Dwelling Unit.

Section 5.8 Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for security purposes, shall be located, used or placed on any Improvement or within any Lot. With the prior approval of the Architectural Control Committee, an Owner may install exterior stereo speakers, provided that the sound levels from such speakers are not objectionable to neighbors.

Section 5.9 Revegetation/Landscaping. Within six (6) months after completion of a Dwelling Unit or within any extension of that period granted by the Architectural Control Committee following an Owner's written request, all native areas that are disturbed by construction or heavy activities will be required to be Revegetated and/or Landscaped and

thereafter maintained and kept in a manner that is required by the Community Standards. Each Lot Owner is responsible for maintaining the Revegetation mechanisms in place for six (6) months following installation. All Landscaping must comply with the Water Restrictions applicable to the Lot. Each Owner hereby acknowledges that all connections for water within a Lot shall be required to be located after the water meter to ensure complete and accurate measuring of water usage. Such connections include, without limitation, all connections for exterior water hoses, sprinklers and other outside water use. The Association shall have the authority to require each Owner to locate such connection on his landscape plan and shall have the right to enter each Lot from time to time to inspect such connections.

In addition, but subject to each Lot's overall water use limitation, Landscaping on any Lot may not contain more than 5,000 square feet which will be irrigated by the Lot's domestic well. Irrigated surfaces shall include, without limitation, all gardens, flower beds, vegetated walkways, lawns and water landscape features of every kind. Each Owner hereby acknowledges that all connections for water within a Lot shall be required to be located after the water meter to ensure complete and accurate measuring of water usage. Such connections include, without limitation, all connections for exterior water hoses, sprinklers and other outside water use. The Association shall have the authority to require each Owner to locate such connection on his Landscape plan and shall have the right to enter each Lot from time to time to inspect such connections. The Developer will request the State Engineer to include this 5,000 square foot watering limitation on all well permits issued for Lots within the Community Area.

Section 5.10 Weeds, Noxious Weeds and Insects. Each Owner acknowledges that the natural surroundings of the Community Area make the Lots susceptible to weeds, insects and growths, including without limitation, mistletoe and beetles. Each Owner shall maintain his Lot in a reasonable manner to control weeds generally and to control the amount and type of noxious weeds, plant diseases and insects that, in the reasonable opinion of the Association or Declarant, constitute a nuisance. If any Lot is reasonably determined by the Association or Declarant to contain an excessive amount and/or concentration of weeds, noxious weeds, plant diseases and/or insects, the Association shall notify the Owner and the Owner shall be responsible for taking appropriate action to reduce the offending item.

Section 5.11 Mowing and Pruning Ground Cover. For drainage and appearance purposes, each Owner shall be responsible for maintaining the historical level of ground cover /grasses that existed on the Lot prior to commencement of construction on the Lot as determined by the Declarant or the Association. No Owner shall allow use of his Lot by any Person, domestic animal and/or domestic stock animal in a manner that impairs the historical level of ground cover or grasses on a Lot or that constitutes overuse, or overgrazing. In addition, in order to effect insect, weed and fire control and to prevent and remove nuisances, each Owner shall mow, cut, prune, clear and remove from his Lot unsightly brush, weeds and other unsightly growth and shall remove trash which may collect or accumulate on the Lot. All tree removal shall require the prior approval of the Architectural Control Committee and any committee established pursuant to the Association adopted forest and/or fire management program as provided in Section 3.11 of this Declaration.

Section 5.12 Grading Patterns. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture. Surface waters should not be concentrated and directed differently than the historic direction of flow. Special attention should be paid to the revegetation of approved grades, cuts and fills to eliminate erosion. Each Owner acknowledges that he is responsible for accepting and passing on clean surface water at a historical drainage flow level.

Section 5.13 Transmitters. No electronic or radio transmitter of any kind, other than garage door openers, electronic devices and transmitters permitted by Title 47, Part 15 of the United States Code and remote control devices for televisions, stereos, video cassette recorders and similar equipment shall be operated in or on any Improvement or Lot.

Section 5.14 Animals.

(a) Domestic Animals. Owners acknowledge that different rules and regulations may apply to different categories of Lots. As such, unless and until a specific category of Lots are expressly authorized to maintain domestic stock and adequate water is determined to be available, no animals, except domesticated birds or fish and other small domestic animals permanently confined indoors and those permitted pursuant to this Section 5.14, shall be permitted within any Lot. Domesticated dogs and domesticated cats may be kept or maintained in or on any Lot within the Community Area only if kept as pets and the total number of domestic pets may not exceed four (4) domestic animals. No animals shall be kept, bred, kenneled for a third party or maintained within the Community Area for any commercial purpose. In addition, no llamas, alpacas, or roosters will be permitted to be maintained within the Community Area. No dogs or other pets shall be chained or enclosed on a Lot outside of the Dwelling Unit for any extended period of time, except by means of underground electronic fences or other invisible barriers or fences. Dog runs and other similar enclosures are generally discouraged; an Owner must obtain prior Architectural Control Committee approval therefor, which approval will be based on the size, location, specifications, and materials used for any enclosure (as may be set forth in the Community Standards). Chickens may be kept or maintained in or on any Lot within the Community Area (in addition to domestic pets), provided that the total number of which may not exceed ten (10) chickens. A chicken coop and other animal enclosure constitute an Improvement and, therefore, each requires the approval of the Architectural Control Committee in the manner set forth in this Declaration. Roosters are expressly prohibited. Notwithstanding the above, no animal of any kind shall be permitted which in the opinion of the Association makes an unreasonable amount of noise or odor or is a nuisance.

(b) Domestic Stock Animals. The Declarant shall have the right to permit, in addition to the permitted domestic animals, up to three (3) mature domestic stock animals, such as horses, within one (1) or more category of Lots to be specified in the Community Standards. Any such authorization will be subject to Community Standards applicable to the Lots in question.

Section 5.15 Parking of Vehicles. Following construction of a Dwelling Unit, no boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor homes any towed trailer unit or truck shall be parked overnight on any street or within any Lot except in a completely enclosed building such as a garage, unless screened in a manner approved by the Architectural Control Committee or authorized by the Community Guidelines for limited purposes. Owners will be allowed to park a recreational vehicle within a Lot for up to 24 hours for loading and unloading purposes. Pickup trucks having a 3/4 ton or less manufacturer's rated capacity, with or without bed toppers, and passenger vans for the private use of the residents of a Dwelling Unit as primary transportation on a day-to-day basis, shall not be considered trucks for purposes of the foregoing restrictions.

Section 5.16 Inoperative Vehicles. No unused, stripped down, partially wrecked or inoperative motor vehicle or part thereof shall be permitted to be parked on any street or on any Lot in such a manner unless otherwise specifically approved by the Architectural Control Committee. An unused vehicle shall be any vehicle which is not properly licensed or as determined by the Association and that has not been approved as Landscaping. Nothing contained in this Section shall permit or be deemed to permit any Owner to maintain more than one (1) inoperative motor vehicle or part thereof, even if screened, within his Lot.

Section 5.17 Vehicle Repairs. No maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed Improvement which screens the sight and sound of the activity from adjoining streets and from neighboring property. Minor repairs, including checking and adding automobile fluids, changing a flat tire, jump starting a vehicle, changing a windshield wiper and changing a headlight, are permitted if done with minimal interference with other residents and in a timely manner. Debris from repairs must be immediately picked up and properly disposed.

Section 5.18 Signs. Subject to the signage rights created by applicable law, the only signs permitted on any Lot or Improvement shall be those permitted by the Community Standards. Except for permitted signs, there shall not be used or displayed on any Lot or Improvement any signs or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental, except by the Declarant or with the prior written permission of the Declarant. All permitted signs must be professionally painted, lettered and constructed. If a permitted sign is not in compliance with the provisions of this Section 5.18, the Association may, upon notice, require it to be modified or removed.

Section 5.19 Outdoor Burning. There shall be no outdoor fires on any Lot or any of the Association Properties, except fires in barbecue, braziers and outside fireplaces contained within facilities or receptacles intended for such purpose. In no event shall any such facility or receptacle be used for burning of trash. Any such facilities or receptacles shall be subject to the Rules and Regulations, which may include limitations on the time and manner in which fires will be permitted and may permit the Association to impose total outside fire bans when deemed appropriate by the Association. No Owner shall permit any condition on such Owner's Lot which creates a fire hazard or is in violation of fire prevention regulations adopted by the County or any governmental authority having jurisdiction and control over outside burning. If any ban on outdoor fires is at any time imposed by the County or a governmental authority having

jurisdiction and control over outside burning, such ban shall be observed within the Community Area.

Section 5.20 Soils/Drainage. The soils within the state of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of the Dwelling Units or other Improvement and the Lot containing it if 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, and the addition of moisture to low-density soils causes a realignment of soiled grains, thereby resulting in consolidation and/or collapse of the soils.

An Owner shall not permit the moisture content of the soil supporting the foundation and supporting the concrete slabs forming a part of the Dwelling Unit to increase to an extent that would adversely affect the foundation and concrete slabs, and shall not introduce excessive water into the soil surrounding the Dwelling Unit. An Owner shall maintain the grading and drainage patterns of the Lot in accordance with the terms of Section 5.12 of this Declaration.

An Owner shall not impede or hinder in any way the water flowing on his Lot from reaching the historical drainage courses for the Lot.

By virtue of the review and submittals described in this Declaration, neither the Declarant nor the Association is in any manner certifying, guaranteeing or otherwise making any representations or warranties with respect to the adequacy, sufficiency or appropriateness of any grading plan applicable to the Lot. Each Owner of a Lot acknowledges and agrees that neither the Declarant nor the Association shall have any responsibility or liability whatsoever with respect to such issues and each Owner shall be fully and solely responsible for the same.

**The Owner of each Lot hereby acknowledges that it is solely responsible for any damage which results, directly or indirectly, from a change in the grading pattern of the Lot in violation of the provisions of this Section 5.20 or Section 5.12 of this Declaration.**

**Regarding water run-off from a Lot, each Owner also acknowledges that he is required to (i) accept clean surface water from Lots and other properties located above the Owner's lot and (ii) deliver clean surface water to Lots and other properties located below the Owner's Lot. Each Owner is responsible for any silt or dirt that flows from the Owner's Lot.**

Section 5.21 Hazardous Materials. No materials shall be transported to, from or within the Community Area in such a way as to create a nuisance or hazard. Storage, use or disposal of asbestos or hazardous or radioactive material, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), within the Community Area is prohibited. Any continued or intensive use of pesticides or herbicides is deemed to be a use of hazardous materials.

Section 5.22 Solar Devices, Air Conditioning Units, Etc. All solar devices, exterior air conditioning units and systems, swamp coolers and other similar devices must either be

architecturally and aesthetically integrated into the building they serve or be screened from the view of adjacent Lots and streets in a manner satisfactory to the Architectural Control Committee and approved in the manner required by the Community Standards.

Section 5.23 Intentionally Reserved.

Section 5.24 Outside Lighting. The Architectural Control Committee may establish various standards for exterior lighting, including, without limitation, standards for hue and intensity. All exterior floodlights and spotlights installed or maintained on any Dwelling Unit or other Improvement must be approved by the Architectural Control Committee prior to installation and shall comply with the Community Standards and the restrictions described in Section 3.10 of this Declaration.

Section 5.25 Mandatory Trash Collection. In an effort to avoid multiple trash collections within the Community Area, the Association may (but is not required to) select, from time to time, one (1) residential trash collection service provider and residential trash collection plan for all completed Dwelling Units within the Community Area, which service provider will collect trash on a specified date for the entire Community Area. The Owners of Lots upon which a Dwelling Unit has been completed and occupied will then be obligated to pay the applicable charge for trash services, regardless of whether or not the Association has commenced Common Assessments for the Community Area.

Section 5.26 Leasing Restrictions. Subject to applicable County regulations and requirements, any Owner shall have the right to lease or allow occupancy of his Lot upon such terms and conditions as the Owner may deem advisable, subject to each of the following: (i) the restrictions of this Declaration; (ii) the restrictions of record; and (iii) the following items:

(a) “Leasing” or “Renting” for the purposes of this Declaration is defined as regular, exclusive occupancy of a Lot by any Person other than the Owner; provided, however, for the purposes of this Declaration, Persons who reside with the Owner, a guest or invitee of an Owner or a roommate of the Owner, where the Owner occupies the Lot as the Owner’s primary Residence, are not considered tenants and their occupancy does not constitute leasing. For purposes of this Declaration, for Lots with Outbuildings, occupation by extended family shall not be considered leasing.

(b) Short term occupancies and rentals of less than six (6) months of Lots, including but not limited to transient, hotel, bed-and-breakfast or vacation-type rentals, are prohibited without prior specific written permission from the Association. Upon the expiration of any lease of at least nine (9) months, the Owner may thereafter extend that lease on a month-to-month basis. All leases shall be for the entire Lot without the subdivision of dwelling units for leasing purposes. Subleasing, meaning the leasing or rental of a leased Lot from the tenant under the lease to another Person is prohibited.

(c) All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Association Documents. Owners

are required to provide tenants with copies of the current Declaration. Articles of Incorporation, Bylaws, Community Standards and any rules, regulations and policies of the Association.

(d) Each Owner who leases his or her Lot shall provide the Association, upon request, with a copy of the current lease and tenant information, including the names of all occupants, vehicle descriptions, including license plate numbers, number and type of pets, and any other information reasonably requested by the Association or its agents.

(e) Intentionally Reserved.

(f) All occupancies, leases and rental agreements of Lots shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Association Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the landlord or the Association, or by both of them.

(g) All occupancies or rentals of Lots shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of this Declaration or any other of the Association Documents.

(h) If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within thirty (30) days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association brings an eviction action against the lessee as attorney-in-fact for the Owner, the prevailing party shall be awarded the costs incurred, including but not limited to, reasonable attorney fees and court costs. The Association shall be entitled to assess the Owner personally with any attorneys' fees, cost and expenses incurred and/or awarded, which fees, costs and expenses shall also be a lien against the Lot.

(i) All leases shall be for or of the entire Lot.

(j) All Owners who reside at a place other than the Lot shall provide to the Association an address and phone number(s) where the Owner can be reached in case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(k) The Association shall have the authority to adopt Rules and Regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

Section 5.27 Prohibition of Marijuana and Illicit Drug Distribution and Growing. Except for the growth of marijuana for personal use as permitted by Colorado law, no Owner or occupant of a Lot may utilize such Lot, or any Improvement located thereon, for the purpose of

growing or distributing marijuana, medical marijuana, hash oil, or any illicit drugs. This prohibition may further be clarified by the Board of Directors through Rules and Regulations. Owners will be responsible for any damage resulting from a violation of this restriction. Further, no Owner or occupant of a Lot may engage in any activity or practice which, in the sole discretion of the Board, is considered a threat to the health and/or safety of other Owners and residents within the Community Area, including but not limited to, boarding, creating conditions conducive to indoor fires, allowing Lots to fall into a state of disrepair to the point that rodents or other pests enter, or any other conditions which could cause damage or harm to other Lots in the Community Area.

## **ARTICLE 6 ARCHITECTURAL CONTROL**

Section 6.1 Architectural Control Committee. Until Declarant has sold all of the Lots in the Community Area, or until such earlier time as Declarant elects to assign the right to appoint the Architectural Control Committee, the Architectural Control Committee for the Community Area shall consist of one (1) to three (3) members appointed by Declarant from time to time. After the right to appoint the Architectural Control Committee for the Community Area has been transferred to the Board of Directors of the Association, the Architectural Control Committee for the Community Area shall consist of at least three (3) and not more than five (5) individuals, all of whom shall be appointed by the Board of the Association. All references in this Declaration to the Architectural Control Committee shall be deemed to refer to the Architectural Control Committee, whether such committee is appointed by the Declarant or the Board. The members of the Architectural Control Committee need not be Members of the Association. The Architectural Control Committee shall exercise the functions assigned to it by this Declaration and the Community Standards, including reviewing and approving all plans for Improvements as provided in this Declaration.

Section 6.2 Community Standards. The Architectural Control Committee may, at any time and from time to time, enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce, a design guide for the Community Area, or other design or architectural guidelines, to interpret and/or implement any provisions of this Declaration to be included as part of the Community Standards. The Community Standards may (without limitation): (i) contain guidelines to clarify the types of designs and materials that may be considered in design approval; (ii) state requirements for submission in order to obtain review by the Architectural Control Committee; (iii) state procedural requirements; and/or (iv) specify acceptable Improvements that may be installed without the prior approval of the Architectural Control Committee. Any Community Standards so adopted by the Architectural Control Committee shall be consistent, and not in conflict with, this Article 6 or this Declaration. If adopted, copies of the Community Standards will be available from the Association or the Architectural Control Committee.

Section 6.3 Approval Required. No Improvement shall be placed, erected, installed or permitted to occur or exist on any Lot, nor shall the exterior of any existing Improvements be altered, nor shall any construction be commenced on any Improvements, unless and until the plans and specifications for such Improvements shall have been submitted to and approved in

writing by the Architectural Control Committee or unless otherwise permitted by the Community Standards. Matters which require the approval of the Architectural Control Committee include but are not limited to:

- (a) The construction, installation, erection or expansion of any building, structure, or other Improvements, including the exterior appearance, finish material, color or texture thereof;
- (b) The installation, addition or modification of Landscaping;
- (c) The demolition or destruction, by voluntary action, of any building, structure or other Improvements;
- (d) The grading, excavation, filling or similar disturbance to the surface of the land;
- (e) For any Outbuilding, evidence of compliance with the applicable County requirements and this Declaration and all other applicable Community Standards; and
- (f) Any change or alteration of any previously approved Improvements, including any change of exterior appearance, finish material, color or texture.

Section 6.4 Plans Submissions. All plans, samples and other materials to be submitted to the Architectural Control Committee shall be submitted in duplicate, together with the fee described in Section 6.5 hereof. The minimum scale of such plans shall be 1/20<sup>th</sup> inch equals one (1) foot. The plot plan shall show in scale the location of all buildings, drives, walks, fences and any other Improvements. Plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. Landscaping plans shall show the location of all Landscaping elements, including grass, ground cover, shrubs, trees and other Landscape materials for all the area of the Lot not covered by Improvements. The size and type of all new plant materials shall be indicated. The Declarant shall have no obligation to retain any submitted plans following action by the Architectural Control Committee.

In discharging its rights and obligations hereunder, the Architectural Control Committee makes no representations or warranties to the Owner or any other Person or entity concerning the construction of the Improvements on the Lot, and the Architectural Control Committee shall have no liability or responsibility for defective construction or other similar matters. Each Owner of a Lot acknowledges and agrees that the Declarant, in discharging its rights and obligations hereunder, is not making any warranty or representation, expressed or implied, that any Improvement to be constructed by an Owner upon a Lot is suitable for that Lot. **Each Owner further acknowledges that each Owner, and such Owner's representatives or contractors, are ultimately and fully responsible for any construction techniques, measures and means utilized in the construction of an Improvement upon a Lot.**

Section 6.5 Approval Process. All action required or permitted to be taken by the Architectural Control Committee shall be in writing, and any such written statement shall establish the action of the Architectural Control Committee and may protect any person relying on the statement. The procedure for submitting requests and obtaining approvals shall be as established from time to time by the Architectural Control Committee. **The Architectural Control Committee may charge reasonable fees to cover expenses incurred in review of all plans (including without limitation Landscaping plans), samples and materials submitted pursuant to this Declaration, not including reimbursement or compensation to the members of the Architectural Control Committee for their services.** The Architectural Control Committee reserves the right to collect (and hold in escrow) such review fees from each Lot purchaser at the time of the first closing of the Lot following completion of a Dwelling Unit on the Lot. The Architectural Control Committee shall be entitled to retain one (1) copy of all approved plans as part of its files and records. Approvals of all plans and specifications for an Improvement will automatically expire within one (1) year after approval if construction is not commenced within one (1) year after approval, and if approval so expires, the applicant must resubmit a request for approval of the Improvement.

Section 6.6 Approval Standards. All Improvements to be constructed or installed within the Community Area must comply with the Community Standards and this Declaration. In granting or withholding approval of matters submitted to it, the Architectural Control Committee shall consider the specific standards and specifications set forth in this Declaration. The Architectural Control Committee shall have the right to disapprove any plans, specifications or details submitted to it if it determines, in its sole discretion, that (i) the proposed Improvement is not consistent with any provision of this Declaration; (ii) the plans and specifications as submitted are incomplete; or (iii) the plans, specifications or details, or any part thereof, are contrary to the interest, welfare or rights of all or any part of the Community Area, the Association or the Owners. If the Architectural Control Committee believes there may be questions of structural integrity, it may, as part of the approval requirements, require the Owner to obtain certification of the final plans and specifications by a professional architect or engineer licensed in Colorado. The decisions of the Architectural Control Committee shall be final and binding.

Section 6.7 No Liability. Neither Declarant, the Board nor the Architectural Control Committee or any member thereof shall be liable in damages or otherwise to anyone submitting plans to them for approval or requesting a variance, or to any Owner by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve the plans, specification or variance. Approval by the Architectural Control Committee shall not mean that plans and specifications are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, and it shall be the responsibility of the Owner or other Person submitting plans to the Architectural Control Committee to comply with all codes, ordinances and regulations.

Section 6.8 Variances. The Architectural Control Committee shall have the authority to grant for a Lot a variance from the terms of this Declaration or the Community Standards, if any, subject to terms and conditions which may be fixed by the Architectural Control Committee and that will not undermine the general intent of the Community Standards and/or interests of the

Owners or shall not be materially detrimental or injurious to other residents, property and/or Improvements in the Community Area and where, in the sole discretion of the Declarant or the Association, warrant a waiver of the literal enforcement of this Declaration or the Community Standards to avoid unnecessary hardship or where circumstances such as aesthetes or environmental conditions require. **The Architectural Control Committee may charge reasonable fees to cover expenses incurred in review of all variances submitted pursuant to this Declaration, not including reimbursement or compensation to the members of the Architectural Control Committee for their services.**

Following an application for a variance:

(a) The Architectural Control Committee shall, within thirty (30) days after the request for the variance was delivered, determine whether to grant or deny the variance. If the Architectural Control Committee fails to act on the request for the variance within this thirty (30) days period, the variance shall be deemed not to be granted as of the expiration of such thirty (30) days period.

(b) A variance granted hereunder shall run with the Lot for which it is granted.

(c) A variance shall not be granted unless the Architectural Control Committee first finds that all of the following conditions exist: (i) the variance will not authorize a use not otherwise permitted by this Declaration; (ii) the variance will not substantially or permanently injure the use of other property in the Community Area; (iii) the variance will not alter the essential character of the Community Area; (iv) the variance will not weaken the general purposes of this Declaration; (v) the variance will be in harmony with the spirit and purpose of this Declaration; and (vi) the circumstances leading the applicant to seek a variance are not applicable generally to Lots in the Community Area or their Owners.

(d) If a variance is denied, another application for substantially the same variance for the Lot involved may not be made for a period of at least one (1) year from the date of submittal of the original request.

## **ARTICLE 7 ASSOCIATION OPERATION**

Section 7.1 Association Structure. The Association has been formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in the Association Documents. As more specifically set forth hereinafter, the Association shall have a Board to manage its affairs. The Board shall be elected by its Members; provided, however, that the Declarant shall have the sole right to appoint a majority of the members of the Board for the period of time provided in Section 7.5.

Section 7.2 Board of Directors. The affairs of the Association shall be managed by a Board. The Board shall consist of a **minimum of three (3) members** during the Period of Declarant Control stated in Section 7.5 and thereafter shall consist of at least **three (3) but not**

**more than five (5) members**, as determined by the Board. All members of the Board shall be representatives of Declarant or Members of the Association. The terms and qualification of the members of the Board shall be fixed in the Articles of Incorporation and Bylaws. The Board may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for the management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board or any duly authorized committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Declaration or by Colorado law. All lawful decisions, agreements and undertakings by the Board, or its authorized representatives, shall be binding upon all Members, Owners, Related Users and other Persons.

Section 7.3 Membership in Community Association. Each Owner shall be a Member of the Association. An Owner shall automatically be the holder of the membership appurtenant to such Owner's Lot, and the membership shall automatically pass with fee simple title to the Lot. Declarant shall hold one membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except an Owner may assign some or all of the Owner's rights as an Owner and as Member of the Association to a contract purchaser, tenant or First Mortgagee, and may arrange for such Person to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of the Owner under the Association Documents. The rights acquired by any such contract purchaser, tenant or First Mortgagee shall be extinguished automatically upon termination of the sales contract, tenancy, or First Mortgage. The assignment of rights by an Owner pursuant to this section shall not be subject to any present or future statutory time limit for the duration of duly notarized proxy rights, but shall be in writing, and delivered to the Association before such Person shall be entitled to exercise any membership rights or privileges. All rights, title and privileges of membership shall be subject to the Association Documents.

Section 7.4 Voting Rights of Members. Subject to the provisions of Section 7.5 which shall control, Members shall have the right to cast votes for the election of Board and on such other matters to be voted on by the Members as provided in the Association Documents. One (1) vote is allocated to each Lot, and Members shall have one (1) vote for each Lot owned. The one (1) vote for each Lot may not be split if there is more than one (1) Owner of the Lot. If more than one (1) of the multiple owners are present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority agreement of the present owners. There is a majority agreement if any one (1) of the multiple owners casts the vote allocated to that Lot without protest being made promptly to the Person presiding over the meeting by any of the other owners of the Lot. If the owners are not in majority agreement, then the Owners shall be deemed to have abstained. Voting rights and procedures may be further defined in the Articles of Incorporation and Bylaws.

Section 7.5 Declarant's Reserved Right to Appoint. Subject to CCIOA requirements, Declarant hereby reserves the right to appoint the Board, to control the Association and to appoint and remove the officers and members of the Board at all times subsequent to the date of

recordation of this Declaration and continuing for a period of twenty (20) years following the date on which this Declaration is recorded (the “Period of Declarant Control”). Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. It is hereby expressly acknowledged that any action by Declarant to surrender its authority over the Association or its Board will in no way limit Declarant’s rights and authority with respect to architectural control matters as provided in this Declaration, unless such rights are expressly terminated or waived by Declarant. Within sixty (60) days after the Owners, other than Declarant, elect a majority of the members of the Board, the Declarant shall deliver to the Association the following: (i) copies of all of the Association Documents, as may be amended, and the Association's minute books and other books and records; (ii) an accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the Period of Declarant Control ends; (iii) the Association funds or control thereof; (iv) all tangible personal property that has been used exclusively in the operation of the Association Properties; (v) a copy of any plans and specifications used by Declarant in the construction of any improvements on the Association Properties; (vi) all insurance policies then in force, in which the Association or the Board or its officers are named as insured Persons; (vii) a roster of Owners and mortgagees and their addresses, if known; and (viii) any employment contracts and service contracts in which the Association is a contracting party.

## **ARTICLE 8 DUTIES AND POWERS OF ASSOCIATION**

Section 8.1 General Duties and Powers of Association. The Association has been formed to further the common interests of the Members and to maintain the Association Property. The Association, acting through the Board or representatives to whom the Board has delegated such powers, shall have the duties and powers given non-profit corporations, including without limitation those hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve and enhance Association Properties, to improve and enhance the attractiveness, desirability and safety of the Community Area, and to use Association funds to enforce this Declaration. The Association shall have and may exercise all powers authorized under the Association Documents, and shall also have the power and authority to acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, subject to approval by Owners entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to units not owned by Declarant, and to impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments. Except as expressly otherwise provided in the Association Documents or by Colorado law, the Association shall act through the Board, without the vote or meeting of the Members, and the Board may exercise all rights, powers and interests of the Association, as described in this Article or elsewhere in the Association Documents.

Section 8.2 Duty to Accept Property and Facilities Transferred by Declarant. **The Association shall accept title to any property, including without limitation any Improvements thereon, any easement or other right, and personal property transferred to the Association by Declarant or by any third party with Declarant's permission, and equipment related thereto, together with the responsibility to perform any and all Association functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration.** Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and contractual rights or licenses to use property. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association free and clear of all liens (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration. No representation, express or implied, is made that the Declarant will or will not transfer property to the Association, except as specifically provided in Section 9.2.

Section 8.3 Duty to Manage and Care for Property.

(a) To the extent owned by the Association, the Association shall, manage, operate, care for, maintain and repair all Association Properties and keep the same in an attractive and desirable condition for the use and enjoyment of the Members; provided, however, maintenance responsibilities for any Association Properties shall not commence until Common Assessments commence. In addition, the Association may manage, operate, care for, maintain and repair property other than Association Properties, if some or all of the Members will benefit thereby or if such Association action is required pursuant to the Plats or the Development Plan. It is the intent that under this Declaration that the properties, Improvements and facilities the Association will be required to maintain will include:

- (i) The Association Properties described in Section 1.6(e);
- (ii) The Boundary Fence owned or to be maintained by the Association;
- (iii) Entry Monument and related landscaping;
- (iv) Association Equestrian Trail, if annexed into this Declaration in Declarant's sole discretion;
- (v) The Parks, if annexed into this Declaration in Declarant's sole discretion;
- (vi) Community mailbox structures;
- (vii) All wells, well sites, well transmission lines and other well Improvements that are within Association Property and are dedicated to serving Association Property; and

(viii) All other Improvements and areas required to be maintained by the Association by this Declaration, the Declarant, the Plats, or the Development Plan. The specific enumeration of the foregoing items shall not be a limitation on the power and authority of the Association to maintain other items not specifically listed where such repair and maintenance of other items would be in the common interests of the Association and the Owners.

**(b) The Association is hereby authorized and shall have the obligation to operate, administer and account for the Water Rights owned or contractually obtained by the Association and used within the Community Area, including all requirements set forth in the augmentation plan approved in Case No. 16CW3190, Water Division No. 1, State of Colorado. Such administration shall include, without limitation, obtaining water meter readings from each Lot, three (3) times per year, on October 31, on December 1 and February 28 or 29, as applicable, assimilating the data required by the Division Engineer or the State Engineer on required forms and timely providing the required information to the Division Engineer or the State Engineer to assure the compliance with the terms and conditions of the augmentation decree.**

(c) In addition, the Association shall have the obligations to monitor, report, and enforce water restrictions as described in Article 18 of this Declaration. The specific enumeration of items in this Section 8.3 shall not be a limitation on the power and authority of the Association to maintain other items not specifically listed where such repair and maintenance of other items would be in the common interests of the Association and the Owners.

(d) The Association is hereby granted the authority to create rules and regulation to help insure the compliance with all Water Rights and related limitations for the entire Community Area and to enforce such limitations and rules and regulations by any and all methods provided for in Section 8.10 of this Agreement. The Association is also hereby granted an easement to access any and all Lots within the Community Area for purposes of conducting inspections of water systems, meters, meter readings and enforcing compliance with all Water Rights and related limitations, restriction and rules and regulations.

Section 8.4 Duty to Pay Taxes. The Association shall pay all taxes and assessments levied upon the Association Properties owned by the Association and all other taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments provided that the Association shall contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment, and provided that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful. The Association may maintain reserves for any taxes, interest and penalties which could be incurred as a result of an adverse ruling on any position taken by the Association.

Section 8.5 Duty to Maintain Insurance. The Association shall obtain and keep in full force and effect at all times insurance coverage in accordance with this Declaration and as required by Colorado law.

Section 8.6 Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

Section 8.7 Power to Provide Security. The Association shall have the right, but not the obligation, to provide for the security of the Owners by hiring a security patrol and performing any other functions relating to safety and security authorized by the Board or the Members.

Section 8.8 Power to Acquire and Maintain Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The Association may construct or reconstruct Improvements on property and may demolish existing Improvements. The Association shall have the power to maintain public or private rights of way and to perform maintenance on any portion of the Community Area, whether or not owned by the Association.

Section 8.9 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce such Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and matters related thereto, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community Area, including Lots. Any such Rules and Regulations shall be reasonable and uniformly applied as determined by the Board in its sole discretion. Rules and Regulations shall be effective upon adoption by resolution of the Board. Written notice of the adoption, amendment or repeal of any Rule or Regulation shall be provided to all Members by the Association, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the copying cost. Each Owner, Related User, Member and other Person shall comply with such Rules and Regulations, and each Owner shall be responsible for ensuring that the Related Users of such Owner comply with the Rules and Regulations. Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 8.10 Power to Enforce Declaration and Rules and Regulations. The Architectural Control Committee, the Association or Declarant, including an assignee or delegate thereof, may give notice to the Owner of the Lot where a violation of this Declaration occurs or which is occupied by the Persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intent of the Architectural Control Committee, the Association or Declarant to invoke this Section unless within a period stated in the notice (which notice shall not be less than ten (10) calendar days unless a shorter period of time is otherwise provided for in this Declaration), the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the Architectural Control Committee or Declarant (whichever gives the notice) may, but shall not be obligated to, cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry upon such Owner's Lot as necessary for such purpose shall not be deemed a trespass. Each Owner of a Lot hereby grants a license to the Declarant, the Association and the Architectural

Control Committee for the purpose of entering onto a Lot to remedy violations or breaches of this Declaration. Declarant, the Association and the Architectural Control Committee may delegate their entry and removal rights hereunder to agents and independent contractors. The cost so incurred by the Architectural Control Committee, the Association or Declarant shall be paid by the Lot Owner and the Person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen percent (18%) per annum and costs enforcement and of collection (including reasonable attorneys' fees), shall be a lien on the ownership interest in the Lot (including improvements thereon) and shall in all respects be the personal obligation of the Owner. Such lien shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded but shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against the lien established in this Section 8.10 and Section 11.15. The Architectural Control Committee, the Association or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and costs of enforcement and collection against the Owner and may bring an action to foreclose the lien against the Lot and Improvements subject to the lien and there shall be added to the amount of such obligation the costs of enforcement and collection, and the judgment in any such action shall include interest as above provided and the costs of collection, including reasonable attorney's fees. The waiver of homestead exemption set forth above shall apply to any foreclosure action for the lien imposed by this Section 8.10 and Section 11.15. The foregoing specified rights and remedies shall not limit the right of any Lot Owner to enforce this Declaration pursuant to Section 11.15 or as otherwise may be provided herein or by law or equity; provided, however, that only the Declarant, the Association and the Architectural Control Committee shall have the right to proceed under this Section 8.10. In the event that the Declarant, the Association or Architectural Control Committee, whether acting for themselves or through their agents and representatives, elect to exercise the right to enter upon a Lot to remedy a violation of this Declaration, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless (i) damage is caused to the Lot or Improvements thereon that is unrelated to the remediation of the breach of the Declaration and (ii) is caused by the willful and wanton acts of the Declarant or the Architectural Control Committee. In no event shall there be any liability for damage to an Improvement that is in violation of this Declaration.

Section 8.11 Power and Duty to Enforce Association Documents. The Association shall have the power to enforce the covenants, terms and provisions of the Association Documents.

Section 8.12 Power to Provide Special Services. The Association shall have the power to provide special services beyond this Declaration to a Member or group of Members and any services to any other Person. Any such service or services shall be provided pursuant to an Agreement in writing, or through one or more amendments to this Declaration, which shall provide for payment to the Association by such Member or group of Members or other Persons of the costs and expenses which the Association estimates it will incur in providing such services, including a fair share of the overhead expenses of the Association, and shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs,

personal representatives, successors and assigns or the Member or group of Members or other Persons, and may be collected in the same manner as a Site Assessment, or, if the written agreement so provides, in installments as part of the Common Assessments or may be collected in any manner permitted by law or statute or the Association Documents.

Section 8.13 Power to Operate and Charge for Facilities. The Association shall have the power to acquire, create, own and operate any and all such services as it deems appropriate, including, without limitation, Landscape maintenance and to establish charges for the use of services. Such charges or fees shall be as determined from time to time by the Board.

Section 8.14 Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under Association Property for any lawful purpose, including, without limitation, the provision of emergency services, utilities, telephone, television, or other uses or services to some or all of the Members or to facilitate the development of the Community Area, including any Expansion Property added thereto.

Section 8.15 Power to Employ Managers. The Association shall have the power to retain and pay for the services of a manager or managers to undertake any of the management of any functions for which the Association has responsibility under this Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers or functions to the manager. Any contract or agreement with a manager shall be terminable by the Association for cause on no more than thirty (30) days' prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety (90) days' prior written notice. No such contract or agreement shall be for a term of more than one (1) year. Notwithstanding any delegation to a manager of any duties, powers or functions of the Association, the Association and its Board shall remain ultimately responsible for the performance and exercise of such duties, power and functions. In addition to a manager, the Association may employ and pay a consultant, which may be Declarant, an affiliate of Declarant, or a third party, to assist in operating and managing the Association after the Declarant's reserved rights under Section 7.5 terminate.

Section 8.16 Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents (except as otherwise provided in management contracts) and to retain and pay for such legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under the Association Documents.

Section 8.17 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act and all powers contained in CCIOA Section 38-33.3-302, subject to any limitations, restriction, or requirements expressly set forth in the Association Documents.

Section 8.18 Other Powers. The Association shall have the power to regulate the days and hours during which trash and solid waste may be collected or put out for collection in any portion of the Community Area, and the Association may require all Owners to use a common

trash collection company or entity selected by the Board as further provided in Section 5.25. The Association shall have the power, but not any duty, to sponsor or conduct various community activities or special events of a social or recreational nature, to hire and provide a security or courtesy patrol, which shall be unarmed and shall not be a substitute for the municipal police, and to provide general informational services which may include, without limitation, community newsletter, radio broadcast, cable television services and similar services.

## **ARTICLE 9 ASSOCIATION PROPERTIES**

Section 9.1 Right of Association to Regulate Use. To the extent that the Association hereafter owns, holds or has property, the provisions of this Article 9 shall apply. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Members to enhance further the overall rights of use and enjoyment of all Members, including without limitation, imposing limits on the times of use and numbers of guests permitted to use the Association Properties.

Section 9.2 Property to be Conveyed to the Association. The Declarant shall be obligated to convey to the Association any tract of land that is identified on the Plats as a “Tract” that the Association is required to own pursuant to the Plat, if any and all of the Water Rights. The properties to be conveyed to the Association shall be conveyed to the Association on or before the expiration of the Period of Declarant Control under Section 7.5, and such conveyance shall exclude all water rights, if any. Declarant is not obligated to convey any other real property to the Association. The Association shall be obligated to accept title to each such Tract when conveyed to it by Declarant.

Section 9.3 Liability of Owners for Damage. Each Owner shall be liable to the Association for any damage to Association Properties or for any expense or liability incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Owner or a Related User of such Owner of the Association Documents. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Site Assessment against a Member, Owner, Lot, Related User, or other Person to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of the Association Documents, including without limitation, the deductible on any insurance of the Association, interest, costs, expenses and attorneys’ fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

Section 9.4 Damage to Association Properties. In the event of damage to or destruction of all or a portion of the Association Properties due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage or destruction, then the Association shall levy a Special Assessment in the aggregate amount of such insufficiency pursuant to this Declaration and shall proceed to make such repairs or reconstruction, unless the Owners and First Mortgagees by a majority vote agree not to repair and reconstruct such damage in accordance with the terms and provisions of this Declaration.

No distributions of insurance proceeds shall be made to the Owners, unless made jointly payable to Owners and the First Mortgagees, if any. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction or replacement, the Association may use the excess for future maintenance, repair, and operation of and improvements to Association Properties.

Section 9.5 Association Powers in the Event of Condemnation.

(a) If proceedings are initiated by any government or agency thereof seeking to take the Association Properties or any interests therein or part thereof, including any Improvements, the Association shall give prompt notice thereof, including a description of the part of or interest in the Association Properties or Improvements thereon sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements and agreements with a condemning authority for acquisition of the Association Properties, any part thereof, or any interest therein, and each Owner hereby appoints the Association as the Owner's attorney-in-fact for such purposes. Any award or proceeds of settlement shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

(b) If all of the Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, any award or settlement shall be apportioned by the Association on such a fair and equitable basis as the Association determines to be appropriate in the circumstances, or as determined by judicial decree. If the allocation of the condemnation award is already established in the negotiations, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent that it is relevant and applicable.

(c) If less than all of the Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the condemnation award shall first be applied by the Association to the rebuilding and replacement of those Improvements on the Association Properties which are damaged or taken by the condemning public authority, if such rebuilding or replacement is reasonably practical, unless Members with at least sixty-seven percent (67%) of all Member votes and at least sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each First Mortgage held) agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement shall be distributed by the Association on the same basis as indicated in subparagraph (b) of this section. No provision of this Declaration or any other document relating to the Association Properties shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee, pursuant to a First Mortgage, awarding distribution of insurance proceeds or condemnation awards for losses to or taking of Association Properties.

## ARTICLE 10

### DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS

Section 10.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Association Properties for a period of twenty (20) years after the date this Declaration is recorded in the real property records of El Paso County, Colorado, or until such earlier date when Declarant ceases to own any real property within the Community Area. The rights and reservations set forth in this Declaration shall be deemed excepted and reserved in each conveyance of property by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Community Area is conveyed by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of the Association Documents and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Association Documents. Declarant's consent to any one such amendment shall not be construed as a consent to any other amendment.

Section 10.2 Declarant's Development Rights. For the period stated in Section 10.1, Declarant shall have the following development rights:

(a) Subject to the limitations contained in Section 10.8, Declarant may create additional Lots within the Community Area;

(b) Declarant may create additional Association Properties within the Community Area or convert any of the Declarant owned Lots within the Community Area to Association Properties.

(c) Declarant shall have the right to withdraw all or a portion of the Potential any potential hospitality lots so identified, if and when such Lots are annexed into the Community Area pursuant to the terms of this Declaration, from the Community Area in accordance with the terms of Section 38-33.3-210(4); and/or

(d) Annex all or a portion of the Expansion Property into the Community Area.

The development rights contained in this Declaration shall be exercised by Declarant, if at all, in accordance with Section 38-33.3-210, Colorado Revised Statutes. All of the development rights set forth in this Declaration may be exercised by Declarant with respect to all or any portion of the Community Area. No assurances are made by Declarant concerning which portions of the Community Area may be affected by Declarant's exercise of its development rights or the order in which portions of the Community Area may be affected. Declarant is not obligated to exercise any of its development rights and may elect not to exercise any or all of them. If Declarant does exercise a development right in any portion of the Community Area, Declarant is not obligated to exercise that development right in all or any other portion of the remainder of real estate affected by the exercise of the development right or in all or any other portion of the remainder of the Community Area.

Section 10.3 Special Declarant Rights. For the period stated in Section 10.1, and as more particularly set forth in this Article 10 or elsewhere in this Declaration, Declarant shall have the following special Declarant rights:

- (a) To complete any Improvements shown on the Plats and the Development Plan;
- (b) To exercise any development rights set forth in this Article 10;
- (c) To, directly or through one or more permitted party, maintain anywhere within the Community Area, sales offices, management offices, signs advertising the Community Area and model homes;
- (d) To use easements through the Association Properties and easements granted to the Association for the purpose of making improvements within the Community Area and completing development of the Community Area; and
- (e) To appoint or remove any officer of the Association or any member of the Board appointed by Declarant.

Section 10.4 Expansion Property.

(a) Right to Expand. Until the expiration period indicated in Section 10.1, Declarant reserves the right to expand the Community Area, without the approval of the Owners or First Mortgagees, to include additional land and one or more additional buildings located upon all or any part of the Expansion Property. By accepting a deed to a Lot, each Owner hereby grants to Declarant a right to expand the Community Area.

(b) Procedure for Expansion. Such expansion may be accomplished by the filing for record by Declarant with the Clerk and Recorder of El Paso County, Colorado no later than the expiration of the period set forth in Section 10.1 an amendment or amendments to this Declaration containing a legal description of the land area to be added to the Community Area, together with any supplemental plats which may be required. Any such amendment or amendments to this Declaration shall also contain a listing of the total number of Lots then contained within the Community Area. The expansion may be accomplished in “phases” by successive amendments.

(c) Effect of Expansion.

(i) In the event of such expansion, the definitions used in the Declaration shall automatically be expanded to encompass and refer to the Community Area as so expanded; e.g., “Community Area” shall mean the real property described on **Exhibit A** and any portion of the Expansion Property added by any annexation amendment to the Declaration. Similarly, “Lots” shall include those areas located within the real property described on **Exhibit A** as well as those so designated on any annexation amendment or supplemental plat relating to any Expansion Property which is annexed pursuant to this Section 10.4. References

to the Declaration shall mean the Declaration, any annexation amendments and any future amendments to the Declaration.

(ii) Upon recording of the annexation amendment or amendments to the Declaration and any supplemental plat with the Clerk and Recorder of the County, the additional Lots shall be subject to the provisions of the Declaration, as amended.

(iii) Until the expansion of the Community Area is accomplished by recording the annexation amendment(s) to the Declaration and supplemental plat(s), the Expansion Property and any improvements constructed thereon shall not be subject to the Declaration in any way whatsoever, including, but not limited to, consideration for the purpose of apportioning assessments or determining voting rights or privileges. If such expansion does not occur, nothing contained in the Declaration or any amendment shall restrict, impair, hinder, encumber or burden, in any way whatsoever, Declarant's or its successors' or assigns' sole and complete right, title and interest to the Expansion Property and any improvements constructed thereon. The Declarant alone shall be liable for all expenses of the Expansion Property unless and until annexed hereunder, and shall be entitled to any income and proceeds therefrom. The Declarant's right to annex may be exercised at different times and as to different portions of the Expansion Property, and so no assurances are made hereby regarding the boundaries of any portion of real property which may be annexed hereunder nor the order in which said portion may be annexed.

Section 10.5 Right to Construct Additional Improvements on Association Properties. Declarant shall have and hereby reserves the right, but shall not be obligated, to construct additional Improvements on Association Properties, at Declarant's cost, at any time and from time to time in accordance with this Declaration for the improvement and enhancement of the Association Properties and for the benefit of the Association and the Owners.

Section 10.6 Declarant's Rights to Use Association Properties in Promotion and Marketing. Declarant shall have and hereby reserves the right to use the Association Properties and to use services offered by the Association in connection with the promotion and marketing of property within the boundaries of the Community Area or nearby areas. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of the Association Properties such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development and marketing of real property within the Community Area; may use vehicles and equipment on Association Properties for promotional purposes; and may permit prospective purchasers of property within the boundaries of the Community Area to use Association Properties.

Section 10.7 Declarant's Rights to Complete Development of Community Area. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development of property within the boundaries of the Community Area or nearby areas and to subdivide, resubdivide, or rezone any portion of such property; to grant licenses, easements, reservations and rights-of-way; to construct or alter Improvements on any property owned by Declarant within the Community Area; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the

Association within the Community Area; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Community Area. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant; to make changes or modifications to Article 6 of this Declaration by means of an amendment to this Declaration; to change any Landscaping, grading, drainage, vegetation, or view; or to construct, alter, demolish or replace any Improvements on any property owned by Declarant, or to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Community Area. Nothing in this section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in the Association Documents, which rights are incorporated in this section by this reference.

Section 10.8 Maximum Number of Lots. Notwithstanding any other provision of this Declaration, the maximum number of Lots that Declarant may create within the entire Community Area is 283 Lots.

Section 10.9 Declarant's Approval. Until Declarant no longer has the right to appoint a majority of the Board, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of Association Properties; mortgage the Association Properties; use Association Properties other than for the benefit of Members; levy any Special Assessment; change or repeal any rules of the Architectural Control Committee; make any substantial reduction or change in Association services; or make any amendment of Association Documents. Nothing contained in this Article 10 limits in any way the Declarant's express rights contained in this Declaration, including without limitation those rights set forth in Articles 14 and 15.

Section 10.10 Declarant's Rights Incident to Completion of the Development. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Association Property and the right to store materials thereon and to make such other uses thereof as may be reasonably necessary or incidental for the purpose of the completion of Improvement for the Community Area, the performance of Declarant's obligations hereunder, the sale of the Lots and/or Units and the exercise of Declarant's special rights under this Article 10; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access by any Owner.

Section 10.11 Removal Property.

(a) Right to Remove. Until the expiration period indicated in Section 10.1, Declarant reserves the right to remove from the Community Area all or part of the Lots that may be identified from time to time as potential hospitality Lots, as provided for in Section 10.2(c), from the Community Area, without the approval of the Owners or First Mortgagees. By accepting a deed to a Lot, each Owner hereby grants to Declarant a right to remove the Potential Hospitality Lots from the Community Area.

(b) Procedure for Expansion. Such removal may be accomplished by the filing for record by Declarant with the Clerk and Recorder of El Paso County, Colorado no later than the expiration of the period set forth in Section 10.1 an amendment or amendments to this Declaration containing a legal description of the Lots to be removed from the Community Area. Any such amendment or amendments to this Declaration shall also contain a listing of the total number of Lots then contained within the Community Area. The removal may be accomplished in “phases” by successive amendments.

(c) Effect of Removal.

(i) In the event of such expansion, the definitions used in the Declaration shall automatically be modified to deleted the removed Lots from the Community Area as so amended; e.g., “Community Area” shall mean the real property described on Exhibit A, less the removed Lots removed by any amendment to the Declaration. Similarly, “Lots” shall not include any removed Lots that are removed pursuant to this Section 10.11. References to the Declaration shall mean the Declaration, any amendments and any future amendments to the Declaration.

(ii) Upon recording of the amendment or amendments to the Declaration pursuant to this Section 10.11 with the Clerk and Recorder of the County, the removed Lots shall no longer be subject to this Declaration in any manner.

(iii) Until the removal of a Lot pursuant to this Section 10.11, the Lot will be fully subject to the Declaration, including, but not limited to, consideration for the purpose of apportioning assessments or determining voting rights or privileges. The Declarant alone shall be liable for all expenses of removing Lots pursuant to this Section 10.11. The Declarant’s right to hereunder may be exercised at different times and as to different potential hospitality Lots, and so no assurances are made that removal will occur.

## **ARTICLE 11 ASSESSMENTS**

Section 11.1 Obligation for Assessments. Each Owner, for each Lot owned within the Community Area, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all Assessments applicable to his Lot which are provided for in the Association Documents and which shall be both a personal obligation of the Owner and a lien against his Lot as provided therein. Each Owner hereby acknowledges that no Special or Common Assessments will be payable by the Owner of any property which is not annexed into this Declaration. Each Owner shall be jointly and severally liable to the Association for the payment of all applicable Assessments attributable to his Lot. The personal obligation for delinquent Assessments shall not pass to an Owner’s successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for herein by non-use of the Association Properties or the facilities contained therein, by non-use of any service provided by the Association for all Owners, by abandonment or leasing of his Lot, or by asserting any claims against the

Association, the Declarant or any other Person or entity. In addition to the foregoing Assessments, charges, fees and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot. All property dedicated to and accepted by a public or governmental authority and the Association Properties shall be exempt from Assessments hereunder.

Section 11.2 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Association Properties as more specifically provided herein.

Section 11.3 Common Assessments. The Common Assessments may include, but shall not be limited to, the following common expenses:

- (a) Expenses of management of the Association and its activities;
- (b) Taxes and special assessments upon the Association Properties, both real and personal property;
- (c) Premiums for all insurance which the Association is required or permitted to maintain;
- (d) Common services to Owners as authorized in accordance with the terms of this Declaration;
- (e) Landscaping and care of the Association Properties and any recreational or other Association Improvements located thereon, if any;
- (f) Repairs and maintenance that are the responsibility of the Association, including, without limitation, the obligations described in Section 8.3 of this Declaration;
- (g) Wages for Association employees and payments to Association contractors;
- (h) Legal and accounting fees for the Association;
- (i) Any deficit remaining from a previous Assessment year;
- (j) The creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of those elements of Association Property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by Special Assessments, subject to the provisions of Section 11.19;
- (k) The creation of reasonable contingency reserves for any applicable insurance deductibles and emergencies, subject to the provisions of Section 11.19;

(l) Any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration;

(m) The cost and expense of the Forest Management; and

(n) The cost and expense of operating and administering and accounting for the water system and Water Rights described in this Declaration, enforcing the terms and conditions of the decrees described in Section 1.9 and modifying the terms and conditions of the decrees through water court proceedings and applications.

Common Assessments shall be paid as provided in Section 11.5.

Section 11.4 Declarant's Obligation. Until Common Assessments are first levied by the Association pursuant to this Article 11, Declarant shall pay all common expenses of the Association described in Section 11.3.

Section 11.5 Common Assessment Procedure.

(a) Each Owner acknowledges that benefits accorded to Owners of Lots that are occupied by residents of the Community Area ("Functional Units") are significantly greater than Lots that do not contain Functional Units. In recognition of this fact and to establish a clear, reasonable and cost effective administrative process for the commencement of Common Assessments in light of this distinction in benefits, Common Assessments will commence as follows:

On the date on which the later of the following events occurs: (i) the recordation of the Plat or (ii) the date Declarant elects to Commence Common Assessments for Lots within the Community Area as initially constructed shall constitute the "Start Date" for the Lots described on **Exhibit A**. The recordation of an applicable Plat will constitute that Start Date for any portion of the Expansion Property that is hereafter annexed into this Declaration.

(i) As of the Start Date, all Lots and Dwelling Units will be subject to Common Assessments in an amount that is ten percent (10%) of the applicable Common Assessment (without proration).

(ii) Following the Start Date, as of the date a Dwelling Unit is conveyed to a resident so as to constitute a Functional Unit (i.e., the sale of the Dwelling Unit to the initial resident), the Functional Unit will thereafter be assessed at one hundred percent (100%) of Common Assessments (prorated as provided for in Section 11.5(c)).

(b) Promptly after this Declaration is recorded, the Board shall set the total annual Common Assessment for 2019 based upon an estimated budget for the Association for 2019. No later than ninety (90) days before the beginning of each year after 2019, the Board shall set the total annual Common Assessment based upon an advanced budget of the Association's requirements for the following Assessment year. Within thirty (30) days after

adoption of the Association's budget for each year, by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the budget summary. Unless a majority of all Owners present and voting in Person or by proxy at the meeting called to discuss the budget or voting by a mailed ballot returned to the Board prior to that meeting reject the budget, the budget is ratified, whether or not a quorum is present at the meeting. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

(c) After approval of the budget by the Owners, the Board shall cause to be prepared, delivered or mailed to each Owner as of the billing date, at least thirty (30) days in advance of the date payment is due, a payment statement setting forth the annual Common Assessment. That annual Common Assessment shall be payable in advance in yearly installments due on the first (1<sup>st</sup>) day of each successive January unless the Board otherwise directs. All payments of Common Assessments shall be due and payable, without any notice or demand, on the due dates declared by the Board. Common Assessments shall be applicable to all Lots as provided for in Section 11.5 including those owned by Declarant. Declarant and other Owners of Lots shall be assessed a Common Assessment as provided for in this Section 11.5. Each Owner who subsequently acquires a Lot shall become responsible for Common Assessments attributed to that Lot as of the date the Lot is transferred to such Owner. The first annual Common Assessment on a Lot shall be adjusted according to the number of months remaining in the fiscal year as established pursuant to the Bylaws of the Association. The Board may adopt Rules and Regulations requiring the Owner, at the time when Common Assessments first commence upon that Owner's Lot as provided in this section, to prepay the Common Assessments for the balance of the year and an additional period which shall not exceed an additional twelve (12) months; such prepayment shall not relieve the Owner from any additional requirement to pay working capital pursuant to Section 11.18.

Section 11.6 Rate of Assessments. Common Assessments and Special Assessments shall be sufficient to meet the expected needs of the Association. Common Assessments and Special Assessments shall be allocated equally and uniformly among all Functional Units. The rate for Common Assessments and Special Assessments shall be determined by dividing the total Common Assessments or Special Assessments, as applicable, payable for any Assessment period, as determined by the ratified budget, by the number of Functional Units. The resulting quotient shall be the amount of the Common Assessment or Special Assessment, as applicable, payable with respect to each Functional Unit and the remaining Lots will pay the applicable amount calculated pursuant to Section 11.5, for both Common Assessments and Special Assessments.

Section 11.7 Failure to Fix Assessment. The failure by the Board to levy an Assessment for any period shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Owner to pay Assessments for that or any subsequent period.

Section 11.8 Special Assessments. The Board may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds to construct or reconstruct, repair or replace capital Improvements upon Association Properties, including personal property relating thereto; to add to the Association Properties; to provide for necessary facilities and equipment; to offer the services authorized in this Declaration; to correct any deficit or cost overrun; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. Special Assessments shall be equally, uniformly imposed upon Lots that contain a Functional Unit as provided in Section 11.5. No Special Assessment shall be assessed until it has been approved in accordance with a procedure substantially identical to the procedure set forth in Section 11.5(a). At any time that insurance proceeds are insufficient to repair or reconstruct any damaged or destroyed Improvements on the Association Properties, or on any other property which the Association maintains, the Association may levy Special Assessments for the purpose of repair or reconstruction of such damaged or destroyed Improvements; all such Special Assessments shall be equal to the amount by which the costs of repair or reconstruction of Improvements exceeds the sum of insurance proceeds awarded for the damage or destruction, and shall be set in the same manner as other Special Assessments. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable, and the Owners shall pay any such Special Assessment in the manner so specified.

Section 11.9 Site Assessments. The Board may, subject to the provisions hereof, levy a Site Assessment against any Member, Owner, or Lot if additional services are provided to a Member, Owner, or Lot or if the willful or negligent acts or omissions of the Member, Owner or a Related User cause any violation of the Association Documents or cause any loss or damage to the Association or Association Properties or cause any expenditure of funds in connection with the enforcement powers of the Association. Except for a default consisting solely of a failure to timely pay any Assessment, including, without limitation, Special Assessments or Common Assessments, which shall not require any notice and hearing, a Site Assessment, other than charges for additional services, shall be levied only after such notice and hearing as may be required by the Bylaws. The amount of the Site Assessment shall be due and payable to the Association upon notice by the Board that the Site Assessment is owing. Imposition or non-imposition of Site Assessments shall not preclude the Association from pursuing simultaneously or subsequently all other legal or equitable rights and remedies. In no event will the amount of any Site Assessment levied against any Lot be counted in calculating the amount allowed pursuant to C.R.S. Section 38-33.3-116(2) and (3).

Section 11.10 Costs of Enforcement, Late Charges and Interest. If any Assessment is not paid within ten (10) days after it is due, the Member, Owner or other Person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorneys' fees, court costs, witness expenses, and all related expenses ("collection expenses"), and to pay a reasonable late charge to be determined by the Board. Any Assessment which is not paid within ten (10) days after the date of any notice of default given under Section 11.12 shall bear interest from the due date at a rate determined by the Board, not to exceed the lower of eighteen percent (18%) per annum or the maximum percentage permitted by law, from the due date until paid.

Section 11.11 Attribution of Payments. If any Assessment payment is less than the amount assessed, the sums received by the Association from that Owner shall be credited in such order of priority as the Board, in its discretion, determines.

Section 11.12 Notice of Default and Acceleration of Assessments. If any Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the Owner and to each First Mortgagee of the Lot who has requested a copy of such notice. The notice shall substantially set forth: (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than twenty (20) days from the date of mailing of the notice by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in the foreclosure of the lien for the Assessment against the Owner's Lot. A default shall not be considered cured unless the past due sums, collection expenses, and all sums coming due through the date of payment are paid to the Association. If the delinquent Assessment and any collection expenses, late charges or interest thereon, plus any other sums due as of the date of the payment, are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all collection expenses, charges and interest thereon in any manner authorized by law or in the Association Documents.

Section 11.13 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed. In the event of a default in payment of any Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with interest, late charges, and expenses of collection, and this covenant shall be a charge on the land and a continuing lien upon the Lot against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is filed in accordance with Section 11.15.

Section 11.14 Lawsuit to Enforce Assessments. The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charge, interest, and other costs of enforcement against the defaulting Owner, including, without limitation, court costs and reasonable attorneys' fees.

Section 11.15 Lien to Enforce Assessments. The Association shall have a lien for Assessments (the "Lien") as provided in CCIOA Section 38-33.3-316. In addition to or in lieu of bringing suit to collect Assessments, the Association may foreclose its Lien as provided by law and in this Section. The Board may elect (but is not required to) to file a claim of lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the interest and expenses of collection which has accrued thereon and which shall continue to accrue in accordance with the terms of Section 11.10 of this Declaration, (c) the legal description and street address of the Lot against which the lien is claimed, and (d) the name of the record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the

Association. The Lien shall have the priority provided by CCIOA and shall be prior to any declaration of homestead rights recorded after the time that the Lot becomes part of the Community Area. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver by the Owner of the homestead exemption as against said Lien. The Lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all collection expenses, court costs, recording costs and filing fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, if recorded, upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage, and convey the same. The lien under this Section shall be subject to the provisions and restrictions of Article 14.

Section 11.16 Estoppel Certificates. Upon the payment of such reasonable fee as may be determined from time to time by the Board, and upon the written request of any Member or Owner and any Person which has acquired, or intends to acquire, any right, title or interest in the Lot of such Member or Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable. Such statement shall, with respect to the Person whom it is issued, if relied thereupon in good faith and without actual knowledge to the contrary, be conclusive against the Association.

Section 11.17 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offset, abatement or reduction thereof shall be permitted for any reason whatsoever, including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under this Declaration, or for inconvenience or discomfort arising from any activity of the Association Properties, or the non-use by an Owner of Association Properties or services provided by the Association or because an Owner claims that a particular function funded by the Assessment does not benefit that Owner directly, or for any other reason.

Section 11.18 Working Capital Fund. The Board may, at its option, require each Lot purchaser, expressly excluding Declarant, at the time of each transfer of title to the Lot, to make a nonrefundable contribution to the Association of an amount established from time to time by the Board, but in no event will the amount exceed three (3) times the amount of the annual Common Assessment against the Lot in effect on the date of delivery of the deed conveying the Lot. The Board shall have the authority to establish different Working Capital amounts for different categories of Lots within the Community Area, but all of which will be subject to the above-described limitation. All such contributions shall be maintained in a non-segregated account for the use and benefit of the Association for, among other purposes, meeting unforeseen expenditures, funding Association deficits or purchasing additional equipment, property or

services. **The working capital contribution shall be in addition to the Assessment and shall not relieve the Owners from paying all Assessments as they come due.** Declarant is excluded from the provisions of this Section because the Association and Owners of Lots with completed Dwelling Units will receive all of the benefits from payments made under this Section.

Section 11.19 Association Reserves. Each Owner hereby acknowledges that it has purchased its Lot within the Community Area with the knowledge and consent that the Association will NOT collect funds to establish reserve funds (“Reserves”) for the Association until such time as each Lot within the entire Community Area has been conveyed by Declarant or such earlier date consented to by Declarant in Declarant’s sole determination. At such time, the Association may establish such Reserves for the Association as the Association, through its Board in consultation with its property management company, if any, determines to be reasonable in its sole discretion. Each Owner further acknowledges that the Association will NOT have any obligation to establish reserves at a level which will fully fund the replacement of all Association Properties, but merely a commercially reasonable offset of such anticipated expenses.

## **ARTICLE 12 INSURANCE**

Section 12.1 Insurance on Association Properties. The Association shall maintain insurance as required by the Act and other applicable law, including the following types of insurance, on the Association Property to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage to be paid by the Association as part of the Common Assessments if reasonable. In addition, the Association may maintain such insurance on such other property as the Board of Directors may determine in its discretion from time to time, or as may be hereinafter required. The Association may also consider, in determining the type and amount of insurance it needs to obtain, the then-existing requirements of the applicable governmental agencies.

(a) Property insurance on all insurable Association Properties for broad form covered causes of loss, and, if reasonably available, the total amount of insurance must not be less than the full insurable replacement cost of all the insured property less applicable deductibles at the time the insurance is purchased and such renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Association Property, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Board of Directors, the Association, any managing agent and their respective employees, agents and all Persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Board of Directors. The Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with an Owner's membership in the Association. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Community and/or any Owner who disburse funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate assessments on the Functional Unit, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Community Area to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subsection (c).

(d) If any Association Properties are located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on such parcels in an amount at least equal to the lesser of:

(i) The maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(ii) One hundred percent (100%) of current replacement costs of all buildings and other insurable property located within a designated flood hazard area.

(e) In addition, the Association may obtain insurance against such other risks of similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association and the members of the Architectural Control Committee and other representatives.

Section 12.2 General Provisions of Insurance Policies. If available at a reasonable price, policies of insurance carried by the Association shall be carried in blanket policy form naming the Association, as insured, or its designee, as trustee and attorney-in-fact for all Owners, as the insured, and each Owner shall be an insured Person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory clause in favor of each First Mortgagee or other mortgagee (collectively, "Security Interest Holder"), and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and to each Security Interest Holder, insurer or guarantor of a security interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest including Security Interest Holders,

upon request. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any act or neglect of an Owner where such Owner is not under the control of the Association. Insurance obtained by the Association, to the extent reasonably feasible, shall name Declarant as an additional insured and shall contain a waiver of subrogation rights against Declarant. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Association Properties and property of Declarant.

Section 12.3 Deductibles. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles and any other matters of claims adjustment.

(a) To the extent the Association settles a claim for damages, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than any one (1) Lot and/or related Improvements and damage by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

(b) Any loss to any Lot or to any Association Property or other property that the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the Person who is responsible for the repair and maintenance of the property that is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the Persons sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss resulted from the act or negligence of an Owner, his tenants, family members, guest or invitees. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

Section 12.4 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Article 12 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Article 9 of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated.

Section 12.5 Acceptable Insurance Companies. Each insurance policy purchased by the Association must be written by a hazard insurance carrier that is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where: (a) under the terms of the insurance company's charter, bylaws, or policy contributions or assessments may be made

against the mortgagor or mortgagee's designee; (b) under the terms of the carrier's charter, bylaws, or policy loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which would prevent a Security Interest Holder or any Owner from collecting insurance proceeds.

Section 12.6 Insurance to be Maintained by Owners. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Lot, Functional Unit and any other Improvements thereon, including but not limited to flood insurance, and the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each Lot and the Improvements thereon, shall be the responsibility of the Owner of such Lot. The Association shall have no responsibility regarding the obtaining or continuation of any such insurance.

Section 12.7 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association. In making the aforesaid determination, the Board of Directors or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance.

Section 12.8 Owners' Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any or all of the Association Property is caused by the willful or negligent act or omission of any Owner, or a Related User of such Owner, the cost of such repair, maintenance or reconstruction shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction may be collected as a Site Assessment as provided in this Declaration or by the Association exercising any rights or remedies under the Association Documents or otherwise as permitted by law. A determination of the negligence or willful act or omission of any Owner's liability therefor shall be determined by the Board at a hearing after any notice required by the Bylaws to be given to the Owner, but any determination by the Board shall be subject to judicial review as appropriate.

## **ARTICLE 13 EASEMENTS**

Section 13.1 Association Easement. A non-exclusive easement is hereby granted to the Association, their respective officers, agents, employees and assigns upon, across, over, in and under the Association Property and any Lot as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration or otherwise, including without limitation any maintenance required or permitted hereunder, any inspection, repair, replacement, construction or reconstruction of any facilities or utilities on or within the Association Property and the right to make such use of the Community Area as may be necessary or appropriate in carrying out such maintenance and other rights and obligations.

Section 13.2 Emergency Easement. A non-exclusive easement is hereby granted to all police, fire protection, ambulance and all similar Persons to enter upon the Community Area in the performance of their duties.

Section 13.3 Easement for Encroachments. If any portion of an Improvement encroaches upon the Association Property, including any future encroachments arising or resulting from erosion or subsidence, or from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, the Board may grant a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, for so long as such encroachment exists, but subject to any conditions or restrictions imposed by the Board.

Section 13.4 Utilities. Declarant hereby creates and reserves to itself, until Declarant has sold the last Lot in the Community Area to an Owner other than Declarant, and, thereafter, to the Association:

(a) Perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to other over, under, in and across each of the utility easements of each Lot as shown on the Plat or the Development Plan for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes; and

(b) A blanket easement across, over and under the Association Properties for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone and electricity.

(c) A perpetual easement to access each Lot for purposes of inspecting each Lot for compliance with all Water Rights and related limitations, restriction and rules and regulation and to read water meters.

If any utility or quasi-utility company furnishing a service covered by the easements created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement. The Association shall succeed to such right and authority upon conveyance by Declarant of the last Lot in the Community Area to the first Owner thereof, other than Declarant. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Community Area.

Section 13.5 Easements Deemed Created. All conveyance of Lots hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Declaration, whether or not specific reference to such easements or to this Article appears in the instrument of such conveyance.

Section 13.6 Easements of Record. In addition to the easements created in this Article 13 and on the Plat, the Community Area is subject to those easements and other matters currently

of record in El Paso County, Colorado, including but not limited to, that certain Golf Play Easement recorded in the real property records of El Paso County, Colorado contemporaneously with the date of this Declaration (the "Golf Play Easement").

Section 13.7 Flag Lot Easements. Unless otherwise provide for in an applicable Supplement to this Declaration, all flag lot stems are platted driveway easements and public utility easements for adjoining Lots.

Section 13.9 Community Mailboxes. The U.S. Postal Service will locate one or more delivery pads and mailboxes a/k/a "community mailbox" structures within the Community Area, in accordance with U.S. Postal Service and County regulations. The Declarant hereby creates and reserves to the Association and the U.S. Postal Service, perpetual, alienable, divisible and releasable easements over, under, in and across the Association Property, for use of portions of such areas for the "community mailbox" structure(s). The easement provided for in this section shall in no way affect, void, extinguish or modify any other easement in the Community Area. Each Owner acknowledges that the Association will issue the initial mailbox key to the initial Lot Owner following PRI2 and that it will be the responsibility of the initial Lot Owner and each subsequent Lot Owner to transfer the mailbox key to his or her purchaser and failure to do so will require the purchaser to acquire a new mailbox key directly from the U.S. Postal Service and to undertake whatever requirements that may entail. Each Owner acknowledges that the Association shall not have any responsibility or obligation regarding the issuance, maintenance or transfer of mailbox keys after issuing the initial key as above provided.

Section 13.10 Association Equestrian Easement. The Association is hereby granted a non-exclusive, perpetual easement over and across all utility easements within Lots that abut the public right of way for equestrian trail easement purposes.

## **ARTICLE 14 ENFORCEMENT; DISPUTE RESOLUTION**

The Association, Architectural Control Committee, Declarant, and all Owners agree to use of mediation or arbitration in the resolution of disputes pertaining to the Declaration and Association Document and the Community Area as encouraged by CCIOA, subject to Section 14.1. Accordingly, each hereby covenants and agrees to be bound by the provisions set forth in this Article.

Section 14.1 Collection of Assessments. Any action or proceeding by the Association to collect any Assessments, together with interest, late charges, and expenses of collection, shall proceed according to Article 11, and shall not be included within or impacted by this Article 14 unless the Association elects otherwise pursuant to Section 14.3(d).

Section 14.2 Enforcement of Declaration, Community Standards and Association Documents by the Architectural Control Committee, the Association, or Declarant. The Architectural Control Committee, the Association, or Declarant, including an assignee or delegate thereof, may give notice to the Owner of the Lot where a violation of this Declaration occurs or to the occupant when the Lot at issue is occupied by the Persons causing or responsible

for the violation, which notice shall state: the nature of the violation, the action required to cure the violation; a date not less than ten (10) days from the date of mailing of the notice by which such violation must be cured (a shorter time period may be stated in the event of emergency); and the intent of the Architectural Control Committee, the Association, or Declarant to invoke this Section. Further action shall be stayed if the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated, or if appropriate measures to cure and terminate are begun and are not thereafter continuously prosecuted with diligence, as required by the notice, then at any time following an Owner's failure to cure the violation, the Architectural Control Committee, Association, or Declarant (whichever gives the notice and in their reasonable discretion) may, but shall not be obligated to elect to (i) cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, pursuant to Section 14.3 below; (ii) proceed with an action to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief), together with such other ancillary relief as a court may deem necessary in order to enforce any of the provisions of this Declaration; or (iii) proceed with the dispute resolution procedure set forth in Section 14.5 below. Any other disputes between any of the Architectural Control Committee, the Association, and the Declarant, whether in contract, tort or statutory, shall be resolved pursuant to the dispute resolution procedures set forth in Section 14.5 below.

#### Section 14.3 Entry Upon a Lot to Cure Violation/Liens.

(a) License. Each Owner of a Lot hereby grants a license to the Declarant, the Association and the Architectural Control Committee for the purpose of entering onto a Lot to remedy violations or breaches of this Declaration pursuant to Section 14.2 above. The Architectural Control Committee, the Association, or Declarant may delegate their entry and removal rights hereunder to agents and independent contractors.

(b) No Liability. In the event that the Architectural Control Committee, the Association, or Declarant, whether acting for themselves or through their agents, officers, members, employees, and representatives, elect to exercise the right to enter upon a Lot to remedy a violation of this Declaration, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless: damage is caused to the Lot or Improvements thereon that is unrelated to the remediation of the breach of the Declaration, and is caused by the willful and wanton acts of the Architectural Control Committee, the Association, or Declarant. In no event shall there be any liability for damage to an Improvement that is in violation of this Declaration.

(c) Lien. The costs incurred by the Architectural Control Committee, the Association, or Declarant pursuant to any enforcement pursuant to this Article 14 shall be paid by the Lot Owner and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen percent (18%) per annum and costs of enforcement and of collection (including reasonable attorneys' fees), shall be a lien on the ownership interest in the Lot (including Improvements thereon) and shall in all respects be the personal obligation of the Owner.

(d) Collection. The Architectural Control Committee, the Association, or Declarant may bring an action at law for recovery of the costs incurred by it, pursuant to this Article 14 against the Owner and may bring an action to foreclose the lien against the Lot and Improvements subject to the lien, and the judgment or foreclosure in any such action shall include interest as above provided and the costs of collection, including reasonable attorneys' fees.

(e) Foreclosure of Lien. The Architectural Control Committee, the Association, or Declarant may enforce a lien pursuant to this Article 14 by suit or by filing and foreclosure of the lien as hereinafter provided. Such party may elect (but is not required to) to file a claim of lien against the Lot of the defaulting Owner by recording a notice ("Notice of Article 14 Lien") substantially setting forth: (i) the amount of the claimed delinquency, (ii) the interest and expenses of collection which has accrued thereon and which shall continue to accrue in accordance with the terms hereof, (iii) the legal description and street address of the Lot against which the lien is claimed, and (iv) the name of the record Owner thereof. Such Notice of Article 14 Lien shall be signed and acknowledged by an officer of the entity. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to agree to pay all such amounts, and this covenant shall be a charge on the land and a continuing lien upon the Lot. The lien created by this Section shall exist from the date of entry upon the Lot until all sums are paid, whether or not a Notice of Article 14 Lien is filed in accordance herewith. The lien created by this Section shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded but shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against the lien established in this Section. When all amounts claimed under the lien have been fully paid or satisfied, the filing entity shall execute and record a notice releasing the Notice of Article 14 Lien, if recorded, upon payment by the Owner of a reasonable fee fixed to cover the cost of preparing and recording the release. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The lien under this Section shall be subject to the provisions and restrictions of Section 15.6 hereof.

Section 14.4 Enforcement of Declaration, Community Standards and Association Documents by an Owner. Any action by a Lot Owner against the Association, the Declarant, the Architectural Control Committee, or any of the officers, directors, partners, members, employees, agents or representatives of the foregoing, or any Owner of another Lot, whether in contract, tort or statutory, shall proceed pursuant to the dispute resolution procedure set forth in Section 14.5; provided that (i) all actions against the Declarant, or any of its officers, directors, partners, members, employees, agents or representatives, by an Owner related to warranty claims or any other claims related to alleged construction defects of any kind or nature shall be governed solely by the terms of the contract between the Owner (**or their predecessor in interest subsequent to Declarant's ownership**) and the Declarant or Dwelling Unit builder, and by the terms of the limited warranty which was provided to each initial Owner following Declarant as part of such initial Owner's purchase of a Dwelling Unit; and (ii) any suit between or among Owners that does not include Declarant or the Association as a party, and that asserts a

claim independent of the Association Documents, is not governed by Section 14.5 unless mutually agreed by such Owners.

Section 14.5 Actions by Association on behalf of Owners. Pursuant to CCIOA Section 38-33.3-302(1)(d), the Association may institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community (expressly including any Action as described in C.R.S. Section 13-20-802.5 which is commonly referred to as a construction defect proceeding), subject in all instances to each of the following provisions and conditions:

(a) Limited Warranty and Contracts Control. By an Owner's purchase of a Lot and/or Dwelling Unit and by the Association's receipt of title to any Association Property, all Owners and the Association acknowledge that all actions related to warranty claims or any other claims related to alleged construction defects of any kind or nature are governed by the terms of the contract between the Owner (or their predecessor in interest subsequent to Declarant's ownership) and the Declarant or Dwelling Unit builder, and by the terms of the limited warranty which was provided to each initial Owner following Declarant as part of such initial Owner's purchase of a Dwelling Unit, to the fullest extent permitted by law. All Owners, the Declarant (and any of its officers, directors, partners, members, employees, agents or representatives), and the Association acknowledge and agree that all matters governed by the terms of such contract(s) and the limited warranty are not matters affecting the common interest community; and are not included within the Association's authority pursuant to CCIOA Section 38-33.3-302(1)(d).

(b) Association's Rights Coextensive with Owner's Rights. The Association's rights and limitations in any such litigation or administrative proceedings shall be coextensive with and shall not exceed the respective Owner's rights; and the Association shall be bound by any mediation or arbitration procedures to the same extent as individual Owners.

(c) Approvals Required. Prior to the Association making any claim in an applicable action, the Board shall obtain the approval of Owners holding not less than sixty-seven percent (67%) of all votes in the Association following the Association's delivery of a meeting notice and written ballot (if any), that contains a detailed statement regarding the nature of the claim, an estimate of the costs and fees reasonably anticipated to be incurred by the Association, a statement that such costs and fees may increase the amount of Assessments; and an estimate of the projected time frame for resolution of the claim.

(d) Construction Defect Approvals Required. For any Action provided for in C.R.S. Section 13-20-802.5 (construction defects), the Board shall comply with the following additional steps: (i) prior to the service of the summons and complaint on any defendant with respect to an action governed by this section, the executive board shall mail or deliver written notice of the commencement or anticipated commencement of such action to each unit owner at the last known address described in the Association's records, which notice shall state a description of the following: the nature of the action and the relief sought, and the expenses and fees that the Board or Association anticipates will be incurred in prosecuting the action. Nothing in this section shall be construed to: (i) require the disclosure in the notice or the disclosure to a

unit owner of attorney-client communications or other privileged communications; (ii) permit the notice to serve as a basis for any Person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or (iii) limit or impair the authority of the executive board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

(e) Dispute Resolution Procedures.

(i) Notice; Negotiation. For any claim governed by this Section 14.5, whether in tort, contract, or statutory, or the election to proceed under this Section 14.5 (e) as provided in Section 14.2 (the "Claim"), the claimant ("Claimant") shall give notice to the other Person against whom the claim is asserted ("Respondent"), setting forth: the nature of the claim; the basis or reason for the claim; any other material information regarding the claim; the specific relief and/or proposed remedy sought; and the intent to invoke this Section (the "Notice of Claim"). A Claimant may not deliver such notice during any cure or enforcement period pursuant to Section 14.2. Following all applicable notice and approval requirements, including without limitation, those set forth in Section 14.5 (c), Claimant and Respondent shall use good faith efforts to resolve the Claim through negotiations following delivery of the Notice of Claim, pending mediation pursuant to Section 14.5(e)(ii) below.

(ii) Mediation. The Claim shall first be submitted to non-binding mediation before a mediator selected by the parties. The costs of the mediation shall be borne equally by all parties. Mediation shall be a condition precedent to arbitrating any dispute. The mediation shall occur within forty-five (45) days following delivery of the Notice of Claim ("Mediation Period"). In the event that mediation is unsuccessful, either party may demand arbitration pursuant to Section 14.5(e)(iii) within thirty (30) calendar days of the date of the mediation. If no party demands arbitration within the specified time, the parties, to the fullest extent permitted by law, irrevocably waive any and all right to proceed to arbitration and any and all claims they may have against the other party(ies).

(iii) Arbitration. The Declaration is a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. Following the Mediation Period and a written demand for arbitration, the Claim shall be resolved by binding arbitration administered by the American Arbitration Association in accordance with the current Construction Industry Arbitration Rules with an Arbitrator appointed by Declarant. The costs of the arbitration shall be borne equally by the parties, subject to reallocation by the Arbitrator. Any arbitration award may be enforced through entry of judgment by any court having jurisdiction thereover. Exclusive venue for any arbitration proceeding shall be in El Paso County, Colorado.

(iv) Construction Defect Actions. In the event any Action provided for in C.R.S. Section 13-20-802.5 (construction defects), the provisions of this Section 14.5(e)(iv) shall also apply. If any of Claimant's claims relate, in any way, to any work completed by any of Respondent's subcontractors or any materials and/or equipment provided by any of Respondent's suppliers, Respondent, in its sole discretion, may join such subcontractors and/or suppliers to any arbitration proceeding with Claimant. The sole manner which may be used to establish breach of any of Respondent's obligations under this Declaration, any obligations

which may exist by law or reason of any statute, any applicable industry standards, and/or Claimant's damages, including, but not limited to, appropriate repair costs, shall be through the testimony of a homebuilder currently licensed by the Pikes Peak Regional Building Department who has built and sold at least fifty (50) homes with a sales price exceeding Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) in the two (2) calendar years immediately preceding the calendar year in which the claim is brought. The Arbiter shall completely exclude the testimony of any tendered expert who does not meet the foregoing qualifications.

(f) Amendment. The terms and provisions of this Section 14.5, inure to the benefit of Declarant and the Third Party Beneficiaries (defined below), are enforceable by Declarant and the Third Party Beneficiaries and shall not ever be amended without the written consent of Declarant and without regard to whether Declarant owns any portion of the Community Area, any Lots and/or the status of the Period of Declarant Control. BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS SECTION 14.5 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE LOTS AND DWELLING UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS SECTION 14.5, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE LOTS AND DWELLING UNITS FOR THE PRICE PAID BY THE ORIGINAL PURCHASERS. THIS PROVISION IS IN ADDITION TO AND NOT CONTRARY TO THE TERMS OF ARTICLE 15 CONCERNING ALL OTHER AMENDMENTS TO THIS DECLARATION.

(g) Accrual of Claims. In the event of any amendment of any provision of this Article in violation of Section 14.5(f), or in the event Section 14.5(e) is deemed unenforceable, then and in such event any amendment or modification of the terms of this Article 14 shall only apply prospectively, to claims that accrue following the date of such amendment or modification.

(h) Third Party Beneficiaries. Each member of the design and development and sales team for Flying Horse North is a third party beneficiary of Section 14.5 ("Third Party Beneficiary"), including without limitation each architect, engineer, land planner, surveyor, real estate broker, contractor, subcontractor, supplier, homebuilder, attorney and accountant.

Section 14.6 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 14.7 Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Area, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 14.8 Remedies Cumulative. Except as expressly stated herein, each remedy provided under the Association Documents is cumulative and not exclusive.

Section 14.9 Costs and Attorneys' Fees. In addition to any other rights provided herein and not by way of limitation thereof, any party which seeks to enforce the Association Documents and prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees. For each claim or defense, including but not limited to counterclaims, cross-claims and third-party claims, and except as otherwise provided herein, in any legal proceeding to enforce or defend the provisions of CCIOA or the Association Documents, the prevailing party shall be awarded on such claim the prevailing party's reasonable collection costs and attorneys' fees and costs incurred in asserting or defending the claim to the extent permitted by applicable law.

Section 14.10 Limitations. Notwithstanding any other provision of this Article, no claim or proceedings may be initiated after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitation or statute of repose.

Section 14.11 Liability for Failure of Association to Maintain an Action. No director or officer of the Association shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a claim if the following criteria are satisfied: (i) the director or officer was acting within the scope of his or her duties; (ii) the director or officer was acting in good faith; and (iii) the act or omission was not willful, wanton or grossly negligent.

Section 14.12 Severability. All provisions of this Article are severable. Invalidation of any of the provisions of this Article, by judgment, court order or otherwise, shall in no way affect or limit the effectiveness of any other provisions of this Article, all of which shall remain in full force and effect.

## **ARTICLE 15 MISCELLANEOUS**

Section 15.1 Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for twenty (20) years after the date when this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by agreement of the Owners with at least sixty-seven percent (67%) of the voting power of the Association, in the manner provided in CCIOA Section 38-33.3-218.

Section 15.2 Amendment of Declaration by Declarant or the Association. Declarant is hereby granted the unilateral authority to amend this Declaration as follows:

(a) Until the first Lot subject to this Declaration has been conveyed by Declarant to an Owner other than a successor Declarant, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or

terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.

(b) Declarant may amend the Declaration in accordance with Article 10 as necessary to exercise any of the development rights set forth in Article 10 or elsewhere in this Declaration.

Section 15.3 Amendment of Declaration by Members. Subject to the additional specific requirements contained in Section 14.5(e) or Section 15.4, each setting forth specific additional requirements and circumstances requiring Declarant consent, this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members with at least sixty-seven percent (67%) of the voting power of the Association, in accordance with the requirements of CCIOA Section 38-33.3-217. Every amendment to the Declaration must be recorded in the County, and is effective only upon recordation.

Section 15.4 Required Consent of Declarant to Amendment. Any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall not terminate at such time as the last Lot in the Community Area has been conveyed by Declarant to the first Owner but shall continue for the terms of Article 10 and/or Section 14.5, as applicable, which consent requirement shall survive as provided therein.

Section 15.4 Water Rights Restrictions. Notwithstanding any other provision in this Declaration to the contrary, all provisions addressing the water supply, Water Rights and the augmentation plan including, but not limited to, Sections 1.9, 2.9, 3.14, 4.2, 5.9, 8.3(b) and Article 18 shall neither terminate nor be revoked, changed, or amended except by Order of the Water Court, which may amend, modify, or change such provisions by judicial order.

Section 15.5 Special Rights of First Mortgagees. Any First Mortgagee, upon filing a written request therefor with the Association, shall be entitled to: (a) receive written notice from the Association of any default by the Owner indebted to such First Mortgagee in the performance of the Owner's obligations under the Association Documents, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) upon request, receive a copy of financial statement, within ninety (90) days following the end of any fiscal year of the Association; (d) receive written notice of all meeting of Members; (e) designate a representative to attend any meeting of Members; (f) receive written notice of abandonment or termination of the Association or of this Declaration; (g) receive notice of any amendment to this Declaration, the Articles of Incorporation or the Bylaws; (h) receive written notice of termination of any agreement for professional management of the Association of the Association Properties following a decision of the Association to assume self-management of the Association Properties; and (i) receive written notice of any damage to the Association Properties if the cost of reconstruction exceeds Fifty Thousand and 00/100 Dollars (\$50,000.00), and of any condemnation or eminent domain

proceedings or other proposed acquisition with respect to any portion of the Association Properties.

For purposes of this Section, to obtain the approval or consent of any First Mortgagee, the Association shall send a dated, written notice and a copy of any proposed amendment by certified mail to each First Mortgagee at its most recent address shown on the recorded Mortgage or recorded assignment thereof. In addition, the Association shall cause the dated notice, together with information on how to obtain a copy of the proposed amendment, to be printed in full at least twice on separate occasions at least one week apart in a newspaper of general circulation in the county in which the Community is located. A First Mortgagee that does not deliver to the Association a negative response within sixty (60) days after the date of the notice shall be deemed to have approved the proposed amendment.

Section 15.6 Priority of First Mortgage Over Assessments. Each First Mortgagee who recorded its First Mortgage before Assessments have become delinquent and who obtains title to the Lot encumbered by the First Mortgage, whether pursuant to the remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot other than as otherwise provided under Colorado law. A First Mortgagee shall be deemed to have acquired title to a Lot on the date of receipt of a deed in lieu of foreclosure, on the date of receipt of a Certificate of Purchase from the Public Trustee, or on the date of sale pursuant to a judicial foreclosure and receipt of the Sheriff's Certificate of Purchase, as the case may be.

Section 15.7 First Mortgagee Right to Pay Taxes and Insurance Premiums. Any one or more First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may become or have become a charge against any of the Association Properties, and may pay any overdue premiums on hazard insurance policies for any Association Properties, or may secure new coverage if the insurance policy on and Association Properties lapses, and the First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 15.8 Evidence of Required Approvals. Whenever the validity of any amendment to or revocation of this Declaration is conditioned upon voting by a stated percentage of Members and approval by First Mortgagees or Agencies, or both, the recorded document implementing the amendment or revocation shall contain a certification by an officer or the Association that the approvals of the required percentages of Members, First Mortgagees and Agencies were obtained. The Association shall keep on file in its offices such proxies, letters, minutes of meetings or other documentation as may be required to evidence compliance with applicable approval requirements, but the officer's certificate on the recorded instrument shall be sufficient public notice of compliance. Required approval by the Declarant must be evidenced by a Declarant executed and notarized consent.

Section 15.9 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if

no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second (2<sup>nd</sup>) business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

Section 15.10 Persons Entitled to Enforce Declaration. The Association (acting by authority of the Board) or any Member (acting on his own behalf), shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration or the other Association Documents, unless otherwise expressly stated herein. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of the Association Documents, and all other rights and remedies provided in the Association Documents and at law or in equity. **Each Owner hereby acknowledges that the Association's enforcement of the use restrictions contained in this Declaration will be in a manner which is consistent with the Water Rights described in Section 1.8 of this Declaration.**

Section 15.11 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 15.12 Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Area, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 15.13 Remedies Cumulative. Each remedy provided under the Association Documents is cumulative and not exclusive.

Section 15.14 Costs and Attorneys' Fees. In addition to any other rights provided herein and not by way of limitation thereof, the party which seeks to enforce the Association Documents and prevails shall be awarded its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees in any action or proceeding under the Association Documents.

Section 15.15 Limitation on Liability. The Association, the Board, the Architectural Control Committee, Declarant, and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and shall be indemnified by the Association to the fullest extent permissible by Colorado law, including without limitation, circumstances in which indemnification is otherwise discretionary under Colorado law, in accordance with the subject to the terms and limitations contained in the Bylaws.

Section 15.16 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its

agents or employees in connection with any portion of the Community Area, or any Improvements thereon, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a writing signed by Declarant.

Section 15.17 Liberal Interpretation. The provisions of the Association Documents shall be liberally construed as a whole to effectuate the purposes of the Association Documents. The use herein of the word “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

Section 15.18 Governing Law/Venue. The Association Documents shall be construed and governed under the laws of the State of Colorado. Exclusive venue shall be in El Paso County, Colorado.

Section 15.19 Severability. Each of the provisions of the Association Documents shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 15.20 Number and Gender. Unless the context requires a contrary construction, as used in the Association Documents, the singular shall include the plural and the plural, the singular and the use of any gender shall include all genders.

Section 15.21 Captions for Convenience. The titles, headings and captions used in the Association Documents are intended solely for convenience of reference and are not intended to affect the meaning of any provision of this Declaration.

Section 15.22 Mergers and Consolidation. The Association may merge with another incorporated association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Community Area together with the covenants and restrictions established upon any other property, as one plan. Notwithstanding the foregoing, the Association shall have the right to merge into one association upon a vote of the respective boards of directors of such associations.

Section 15.23 Conflicts in Documents. In case of any conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. If there is a

conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 15.24 Interpretive Authority Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intent or meaning of any of this Declaration, the Declarant, during the Period of Declarant Control, and thereafter, the Association (the “Interpretive Authority”), shall determine the proper construction of the provisions in question and shall set forth in a written instrument duly acknowledged by the Interpretive Authority and filed for record with the Clerk and Recorder of El Paso County, the meaning, effect, and application of the provision. This determination will thereafter be binding on all parties so long as it is neither arbitrary nor capricious. Nothing contained herein will permit the Association to interpret the provisions of Section 14.5 in any manner that limits Declarant’s authority and/or rights and/or limits in any manner the mandatory arbitration provisions contained in this Declaration.

## **ARTICLE 16 DISCLOSURES**

Section 16.1 Statutory Disclosure. C.R.S. Section 38-35.7-101 requires that the following disclosure be made to you:

**SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.**

Section 16.2 Plat and Development Plan Restrictions. The Development Plan and Plat may each contain general notes and restrictions with which each Owner should familiarize itself.

Section 16.3 Parks. Each Owner hereby acknowledges that there are no parks located in the Community Area as of the Record Date and that if certain the Expansion Property is annexed by Declarant into the Declaration, at Declarant’s sole election, the Parks will be subject to the terms contained in Section 2.7 of this Declaration. As provided in Section 2.7 the Parks, if annexed into the Community Area, will each be an Association Property.

Section 16.4. Equestrian Trails. Each Owner hereby acknowledges that Expansion Property if annexed into the Declaration, at Declarant's sole discretion, may contain various equestrian trails within and/or adjacent to the Community Area and that the equestrian trails will be open to the public and not limited to use by Owners and their Related Users. As provided in Section 2.8 the Association Equestrian Trail if annexed into the Community Area will be an Association Property.

Section 16.5 Non-Domestic Animals. Each Owner further acknowledges that a certain portion of the Expansion Property may be permitted to maintain non-domestic animals, including horses, all of which are subject to Declarant's election, in Declarant's sole discretion, to annex the applicable property, the availability of an adequate water supply and the Community Standards that will be adopted with respect to those Lots to govern the specific use thereof.

Section 16.6 Owner Responsibilities. Each Owner acknowledges that he is responsible for installing an Architectural Control Committee approved driveway that connects to the public right of way and for maintaining, repairing, and replacing the driveway following installation. Each Owner further acknowledges that he or she is responsible for connecting to utilities located in the adjoining public right of way when constructing the Dwelling Unit and other Improvements. Each Owner will also be responsible for repairing any damage to any drainage culverts and maintaining on an as needed basis the drainage culvert located in the public right of way adjacent to the Owner's Lot.

Section 16.7 Golf Course Risk. Each Owner acknowledges that the Community Area is located near a golf course. By purchase of a Lot, each Owner expressly acknowledges that **the property that comprises the golf course is not required to continue to operate as a golf course and may be converted to open space at the election of the owner thereof**. Each Lot Owner expressly assumes the risks related to the golf course, including without limitation, those risks described in the Golf Play Easement, (regardless of whether the Owner is using the golf course) and agrees that neither Declarant, the Association nor any of their respective affiliates, successors and assigns, partners, shareholders, officers, directors, employees and agents nor any other entity planning or constructing the Owner's Lot or Dwelling Unit shall be liable to Owner, Related User or any other Person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, loss of view, noise pollution or other visual or audible offenses or trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or any Association Property to the golf course, including without limitation, any claim arising, in whole or in part, from the negligence of Declarant or any other entity planning or constructing the Owner's Lot or Dwelling Unit. Each Owner hereby agrees to indemnify and hold harmless Declarant, the Association, their affiliates, successors and assigns, partners, shareholders, officers, directors, employees and agents against any and all claims by Owner's guests and invitees.

Section 16.8 Flying Horse Club and Community Amenities Release. The Declarant, the Developer, the Club at Flying Horse (including without limitations the operations known as the Club at Flying Horse North ("Club")) and their respective members, affiliates, bond holders, employees, directors, officers, successors, assigns and agents are each hereby released and none

of them shall be held in any manner to be liable or responsible, either directly or indirectly, for any damage to any Lot, or to any Improvement thereon or personal property, or for any injury to any Person due to the use in any manner of any Club property, amenity or Improvement, park, open space, trail, or any other community amenity within the Flying Horse North development (the "Amenities" and individually, the "Amenity"), including any golf ball or other matter of any kind or nature, whether in motion or at rest, which shall have been driven or originated from any Amenity. Each Owner, for itself and its Related Users acknowledges that risks of injury to Persons or property are inherent to Person or property located upon or in close proximity to a golf course, club house, park, open space, trail or any other Amenity and agree that they assume all risks resulting therefrom, including but not limited to, claims of negligent design of any Lot or Amenity, negligent construction of any Amenity or location of any Amenity. Further, by accepting a deed to a Lot, you agree to indemnify and hold Developer, the Association, the Club, and their respective members, affiliates, bond holders, employees, directors, officers, successors, assigns and agents harmless from and against all damages, including costs of investigation, settlement and reasonable attorneys' fees and costs arising out of any injury to Person or property which occurs to any Person or property (real or personal) proximately caused by the use of any Amenity or negligence of Developer, the Association, the Club and their respective members, affiliates, bond holders, employees, directors, officers, successors, assigns in connection with all Amenities.

Each Owner should determine the proximity of his Lot he is purchasing to the Amenities, including without limitation the golf course, to evaluate sensitivity to any anticipated use, levels of use, noise levels, and/or concentration of users associated with the applicable Amenities.

Section 16.9 The Club at Flying Horse. The Club is a private membership golf course. All memberships to the Club are subject to the Club's then current application process and requirements. Information concerning the Club, membership application procedures, amenities and availability can be obtained by directly contacting the Club. Club Memberships, of whatever kind, may only be transferred in accordance with the rules and regulations the Club may adopt from time to time. **You are hereby advised that Club Memberships DO NOT transfer with the purchase or sale of a home within Flying Horse North.** Neither the Declarant nor the Association make any representations about the timing of construction of Club amenities, monthly fees, membership rules or regulations or any other aspect of the Club or its operations. You are responsible for your own investigation regarding the Club.

Section 16.10 View / Proximity Impairment. The Developer, the Association, or the owner of any Amenity does not guarantee or represent that any view over and across the Amenity from Lots adjacent to the Amenity or proximity to an Amenity will be preserved without impairment. Owners of the Amenities shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping to the Amenities from time to time. In addition, the owner of any Amenity, which includes the golf course, may, in its sole discretion, change the location, configuration, size, and elevation of the trees, bunkers, fairways and greens from time to time and/or convert the use to open space. Any such additions or changes may diminish or obstruct any view or proximity to an Amenity from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

16.11 Rights of Access and Parking. There is hereby established for the benefit of any Amenity and its members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all private roadways located within Flying Horse North reasonably necessary to travel between the entrance to the Amenity and over those portions of the Amenity (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Amenity. Without limiting the generality of the foregoing, members of any Amenity and the guests and invitees of such Amenity shall have the right to park their vehicles on the roadways located within the Community Area at reasonable times before, during, and after tournaments, other similar functions, and special events held by or at the Amenity to the extent that the Amenity has insufficient parking to accommodate such vehicles.

## **ARTICLE 17 OWNER ASSURANCE**

Section 17.1 Owner Assurance Program. In an effort to keep the consistent, quality and character of the Community Area prior to and during construction of the Dwelling Unit and related Improvements and to encourage timely Revegetation and, if applicable, Landscaping within the Community Area, the Association has adopted, and each Owner acknowledges and consents to comply with, the Owner Assurance Program described in this Article 17. The initial Owner of the Lot following receipt of title from the Developer will deposit **with the Association** the applicable “Owner Assurance” amount established from time to time by the Association as part of the Community Standards. At any time during which the Owner Assurance is required, if the Owner Assurance is reduced to less than required, the applicable Owner shall be required to immediately provide the Association with additional funds to replenish the Owner’s Owner Assurance.

Section 17.2 Use of Construction Assurance. Each Owner acknowledges that the Owner Assurance is being provided as security to ensure the Owner’s compliance with this Declaration, the Community Standards, other Association Documents in conjunction with Lot ownership and the initial construction on the Owner’s Lot, including without limitation, Rules and Regulations adopted from time to time by the Association to implement and manage the construction process. When Lot construction is fully satisfied and an Owner requests an Association inspection and the Owner fully satisfies that inspection, the applicable Owner Assurance will be released to the Owner, subject to the terms of this Article 17. Each Owner acknowledges that the Ownership Assurance will not be released until a final satisfactory inspection occurs following an Owner timely scheduling and passing the final inspection all as further provided for in the Owner Assurance Rules and Regulations to be adopted by the Association. At such times that the Association determines in its reasonable discretion that a violation has occurred, the Association shall have the right, but not the obligation, without further notice or rights by the Owner, to utilize the Owner Assurance in the manner provided for in this Article 17. Any use of the Owner Assurance will require an Owner to immediately provide the Association with additional funds to replenish the Owner Assurance funds that was utilized.

Section 17.3 Ongoing Maintenance. In addition to and not in limitation of the potential violations that can be cured by the Association using the Owner Assurance, if at any time that the Owner's Assurance is being held by the Association and has not been repaid to the Owner or forfeited to the Association that the Association reasonably determines that a Lot has not been properly maintained, the Association may, on behalf of Owner: (i) cause the vegetation on the Lot to be cut, noxious weeds to be removed or strayed, and/or dead vegetation to be removed; (ii) remove trash and other debris for the Lot; and/or (iii) install or repair any silt fences or other drainage control items.

Section 17.4 Remediation. Prior to the release of the entire Owner Assurance, the Association may, on behalf of an Owner: (i) undertake a cure that the Association determines to be reasonable of violations, including without limitation, any violation of applicable Construction Regulations, trash accumulations, damage to Association Property or third party property by the Owner or its agents as well as (ii) or (ii) undertake a cure of any violation of this Declaration, the Community Standards and/or any other Association Document. Upon such Association undertaking, the Association will deduct the cost of that action from the Owner Assurance.

Section 17.5 Revegetation and Landscape Installation. In the event Revegetation and/or the Landscaping is not timely, properly or fully installed on the Lot as provided for in this Declaration and the Community Standards, the Association may install, complete or repair the Revegetation and/or Landscaping, on behalf of the applicable Owner with the right to utilize the applicable Owner Assurance for that action.

Section 17.6 Site Plan and Other Approvals. In all events, the various applicable approval and inspection fees charged from time to time by the Association will be deducted from the Owner Assurance. The Lot must be Revegetated and/or Landscaped in accordance with this Declaration and the Community Standards and the Revegetation and Landscape plan for the Lot must be approved by the Association prior to installation. The approved Revegetation and/or Landscaping must be installed within 6 months following completion of the Dwelling Unit or such later date approved by the Association following the Owner's successful and timely application for an extension thereof.

Section 17.7 Intentionally Reserved.

Section 17.8 Fees and Costs. Each Owner acknowledges that the Association will impose, directly or on behalf of third party contractors, various inspection and review fees. These charges will be deducted from the Owner Assurance prior to a final disbursement to the Owner.

Section 17.9 Balance. Following completion of construction of a Dwelling Unit and proper Landscaping and Revegetation as provided for in this Declaration, the Community Standards, and other Association Documents, the Owner shall be responsible for scheduling a final inspection (the "Final Inspection Date"). In the event an Owner fails to request and pass a Final Inspection prior to the conveyance of the Lot, the remaining Owner Assurance then held by the Association shall be deemed automatically transferred with title to the Lot unless the

Association, prior to or contemporaneously with the Lot transfer, receives instructions otherwise from the Owner AND receives a replacement Owner Assurance from the new Owner in the same amount then being held by the Association. Neither the transfer of the Lot or replacement of the Owner Assurance by a purchaser will extend the Termination Date. In the event an Owner fails to request and pass a final inspection prior to one (1) year following the issuance of a Certificate of Occupancy for the Dwelling Unit (the "Termination Date"), the portion of the Owner Assurance then being held by the Association shall become the Association's sole and exclusive property.

## **ARTICLE 18 WATER RESTRICTIONS AND REQUIREMENTS**

Section 18.1 Water and Sanitary Facilities. Water, sewer and other utilities are the responsibility of each Lot Owner. Each Owner hereby acknowledges that the Community Area, including but not limited to each Lot contained therein, is subject to the terms, conditions and requirements contained in that certain Findings of Fact, Conclusions of Law and decree issued by the Water Court, Water Division 1, in Case Nos. 16CW3190. The Declarant will convey title to the Association all of the non-tributary water rights from the Laramie-Fox Hills aquifer and all of the not non-tributary water rights from the Dawson aquifer as decreed in Case No. 94CW023(B), (Water Division No. 1), and will convey 208 acre-feet annually of the non-tributary water rights from the Laramie-Fox Hills aquifer as decreed in Case No. 99CW218, Water Division No. 1, as well as all of the rights associated with the augmentation plan approved in Case No. 16CW3190, Water Division No. 1. In addition, Declarant will sell to the Association, based on annual usage and the actual lease rate paid by Declarant, water from the non-tributary Laramie-Fox aquifer and ~~all of~~ water from the not non-tributary Dawson aquifer as decreed in Case No. 04CW098 (Water Division No. 2) which are currently leased from the Colorado State Land Board (and ~~to~~ will convey those rights to the Association as set forth in Section 1.9). Each Owner of a Lot, subject to any greater restrictions contained in the Decree and all appropriate governmental approval and applicable laws, applicable water permits, Rules and Regulations, may be permitted to drill a domestic water well into the Dawson aquifer on the Lot owned by said Owner and utilize a portion of the Association Water Rights for providing a supply of water for ordinary household purposes and exterior irrigation, subject to the following requirements:

(a) For the purpose of these Covenants, "domestic" purposes include ordinary in-house uses, watering of lawn and garden, and may (but only if the decree is modified to) include watering of non-commercial domestic animals.

(b) Each Owner shall be required to provide to the Association, at least three (3) times per year, readings of the Owner's totalizing flow meter. Requested information shall be provided to the Association within thirty (30) days following delivery to the Owner of the Association's request.

(c) No more than 5,000 square feet per Lot may be irrigated, regardless of the use thereof.

(d) Each Owner of a Prairie Lot (and such different and/or other Lots as specifically authorized by Declarant) may maintain no more than three (3) mature animals on his/her Lot. Such animals may be maintained for non-commercial purposes only and shall be required to comply with the requirements set forth in Section 5.14 of this Declaration and all applicable Community Standards.

(e) Each such well shall be equipped with a totalizing flow meter and shall be maintained in good operating condition by the Lot Owner.

(f) Each Lot must have a non-evaporative septic tank and leach field domestic effluent system duly approved by the City-County Health Department of El Paso County, and all plans for same must be approved by the Architectural Control Committee. If a non-evaporative septic system is disapproved by the Health Department of El Paso County, Colorado, the applicable Lot Owner shall apply to the Architectural Committee for permission to install an evaporative septic system within the Lot, and the Architectural Committee shall grant such permission for installation of an evaporative septic system. All references in this Declaration to non-evaporative septic systems shall be deemed to include evaporative septic systems which have been approved by the Architectural Committee in the manner provided in this Section 18.1.

(g) No sanitary or septic facility shall be constructed so as to interfere with the water supply of any adjoining property.

(h) Water from wells within the Community Area may not be used to initially fill, or, if drained, to refill water to swimming pools. Water from other offsite sources must be used for this purpose. Water from an Owner's well within the Community Area may, however, be used to level off or otherwise supplement the water line in an approved swimming pool, subject to the notice requirement indicated below. Each Owner who elects to level off or otherwise supplement the water level in an approved pool from his Community Area well shall be required to notify the Architectural Control Committee of the amount of water utilized during each such supplementing of pool water levels. Each Owner hereby acknowledges that any such use of water from wells within the Community Area will be subject to the restrictions set forth on the decree and may subject such Owner to other water use restrictions, including without limitation a requirement to reduce the irrigated area contained within such Owner's Lot.

(i) The Association and each Owner shall be responsible for obligations and costs associated with the plan for augmentation, including, but not limited to, construction and pumping of Laramie-Fox Hills wells, or other sources, to replace pumping and post-pumping depletions to the appropriate stream systems.

Section 18.2 Disclosure. Each Owner hereby acknowledges the State Engineer's following admonition:

“Water in the Denver Basin Aquifer is allocated based on a 100 year life; however, for El Paso County planning purposes, water in the Denver Basin Aquifer is evaluated based on a 300 year aquifer life. Declarant, the Association and all Lot Owners within the Community Area should be aware that the

economic life of a water supply based on wells in a given Denver Basin aquifer, including the Laramie-Fox Hill Aquifer and the Dawson Aquifer, may be less than either the 100 years or 300 years indicated due to anticipated water level declines. Furthermore, the water supply plan should not rely solely upon non-renewable aquifers. Alternatively renewable water resources should be acquired and incorporated in a permanent water supply plan that provides future generations with a water supply.”

**Section 18.3 Water Wells for Each Lot. The Association holds title to, or has the right to use, the Water Rights described in Section 1.9 herein. Membership in the Association shall entitle each Owner to use a portion of the Water Rights. The use by each Owner of the Water Rights is restricted and regulated by the terms and conditions of the augmentation plan described in Section 2.9 herein. The use is further limited by the restrictions set forth in this Declaration, and shall be based upon the water requirements of each Lot, including the amount necessary to provide in-house water use together with the limited irrigation provided for herein, and, for Owners of Lots permitted to maintain domestic stock animals, including the water necessary to maintain the animals described in Section 5.14 herein. Prior to constructing a well into the Dawson aquifer to provide water for Owner’s Lot, Owner shall make application for a well permit from the State of Colorado. Said well permit application shall designate the Association as “owner” and shall be approved by the Association prior to submission to the State of Colorado. The water court decree (described in Section 1.9 herein), approving the plan for augmentation for the wells to be used by each Owner, provides that the State of Colorado shall approve Dawson aquifer wells for each Lot. The Owners shall process all well permits and matters relating thereto through the Association. Each Owner and the Association hereby acknowledge that the County shall have no obligation for matters related to the issuance of well permits for the Lots or for assisting an Owner with his well permit application. Owner shall be responsible for all costs of construction of the Dawson aquifer well that provides water to Owner’s Lot and for all maintenance and repair of said well. Owner’s Dawson well shall be completed as close as possible to the bottom of the Dawson aquifer. Owner agrees to indemnify and hold harmless the Association for any claims made against the Association based upon the use of the well that provides water to Owner’s Lot, including reasonable costs and attorney’s fees in the defense of any such claim. Each owner hereby acknowledges that the Water Rights which are available for use by each Owner in connection with his Lot will be evidenced by a certificate indicating that the Lot Owner will be entitled to the share of water described in this Section 18.3 (“Water Certificates”). Each Owner further acknowledges that each Owner’s ability to utilize the Association’s Water Rights will transfer automatically upon the transfer of title to a Lot and such rights are not severable from any Lot. The Association shall, therefore, have the right to cancel any previously issued Water Certificates if any Owner fails to transfer his Water Certificate to a successor Owner of the Lot. The Association shall have the right to establish reasonable fees, from time to time, for issuance of new Water Certificates to Owners. Each Owner hereby acknowledges that nothing contained in this Declaration will guaranty any Owner water availability but rather the legal right thereto. Each Owner**

also hereby acknowledges the location and completion of water well(s) satisfactory to each Owner on the Owner's Lot is the Owner's responsibility and not the Developer's or the Association's responsibility.

*SIGNATURE PAGE FOLLOWS.*





**EXHIBIT A**  
**TO**  
**DECLARATION OF**  
**COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**  
**FOR FLYING HORSE NORTH**

**LEGAL DESCRIPTION OF THE COMMUNITY AREA**

Lots 1 through 80, all in Flying Horse North, Filing No. 1, El Paso County, Colorado together with those Tracts in Flying Horse North Filing No. 1, El Paso County, Colorado that are to be owned and/or maintained by the Flying Horse North Homeowners Association, Inc. as set forth in the related Plat thereof.

**EXHIBIT B**  
**TO**  
**DECLARATION OF**  
**COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**  
**FOR FLYING HORSE NORTH**

LEGAL DESCRIPTION OF THE EXPANSION PROPERTY

*See Attached*

## EXHIBIT B



619 N. Cascade Avenue, Suite 200  
Colorado Springs, Colorado 80903  
(719)785-0790 (719)785-0799(fax)

JOB NO. 1096.10-13  
OCTOBER 23, 2017  
PAGE 1 OF 6

### **LEGAL DESCRIPTION: EXPANSION AREA**

TWO (2) PARCELS OF LAND BEING ALL OF SECTION 36 AND A PORTION OF SECTION 34 AND SECTION 35, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, AND A PORTION OF SECTIONS 30 AND 31, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ALL IN EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE WEST END BY A 2" ALUMINUM CAP STAMPED "24964" AND THE EAST END BY A 2 1/2" ALUMINUM CAP STAMPED "CCES LLC PLS 30118", IS ASSUMED TO BEAR S89°51'39"E, A DISTANCE OF 1316.82 FEET.

### **PARCEL 1**

COMMENCING AT THE NORTHWEST CORNER OF SECTION 36, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, SAID POINT BEING THE POINT OF BEGINNING;

THENCE N89°06'04"E, ON THE SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 2, RECORDED UNDER RECEPTION NO. 202134767, RECORDS OF EL PASO COUNTY, COLORADO AND THE NORTH LINE OF NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, A DISTANCE OF 1332.12 FEET TO THE SOUTHEASTERLY CORNER OF SAID HIGH FOREST RANCH FILING NO. 2, SAID POINT BEING THE WEST SIXTEENTH CORNER OF SAID SECTION 36;

THENCE N89°07'00"E, ON THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 36, A DISTANCE OF 1331.92 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 36;

THENCE N89°01'18"E, ON THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 36, A DISTANCE OF 1331.92 FEET TO THE EAST SIXTEENTH CORNER OF SAID SECTION 36;

THENCE N89°03'58"E, ON THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 36, A DISTANCE OF 1332.09 FEET TO THE NORTHEAST CORNER OF SAID SECTION 36;

THENCE N89°06'20"E, ON THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, A DISTANCE OF 1474.13 FEET TO THE WEST SIXTEENTH CORNER OF SAID SECTION 31;

THENCE N00°08'36"E, ON THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 11 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, A DISTANCE OF 1325.48 FEET TO THE SOUTHWEST SIXTEENTH CORNER OF SAID SECTION 30;

THENCE N89°03'20"E, ON THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, A DISTANCE OF 920.27 FEET TO THE SOUTHWEST CORNER OF THE EASTERLY TWELVE (12) ACRES OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 30;

THENCE N00°08'15"E, ON THE WEST LINE OF SAID EASTERLY (12) TWELVE ACRES OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, A DISTANCE OF 1326.26 FEET TO THE NORTHWESTERLY CORNER OF SAID EAST (12) TWELVE ACRES OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, SAID POINT BEING ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30 (HELD MONUMENTS DEPICTED ON LAND SURVEY PLAT DEPOSITED UNDER RECEPTION NO. 91000488 BY BERGE-BREWER & ASSOCIATES, INC ON JULY 30, 1991);

THENCE N89°01'31"E, ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, A DISTANCE OF 399.42 FEET TO THE CENTER QUARTER OF SAID SECTION 30;

THENCE N00°08'48"E, ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30, A DISTANCE OF 2604.74 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF A PARCEL OF LAND DESCRIBED IN A DOCUMENT RECORDED UNDER RECEPTION NO. 210081316;

THENCE ON SAID SOUTHERLY BOUNDARY, THE FOLLOWING (3) THREE COURSES:

1. N88°58'45"E, A DISTANCE OF 2270.00 FEET;
2. S71°21'27"E, A DISTANCE OF 29.72 FEET;
3. N88°58'45"E, A DISTANCE OF 299.96 FEET TO A POINT ON A LINE 30.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID NORTHEAST QUARTER OF SECTION 30;

THENCE S00°00'48"W, ON SAID PARALLEL LINE, A DISTANCE OF 2595.64 FEET TO A POINT ON A LINE 30.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHEAST QUARTER SAID SECTION 30;

THENCE S00°00'53"W, ON SAID PARALLEL LINE, A DISTANCE OF 2656.67 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 30;

THENCE S89°04'37"W, ON SAID SOUTH LINE, A DISTANCE OF 1290.01 FEET TO THE EAST SIXTEENTH CORNER OF SAID SECTION 31;

THENCE S00°00'11"E, ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31, A DISTANCE OF 1326.67 FEET TO THE NORTHEAST SIXTEENTH CORNER OF SAID SECTION 31;  
THENCE N89°08'21"E, ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31, A DISTANCE OF 1289.57 FEET TO A POINT ON A LINE 30.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31;  
THENCE S00°00'54"W, ON SAID PARALLEL LINE, A DISTANCE OF 1328.09 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31, SAID POINT BEING ON THE NORTHERLY BOUNDARY OF COUNTRY VIEW ESTATES, RECORDED UNDER RECEPTION NO. 99011204;  
THENCE S89°11'15"W, ON SAID SOUTH LINE AND THE NORTHERLY BOUNDARY OF SAID COUNTRY VIEW ESTATES AND ITS WESTERLY EXTENSION, A DISTANCE OF 2608.28 FEET TO THE CENTER QUARTER CORNER OF SAID SECTION 31;  
THENCE S89°11'00"W, ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 31, A DISTANCE OF 1320.84 FEET TO THE CENTER-WEST SIXTEENTH CORNER OF SAID SECTION 31;  
THENCE S00°00'34"W, ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 31, A DISTANCE OF 1329.16 FEET TO THE SOUTHWEST SIXTEENTH CORNER OF SAID SECTION 31, SAID POINT BEING ON THE NORTHERLY BOUNDARY OF PALMER DIVIDE, RECORDED UNDER RECEPTION NO. 205084216;  
THENCE S89°24'17"W, ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31 AND SAID NORTHERLY BOUNDARY OF PALMER DIVIDE AND ITS WESTERLY EXTENSION, A DISTANCE OF 1440.81 FEET TO THE SOUTH SIXTEENTH CORNER OF SAID SECTION 31;  
THENCE S00°28'30"E, ON THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 36, A DISTANCE OF 1323.57 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 36, SAID POINT ALSO BEING THE NORTHEASTERLY CORNER OF EDMONDS SUBDIVISION, RECORDED IN PLAT BOOK H-3 AT PAGE 60;  
THENCE S89°20'59"W, ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36, THE NORTHERLY BOUNDARY OF SAID EDMONDS SUBDIVISION AND THE NORTHERLY BOUNDARY OF CATHEDRAL PINES SUBDIVISION FILING NO. 2, RECORDED UNDER RECEPTION NO. 205164426, A DISTANCE OF 2674.51 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 36;  
THENCE S89°20'35"W, ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 30, CONTINUING ON SAID NORTHERLY BOUNDARY OF CATHEDRAL PINES SUBDIVISION FILING NO. 2 AND ON THE NORTHERLY BOUNDARY OF CATHEDRAL PINES SUBDIVISION FILING NO. 3, RECORDED UNDER RECEPTION NO. 206712390, A DISTANCE OF 2674.51 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 36;  
THENCE N00°14'34"W, ON THE WEST LINE OF SAID SECTION 36, A DISTANCE OF 5269.38 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 1346.825 ACRES.

**PARCEL 2**

COMMENCING AT THE NORTHEAST CORNER OF SECTION 35, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, SAID POINT BEING THE POINT OF BEGINNING

THENCE S00°14'34"E, ON THE EAST LINE OF SAID SECTION 35, A DISTANCE OF 523.85 FEET TO A POINT ON CURVE;

THENCE ON THE ARC OF A CURVE TO THE LEFT WHOSE CENTER BEARS S33°01'51"W, HAVING A DELTA OF 38°24'48", A RADIUS OF 535.00 FEET AND A DISTANCE OF 358.69 FEET TO A POINT OF TANGENT;

THENCE S84°37'03"W, A DISTANCE OF 175.44 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 11°13'59", A RADIUS OF 615.00 FEET AND A DISTANCE OF 120.57 FEET TO A POINT OF TANGENT;

THENCE N84°08'58"W, A DISTANCE OF 684.98 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 25°13'51", A RADIUS OF 615.00 FEET AND A DISTANCE OF 270.82 FEET TO A POINT OF TANGENT;

THENCE N58°55'07"W, A DISTANCE OF 166.51 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 31°18'40", A RADIUS OF 535.00 FEET AND A DISTANCE OF 292.37 FEET TO A POINT OF TANGENT;

THENCE S89°46'13"W, A DISTANCE OF 1674.58 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 24°52'43", A RADIUS OF 1960.00 FEET AND A DISTANCE OF 851.06 FEET TO A POINT OF TANGENT;

THENCE S64°53'30"W, A DISTANCE OF 459.47 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 21°22'27", A RADIUS OF 1040.00 FEET AND A DISTANCE OF 387.97 FEET TO A POINT OF TANGENT;

THENCE S86°15'57"W, A DISTANCE OF 692.41 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 51°05'38", A RADIUS OF 535.00 FEET AND A DISTANCE OF 477.09 FEET TO A POINT OF TANGENT;

THENCE S35°10'18"W, A DISTANCE OF 291.93 FEET TO A POINT OF CURVE;

THENCE ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 53°07'49", A RADIUS OF 615.00 FEET AND A DISTANCE OF 570.29 FEET TO A POINT OF TANGENT;

THENCE S88°18'07"W, A DISTANCE OF 160.75 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY 83;

THENCE N01°41'53"W, ON SAID EASTERLY RIGHT OF WAY LINE A DISTANCE OF 90.00 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1 AS PLATTED IN WESCOTT FIRE STATION NO. 3, RECORDED UNDER RECEPTION NO. 212713192 RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ON THE SOUTHERLY, EASTERLY AND NORTHERLY BOUNDARY OF SAID LOT 1 THE FOLLOWING (5) FIVE COURSES;

1. N88°18'07"E, A DISTANCE OF 165.75 FEET TO A POINT OF CURVE;
2. ON THE ARC OF A CURVE TO THE LEFT HAVING A DELTA OF 54°10'43", A RADIUS OF 460.00 FEET AND A DISTANCE OF 434.97 FEET TO A POINT OF REVERSE CURVE;
3. ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 15°19'05", A RADIUS OF 560.00 FEET AND A DISTANCE OF 149.72 FEET TO A POINT ON CURVE;
4. N38°00'00"W, A DISTANCE OF 141.67 FEET;

5. S88°20'00"W, A DISTANCE OF 587.56 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF SAID STATE HIGHWAY 83;

THENCE ON SAID EASTERLY RIGHT OF WAY THE FOLLOWING (3) THREE COURSES;

1. N01°41'53"W, A DISTANCE OF 446.49 FEET;
2. N00°02'53"W, A DISTANCE OF 245.49 FEET TO A POINT ON CURVE;
3. ON THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER BEARS S87°06'46"E, HAVING A DELTA OF 07°31'38", A RADIUS OF 1380.65 FEET AND A DISTANCE OF 181.38 FEET TO A POINT ON CURVE, SAID POINT BEING THE SOUTHWESTERLY CORNER OF HIGH FOREST RANCH FILING NO. 1, RECORDED UNDER RECEPTION NO. 201036672, SAID POINT ALSO BEING ON THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO;

THENCE N89°54'54"E, ON THE SOUTHERLY BOUNDARY OF SAID HIGH FOREST RANCH FILING NO. 1, AND SAID NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 34, A DISTANCE OF 584.61 FEET TO THE EAST SIXTEENTH CORNER OF SAID SECTION 34;

THENCE S89°57'36"E, ON THE NORTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 34 AND CONTINUING ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 1, A DISTANCE OF 1319.30 FEET TO THE NORTHEAST CORNER OF SAID SECTION 34;

THENCE N89°46'13"E, CONTINUING ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 1 AND ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 11 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, A DISTANCE OF 2660.56 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 35;

THENCE N89°45'50"E, CONTINUING ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 1, ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 35 AND THE SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 2, RECORDED UNDER RECEPTION NO. 202134767, A DISTANCE OF 2048.33 FEET;

THENCE ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 2, THE FOLLOWING (5) FIVE COURSES:

1. N44°21'15"E, A DISTANCE OF 120.12 FEET;
2. N27°42'44"E, A DISTANCE OF 30.37 FEET;
3. N83°51'56"E, A DISTANCE OF 62.76 FEET;
4. S79°32'21"E, A DISTANCE OF 69.45 FEET;
5. S46°40'23"E, A DISTANCE OF 153.82 FEET TO A POINT ON SAID NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 35;

THENCE N89°48'10"E, ON SAID SOUTHERLY BOUNDARY OF HIGH FOREST RANCH FILING NO. 2 AND SAID NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 35, A DISTANCE OF 270.47 FEET TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 70.926 ACRES.

CONTAINING A **TOTAL** CALCULATED AREA OF 1,417.751 ACFRES.

**EXCEPTING THEREFROM**

LOTS 1 THROUGH 81, TOGETHER WITH TRACTS A THROUGH N, S AND T, ALL IN FLYING HORSE NORTH FILING NO. 1, RECORDED UNDER RECEPTION NO. \_\_\_\_\_, RECORDS OF EL PASO COUNTY, COLORADO.

CONTAINING A CALCULATED AREA OF 360.365 ACRES.

CONTAINING A TOTAL CALCULATED AREA OF 1057.386 ACRES.

**LEGAL DESCRIPTION STATEMENT:**

I, DOUGLAS P. REINELT, A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE LEGAL WAS PREPARED UNDER MY RESPONSIBLE CHARGE AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, IS CORRECT.

**PRELIMINARY**

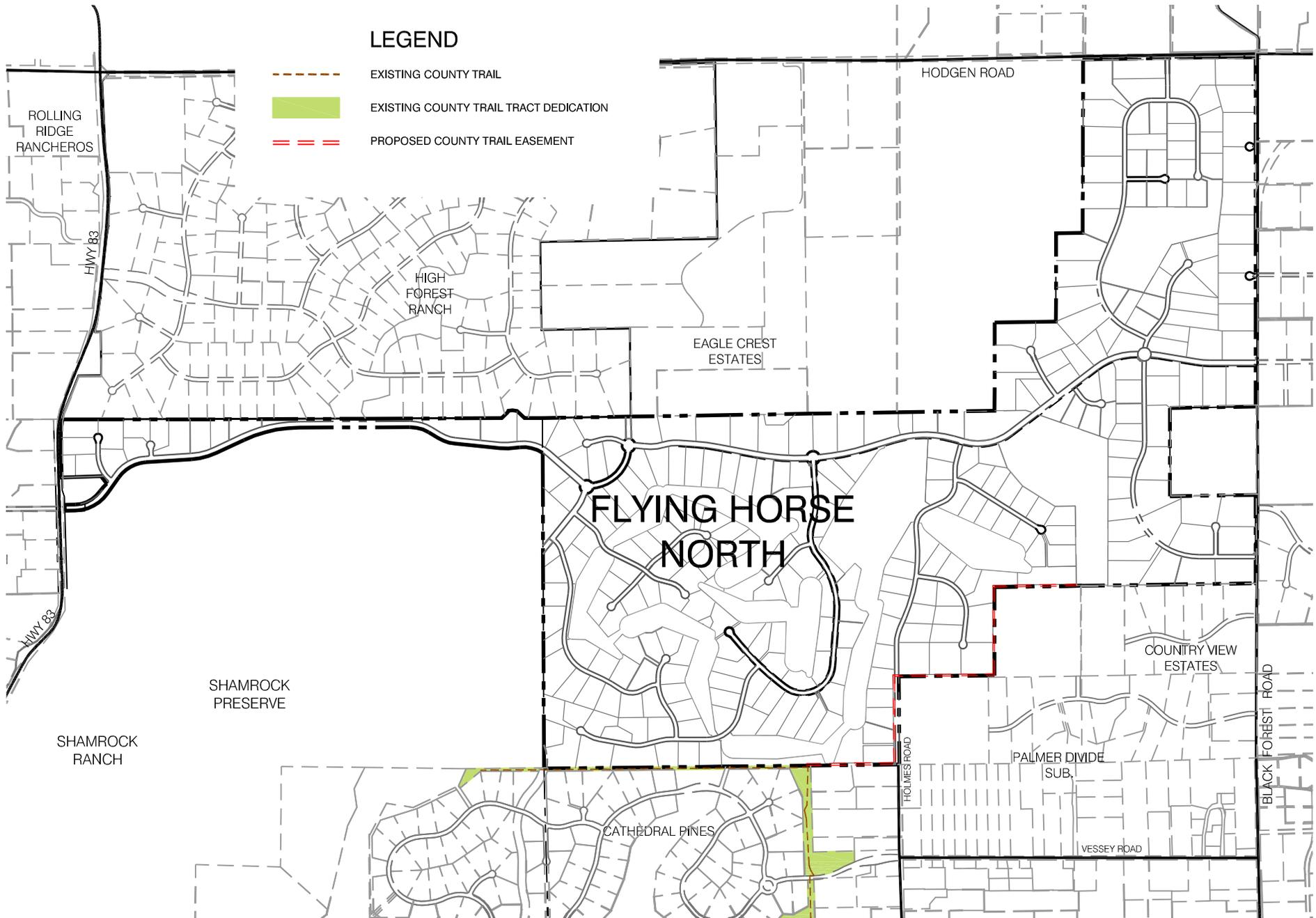
\_\_\_\_\_  
DOUGLAS P. REINELT, PROFESSIONAL LAND SURVEYOR  
COLORADO P.L.S. NO. 30118  
FOR AND ON BEHALF OF CLASSIC CONSULTING  
ENGINEERS AND SURVEYORS, LLC

\_\_\_\_\_  
DATE

**EXHIBIT C**  
**TO**  
**DECLARATION OF**  
**COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**  
**FOR FLYING HORSE NORTH**

DEPICTION OF COUNTY EQUESTRIAN TRAIL  
AND DEPICTION OF ASSOCIATION EQUESTRIAN TRAIL

*See Attached*



**LEGEND**

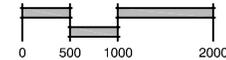
-  EXISTING COUNTY TRAIL
-  EXISTING COUNTY TRAIL TRACT DEDICATION
-  PROPOSED COUNTY TRAIL EASEMENT

**FLYING HORSE NORTH**

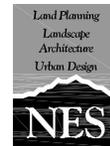
Exhibit C: Equestrian Trails



NORTH



SCALE: 1" = 2000'



N.E.S. Inc.  
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Suite 200  
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Fax 719.471.0267

[www.nescolorado.com](http://www.nescolorado.com)