

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PAINT BRUSH HILLS**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Paint Brush Hills (“Declaration”) is made as of April 11, 2022, by Tralon Homes, LLC, a limited liability company, formally Saint Aubyn Homes, LLC, a Colorado limited liability company (“Declarant”).

**BACKGROUND AND PURPOSE**

- A. Declarant is the owner of the real property located in El Paso County, Colorado described in Exhibit A attached hereto and incorporated herein by this reference (hereafter the “Property”).
- B. Declarant desires to subject and place upon the Property certain covenants, conditions, and restrictions, for the development, improvement, use, operation, maintenance, repair and enjoyment of the Property, that run with the land.
- C. This Declaration does not create a Common Interest Community (as defined by the Colorado Common Interest Ownership Act at C.R.S. §§38-33.3-103(8)). Therefore, this Declaration is not governed by the Colorado Common Interest Ownership Act.
- D. Declarant imposes the covenants, conditions, restrictions and easements set forth in this Declaration on the Property, and pursuant to C.R.S. § 32-1-1004 Declarant empowers the Paint Brush Hills Metropolitan District authority to furnish covenant enforcement and design review services for the Property, using revenues that are derived from the Property.
- E. Declarant reserves the right to add additional real property to this Declaration by recording one or more Supplemental Declarations.
- F. Pursuant to the Colorado Constitution, Article XIV, §§ 18(2)(a) and (b), and C.R.S. § 29-1-203, metropolitan districts may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for the sharing of costs, the imposition of taxes, and the incurring of debt.
- G. Declarant executes this Declaration (a) in furtherance of a common and general plan for the residential land located on the Property and to create the Community of Paint Brush Hills (“Community”); (b) to protect and enhance the quality, value, desirability and attractiveness of the Property and Improvements (as hereafter defined) within the Community; (c) to provide for design review for Improvements within the Community; (d) to enforce the provisions of this Declaration, the Design Guidelines (as hereafter defined), and Rules and Regulations (as hereafter defined) adopted under the provisions of this Declaration; and (e) to define duties, powers and rights of Declarant, the District (as hereafter defined), the Owners (as hereafter defined).

**DECLARATION**

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NOW, THEREFORE, Declarant, for itself, and Declarant's successors and assigns, hereby incorporates the recitals contained hereinabove as though fully set forth, and declares that the Property is and shall hereafter be owned and conveyed subject to the following uniform covenants, conditions and restrictions in furtherance of a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Community, and to enhance the value, desirability and attractiveness of the Community. This Declaration is intended to and shall run with the land and shall be binding on all persons having or acquiring any interest in the Property or any part thereof; shall inure to the benefit of and be binding upon every part of the Property and every interest therein; and shall inure to the benefit of, be binding upon and be enforceable by Declarant, the District, their successors in interest, owners associations within the Community that have been delegated such enforcement authority, and each Owner and such Owner's successors in interest.

**1. Definitions**

- 1.01 Declarant shall mean Tralon Homes LLC, a Colorado limited liability company, as well as any Person to whom Declarant specifically assigns all or a portion of Declarant's rights or obligations as Declarant hereunder by written document recorded in the Records.
- 1.02 Declaration shall mean this instrument as it may be amended from time to time by an instrument executed by Declarant or other parties authorized herein to amend the same, which instrument shall be Recorded.
- 1.03 Design Guidelines shall mean the architectural, construction, structural and/or aesthetic criteria, rules or standards, if any, established by the Design Review Committee from time to time that will apply to Improvements within all or specified portions of the Property.
3. 1.04 Design Review Committee shall mean the committee created pursuant to Article
- 1.05 Development Rights shall mean the right to: (a) add real estate to the Community; (b) create Lots within the Community; (c) subdivide or combine Lots; (d) withdraw real estate from the Community; (e) reserve, grant, create, modify and use easements over, across, under or through the Property; and (f) the right to move any Lot line(s) on Lot(s) owned by Declarant, for the purpose of accommodating Improvements which are constructed or may be constructed.
- 1.06 District shall mean Paint Brush Hills Metropolitan District, which entity has been formed as a special district in accordance with the Special District Act, Section 32-1-101, et seq., Colorado Revised Statutes. The District is the entity authorized and empowered to enforce the covenants, conditions, and restrictions contained herein, and to provide design review services for the Community.
- 1.07 Board shall mean the board of directors of the District.
- 1.08 District Properties shall mean all real and personal property, together with any Improvements and appurtenances and rights thereto, now or hereafter owned, leased or maintained by the District. District Properties may include, without limitation, when conveyed to the District, parks and open space within the Property, public trails, landscaping and related structures along public rights of way, entry signage and features, public walkways and trails.

- 1.09 Home shall mean all Improvements on a Lot intended or used for residential occupancy.
- 1.10 Improvement shall mean structures now or hereafter located on a Lot and anything which alters the previously existing exterior appearance of any Lot, including but not limited to Homes, buildings, outbuildings, patios, swimming pools, garages, doghouses, pet enclosures, mailboxes, aerials, antennas, roads, driveways, sidewalks/walks, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, and poles, tanks, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, radio, television (including cable or satellite systems), or other utilities.
- 1.11 Lot shall mean a parcel of land designated as a lot in a recorded Plat within the Property, together with all appurtenances and Improvements associated therewith, now existing or subsequently created.
- 1.12 Notice and Hearing shall have the meaning set forth in Section 4.02 of this Declaration.
- 1.13 Owner shall mean the party, whether one or more Persons, including Declarant, holding fee simple title to a Lot as shown in the Records.
- 1.14 Person shall mean a natural individual, trust or any other legal entity.
- 1.15 Plat shall mean a governmentally-approved and recorded subdivision plat creating a subdivision of land that is part of the Property which results in the creation of Lots. All such Plats are incorporated herein by reference and made a part hereof as though attached as an Exhibit.
- 1.16 Property shall initially mean the real property described on **Exhibit A** attached hereto and, unless the context indicates the contrary, all real property that is made subject to this Declaration in the future pursuant to a document recorded in the Records pursuant to Section 6.05 of this Declaration; provided, however, that it shall not include any property that has been withdrawn by Declarant in accordance with this Declaration.
- 1.17 Records shall mean the real estate records in the Office of the Clerk and Recorder of El Paso County, Colorado; and Recorded, without further reference, shall mean recorded in the real estate records in the Office of the Clerk and Recorder of El Paso County, Colorado.
- 1.18 Rules and Regulations shall mean those rules and regulations, however, denominated, if any, adopted as provided in Section 4.01 of this Declaration, for the regulation and management of the Community, including Lots, as the same may be amended from time to time.
- 1.19 Special Declarant Rights shall mean the rights reserved for the benefit of the Declarant as further described in Article 6.

## 2. Covenants to Preserve the Character of the Community

2.01 Purpose of Covenants. The following covenants are adopted in order to preserve the desirability, attractiveness and value of residential property in the Community. The following restrictions and conditions shall apply to all land that is now or may hereafter be subject to this Declaration.

2.02 General. All Homes, buildings and structures of any kind shall be constructed, installed, maintained and used in compliance with all applicable federal, state, and local statutes, ordinances, laws, regulations, rules and requirements of all governmental and quasi-governmental entities, agencies and authorities after obtaining all required permits and licenses, and in accordance with any Design Guidelines and Rules and Regulations, as those may be amended from time to time.

2.03 Improvements. Except as provided in Section 3.06 below, all Improvements placed on a Lot shall be subject to prior approval in writing by the Design Review Committee or as provided in the Design Guidelines.

### 2.04 Construction.

(a) Construction Type. All construction shall be new. Any building previously used at another location or any building or Improvement originally constructed as a mobile dwelling may not be moved onto a Lot except as expressly provided in Section 2.04 (h) for temporary construction, sales or administration buildings or as approved by the Design Review Committee.

(b) Storage. Building materials may not be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement, unless such building materials are stored in an enclosed area and fully screened; except that Declarant may store building materials, supplies and equipment on their its own land in the Property.

(c) Construction Rules and Regulations. During the period of construction of a Home, building or other Improvement on a Lot, the Owner of the Lot shall comply with all construction rules and regulations which the Declarant or the Design Review Committee may reasonably establish from time to time.

(d) Construction Completion. All construction work shall be prosecuted diligently and continuously from the time of commencement of construction until fully completed. The exterior of all Homes, buildings or Improvements must be completed within seven (7) months after the commencement of construction, or such other time as the Design Review Committee deems reasonable under the circumstances due to the nature of the project or other factors. "Commencement of Construction" for a Home or building 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. If construction is not completed within the above time periods or such later time as approved by the Design Review Committee, the Design Review Committee may take further action as provided for in this Declaration.

(e) Occupancy. Any Home or building constructed on a Lot shall not be occupied in the course of original construction until the applicable building authority authorizes such occupancy.

(f) Landscaping. If acquisition of a Lot occurs between April 1 and September 1 of any year, the Owner of the Lot shall install landscaping on such Lot within six (6) months after acquisition of the Lot by such Owner or such longer period of time approved by the Design Review Committee or as established in the Design Guidelines; if acquisition does not occur between such dates, then such landscaping shall be installed by such Owner by the following October 1 or such longer period of time approved by the Design Review Committee or as established in the Design Guidelines. All portions of the Lot, which includes front, back, and sides will be landscaped and maintained in accordance with the Design Guidelines, and initially installed by the Declarant or homebuyer.

(g) Fences or Walls. Fences or walls are subject to approval by the Design Review Committee. Within six (6) months after occupancy of a Home on a Lot or such longer period of time approved by the Design Review Committee or as established in the Design Guidelines, all fencing if chosen to be installed must be properly installed by the homebuyer. All portions of the Lot, which includes front, back, and sides will be fenced and maintained in accordance with the Design Guidelines, and initially installed by the Declarant or homebuyer.

(h) Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices and accompanying parking lots may be erected or maintained by the Declarant. Model homes may be used and exhibited by the Declarant. Temporary buildings shall be promptly removed when they cease to be used for construction or sales purposes.

(i) Utilities. All utilities serving a Lot will be placed underground. Declarant or District reserves the right to locate main transmission lines above ground if determined to be advisable. Declarant may grant approval for temporary above ground utility service during construction.

2.05 Grading Patterns. Following the conveyance of the Lot by Declarant, each Owner shall maintain the grading on his Lot (including grading around the foundation of the building constructed thereon) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. For purposes of this Section, “established drainage” is defined as the drainage that exists at the time final grading by the Declarant is completed. Material changes shall not be made in the established drainage of any Lot as fixed by the original finish grading without the prior approval of the Design Review Committee. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and to protect foundations and footings from excess moisture.

2.06 Building and Grounds Maintenance. Except during initial construction by a Declarant, the exterior of all Improvements and grounds of a Lot must be maintained by the Owner in a state of good condition and repair, and adequately painted, or otherwise finished by such Owner, before the surfacing becomes weather-beaten or worn off. Such obligation includes, but is not limited to, maintaining the exterior materials and finishes of the Improvements, fencing, landscaping, drainage areas, driveways and sidewalks. Irrigation of landscaping will be

in compliance with any applicable watering ordinance. If an Owner fails to maintain the Improvements, the Declarant may give written notice to the Owner that, unless the required maintenance is diligently pursued within the ten (10) days following such notice, the property will be declared a nuisance and the Declarant shall have the right to take enforcement action pursuant to this Declaration.

2.07 Rebuilding or Restoration. If any Improvement is destroyed in whole or in part, it must be rebuilt or all debris must be removed promptly and the Lot restored to a safe and attractive condition. Such rebuilding or restoration must be commenced within thirty (30) days after the damage or destruction occurs and thereafter diligently pursued to completion within a reasonable time, not to exceed ten (10) months after the date the damage occurred or such longer period of time as may be approved by the Design Review Committee. If restoration or rebuilding is not completed within the above time periods or such later time approved by the Design Review Committee, or if the restoration or rebuilding shall cease for a period of twenty (20) days without permission of the Design Review Committee, the Design Review Committee may give written notice to the Owner that unless the restoration is diligently pursued within the ten (10) days following notice, the Improvement will be declared a nuisance and the Declarant shall have the right to take enforcement action pursuant to this Declaration.

2.08 Outside Storage. Equipment, tools and other items must be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets, except that Declarant may temporarily store materials as necessary in connection with construction on a Lot.

2.09 Patio Covers, Swing sets and Other Similar Structures. These structures or other similar facilities may only be installed on a Lot in accordance with the Design Guidelines or as approved by the Design Review Committee.

2.10 Accessory Structures. All Improvements over 25 square feet such as garden or utility sheds, gazebos, greenhouses, hot tubs, spas or detached garages shall match the architectural details, material and color of the residence. They must be of new material, maintained in a like-new condition and meet building setback requirements. Approval must be obtained from the DRC for all accessory structures in excess of a total of 25 square feet of floor area. Lots 7-31 will be permitted to build larger detached structures, as a result of their lot size, with Design Review Committee approval.

2.11 Refuse. Unightly objects or materials, including but not limited to ashes, trash, garbage, grass or shrub clippings, scrap material or other refuse, or containers for such items, must not be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during hours of refuse collection. This section shall not apply to Declarant.

2.12 Nuisances. Noxious, hazardous or unreasonably offensive activity must not be carried in or upon any Lot, Home or Improvement, nor may anything be done on a Lot tending to cause unreasonable embarrassment, discomfort, annoyance or nuisance to the neighborhood. No Lot may be used for the growing, sale or dispensing of marijuana or any of its compounds or derivatives.

2.13 Lights, sounds and odors. Lights that are unreasonably bright or cause unreasonable glare, and sounds or odors that are unreasonably noxious or offensive to others are not permitted to emanate from any Lot.

2.14 Noxious Weeds and Insects. All portions of a Lot must be kept free from noxious weeds and insects.

2.15 Animals. No horses, livestock, birds, poultry, reptiles, insects or other animals of any kind shall be raised, bred, kept or boarded in the Community; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats and other domestic animals approved by the Declarant), so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Community. The Association shall have, and is hereby given, the right and authority to do the following as well as take such other action(s) with regard to these matters as the Declarant may determine: set a maximum number of household pets; set a size or weight limit for pets; regulate the type(s) of animals that are permitted to be kept; determine that any dog(s), cat(s) or pet(s) or other animals are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other governmental laws, ordinances, or other provisions; or determine that an Owner is otherwise in violation of any provision of this Declaration or the Rules and Regulations. If the Declarant determines that any of the foregoing have been or are being violated, the Declarant may take any action(s) it determines appropriate, including requiring permanent removal of the pet. An Owner's right to keep household pets is coupled with the responsibility to pay for any damage caused by such pets, as well as all costs incurred by the District as a result of such pets, and all such costs and damages shall be subject to all of the District's rights with respect to the enforcement of the obligations set forth in this Declaration.

2.16 Vehicles; Parking. A boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor homes, any towed trailer unit, motorcycle, all terrain vehicle, recreational vehicle or non-pickup truck shall not be parked on any street in the Community or within any Lot except in a completely enclosed building such as a garage, or unless screened in a manner approved by the Design Review Committee. An exception to this restriction will be made for an emergency motor vehicle used by an Owner who is a bona fide member of a volunteer fire department or is an employee of an emergency firefighting, ambulance service, law enforcement or emergency medical services provider, provided that the vehicle: i) has a gross weight rating of 10,000 pounds or less; ii) bears an official emblem of the emergency services provider; and iii) does not obstruct emergency access or interfere with the reasonable needs of other Owners. Passenger vehicles owned, leased, rented or used by Owners or any other Person used as primary transportation on a day-to-day basis shall not be parked on any street within the Property for longer than seventy-two (72) consecutive hours without being moved. It is the intent of this Declaration that all vehicles park in garages and driveways; no extended street parking is permitted. The foregoing notwithstanding, however, this section shall not apply to Declarant, nor shall it restrict trucks or other commercial vehicles that are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon.

(a) Vehicle Repairs. The maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine, apparatus, trailer, equipment or device may not 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.

(b) Abandoned or Inoperable Vehicles and Equipment. Any type of stripped down, partially wrecked or abandoned or other similar vehicle (boat, machine, apparatus, trailer, equipment or device, or any sizeable part thereof) which has not been driven under its own propulsion for a period of two weeks, shall not be permitted to be placed anywhere within the Property except within a completely enclosed Improvement.

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

(b) All leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be for no less than thirty (30) days and be subject in all respects to the terms of this Declaration and the Rules and Regulations.

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

2.18 Signs. One (1) temporary sign advertising the real property for sale or rent, or for a garage sale, which is no more than six square feet in size, the style of which is compatible with the appearance of the Community and which may be subject to prior approval of the Design Review Committee or as provided in the Design Guidelines, may be installed on a Lot. Trade signs identifying a contractor performing work such as landscaping, painting, remodeling, etc., may only be displayed while such work is in progress on a Lot and must be removed upon completion of the work. Political signs for an upcoming election may be displayed on a Lot no earlier than 60 days before an election and must be taken down within 15 days after an election. No Owner or Person may post signs upon any portion of the District Properties or Public Right-of-ways. This section shall not apply to Declarant.

2.19 Hazardous Activities. No activities shall be conducted on any Lot or within an Improvement which are unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot and no open fires shall be lighted or permitted on any Lot except in a contained cooking unit while attended and in use for cooking purposes or within an interior fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in common household products and in such limited quantities so as to not constitute a hazard or danger to person or property. An Owner must not permit any condition on a Lot that creates a fire hazard or is in violation of fire prevention regulations adopted by the governmental authority



having jurisdiction and control over outside burning. If any ban on outdoor fires is at any time imposed by a governmental authority, such ban shall be observed within the Property

2.20 Temporary Buildings. No temporary house, trailer, garage or other outbuilding may be placed or erected on a Lot or used as a residence. The Design Review Committee may grant permission to an Owner for the placement of a temporary structure for storage of materials during construction on a Lot.

2.21 Professional or Home Occupation. Except as may be required of Declarant in pursuit of construction activities within the Property, Lots shall be used for residential use only including uses which are customarily incident to such residential use, and shall not be used at any time for business, commercial or professional purposes. However, an Owner may conduct business activities within a Home provided that all of the following conditions are met:

- (a) the business conducted is clearly secondary to the residential use of the Home and is conducted entirely within the Home;
- (b) the existence or operation of the business is not detectable from outside of the Home by sight, sound, smell, vibration or otherwise, or by the existence of signs or deliveries indicating that a business is being conducted;
- (c) the business does not result in an undue volume of traffic or parking within the Property;
- (d) the business conforms to all applicable zoning requirements and is lawful in nature; and
- (e) the business conforms to any Rules and Regulations that may be adopted by the Declarant from time to time.

2.22 Subdivision of Lots. No Lot may be subdivided or further divided by an Owner other than Declarant.

2.23 Satellite Dishes and Antennas. Except as provided below in this Section, no aerial, antenna or other device for reception of radio, television, microwave device or other electronic signals may be maintained on the roof of any Improvement, nor shall such structure be mounted at any location so as to be visible from neighboring properties or adjacent streets. Plans for structures, other than FCC Structures (defined below) must be approved by the Design Review Committee prior to installation. An FCC Structure is defined by the Federal Communications Commission as: (a) an antenna that is one meter (39.37") or less in diameter and is designed to: (i) receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite; (ii) receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite; and (b) an antenna that is used to receive television broadcast signals. An FCC structure may be installed on a Lot without prior Design Review Committee approval, subject to the following conditions:

- (a) To the extent feasible, the satellite dish/antenna should be placed in the rear or side yard in such a manner that it is screened from adjacent street(s) and neighboring properties. Rooftop mounting that is visible from adjacent street(s) is discouraged.
- (b) The satellite dish/antenna should be installed at the lowest possible placement, utilizing ground level siting (unless a signal is not attainable).
- (c) The satellite dish/antenna should be painted to match the surrounding environment or screened with a reasonable amount of plantings to minimize its visual impact to surrounding areas, so long as such painting does not materially interfere with the broadcast signals.

2.24 Utilities Location. When installing Improvements on a Lot, Owners are responsible for locating all water, sewer, gas, electrical, cable television or other utility lines and easements. Owners must not construct any Improvements over utilities easements without the consent of the utility involved and Owners will be responsible for any damage to utility lines caused by their work. Owners should request the location of underground utility lines and easements through a utility line location center.

### 3. **Design Review and Approval .**

3.01 Design Review Committee. The Design Review Committee shall consist of at least one and not more than five individuals, all of whom shall be appointed by the Declarant. In lieu of appointing a separate Design Review Committee, the Declarant may act as the Design Review Committee. The Design Review Committee shall exercise the functions assigned to it by the Declarant, this Declaration and the Design Guidelines.

3.02 Composition of the Design Review Committee. If the Declarant does not serve as the Design Review Committee, then individuals appointed to serve on the Design Review Committee shall serve for a two-year term and may be removed by a majority vote of the Declarant. If a vacancy on the Design Review Committee occurs for any reason, the Declarant may appoint a replacement to complete the unexpired term. Design Review Committee members need not be Owners.

3.03 Design Guidelines. The Design Review Committee may from time to time adopt Design Guidelines applicable to Improvements within the Property. Such Design Guidelines may regulate, without limitation, the following matters:

- (a) site location;
- (b) architectural design;
- (c) site accessories, (e.g., lights, signs);
- (d) landscape design;
- (e) building size and height; and
- (f) approval processes.

The Design Review Committee shall have the right to modify or supplement the Design Guidelines from time to time upon the written approval of the Declarant. The Design Guidelines may include guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the Design Review Committee, may state procedural requirements, may specify acceptable Improvement(s) that may be installed without the prior approval of the Design Review Committee, may include design standards, conditions, restrictions, requirements, and/or other provisions, pertaining to any matters; and may provide for changes in technology, industry standards, style, materials, safety issues, consistency with updated building codes or other laws or ordinances, or for any other reason that the Design Review Committee deems to be proper, necessary or in the best interests of the Community. In addition, such provisions may provide for blanket approvals, interpretations and/or restrictions on Improvements. All Improvements proposed to be constructed, and any guidelines that are adopted, shall be completed and used in accordance with this Declaration. The Design Guidelines shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of conflict between the Design Guidelines and the provisions of this Declaration, the Declaration shall control.

3.04 Approval Required. An Improvement shall not be placed, erected, installed or permitted to exist on any Lot, the exterior of any existing Improvements shall not be altered, and construction shall not be commenced on any Improvements, unless and until the plans for such Improvement have been submitted to and approved in writing by the Design Review Committee. Improvements installed or constructed prior to Design Review Committee written approval, or not installed or constructed in compliance with the approved Plans, shall be deemed to be in non-compliance and may be subject to enforcement action under this Declaration including, in addition to any other available right or remedy set forth herein, to record a notice of violation or noncompliance against title to the Lot.

3.05 Exclusive Approval by Declarant. The Declarant shall have the exclusive right to review, approve and enforce construction of all Improvements on a Lot prior to the completion of the first Home on a Lot in accordance with this Declaration and Design Guidelines. After the first Home on a Lot has been completed, the Design Review Committee shall have the right to review and approve construction of Improvements on a Lot in accordance with this Declaration and Design Guidelines.

3.06 Exemption of Declarant. Declarant shall be exempt from the provisions of this Article. This exemption shall terminate at such time as Declarant no longer owns any real property within the Property.

3.07 Submittal of Plans. The requirements for submittal of plans to the Design Review Committee will be set forth in the Design Guidelines.

3.08 Approval Process. All action required or permitted to be taken by the Design Review Committee must be stated in writing, and any such written statement must establish the action of the Design Review Committee. The Design Review Committee will approve or disapprove Plans within forty-five (45) days following submission of a complete set of Plans. If the Design Review Committee does not act within forty-five (45) days following submission, the plans shall be deemed disapproved. The Design Review Committee may charge reasonable fees to cover expenses incurred in the review of plans. The Design Review Committee will retain, for

such time as provided in its records retention policy, one copy of all approved plans as part of its records and written records of all actions taken by it that will be available to Owners for inspection at reasonable business hours. Plan approval will automatically expire one year after approval if construction is not commenced within such one-year period, and if approval so expires, the applicant must submit a new request for approval.

**3.09 Approval Standards.** In granting or withholding approval of matters submitted to it, the Design Review Committee shall consider the specific standards and specifications set forth in any Design Guidelines then in effect and any other matter, whether objective or subjective, that the Design Review Committee feels is relevant to the issue presented. The Design Review Committee shall have the right to disapprove any plans or details submitted to it if it determines, in its sole discretion, that the proposed Improvement is not consistent with the Design Guidelines or any provision of this Declaration; if the plans submitted are incomplete; or if the Design Review Committee deems the plans or details, or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the Community, District, or the Owners. If the Design Review Committee believes there may be questions of structural integrity, it may, as part of the review process, require certification of the final plans and specifications by a professional architect or engineer licensed in Colorado. A majority of the Design Review Committee members attending a meeting at which plans are approved shall constitute a quorum, and a majority vote of the quorum of the Design Review Committee members present shall constitute action of the Design Review Committee. Owners acknowledge that Design Review review is inherently a subjective process and that the Design Review Committee is given wide discretion in carrying out its function. The decisions of the Design Review Committee shall be final and binding.

**3.10 Variances.** The Declarant or the Design Review Committee shall have the authority to grant for a Lot a variance from any provision of this Declaration (including any provision of the Design Guidelines) that is within the authority of the Declarant or the Design Review Committee, as the case may be. A variance may be made subject to terms and conditions approved by the Declarant or the Design Review Committee. If a variance is denied, the applicant may not bring another application for a similar variance for the same Lot for a period of one year after submittal of the original request.

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

**3.12 No Liability.** The Declarant, the District, and the Design Review Committee, and any member, agent or representative thereof, shall not be liable in damages or otherwise to anyone submitting plans for approval or requesting a variance, or to any Owner or other Person, 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 or variance. Approval of plans shall not mean that plans 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, Declarant or applicant to comply with all codes, ordinances and regulations.

3.13 Design Review Non-Compliance. If an Owner is in violation of the provisions of this Article or the Design Guidelines, the violation will be processed in accordance with Article 4 of this Declaration.

#### **4. Enforcement and Delegation of Authority.**

4.01 Adoption of Rules and Regulations. The Declarant 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, the use and enjoyment of District Properties, and the use of any other property within the Community, including Lots. Any such Rules and Regulations will be reasonable and non-discriminatory as determined by the Declarant in its sole discretion. The Rules and Regulations may provide for the assessment of fines for a violation of this Declaration or the Rules and Regulations. Written notice of the adoption, amendment or repeal of any Rule or Regulation will be provided to all Owners, and copies of the currently effective Rules and Regulations will be made available to each Owner upon request. Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, this Declaration shall control. An owners association or District which has been delegated authority by the Declarant to adopt, amend or repeal Rules and Regulations may so adopt, amend or repeal only with the written approval of the Declarant.

4.02 Notice and Hearing. If the Declarant determines a violation of this Declaration or the Rules and Regulations by an Owner or other Person has occurred, the Declarant or its designated representative shall give written notice to the Owner or other Person of the violation and the scheduling of a hearing by the Declarant or its designated representative. The notice shall provide the day, time and location of the hearing. The notice shall be hand-delivered or sent by U.S. Mail, postage prepaid, to the Owner or Person alleged to be in violation not less than ten (10) days prior to the scheduled hearing date. The hearing may be audiotaped by the Declarant. The Declarant or its designated representative and the Owner or other Person will have the opportunity to present evidence in support of their respective positions. Within ten (10) days of the hearing, the Declarant or its designated representative will issue its decision. The hearing will occur whether or not the Owner or other Person attends the hearing, absent extraordinary circumstances as determined by the Declarant or its designated representative, to hear evidence concerning the violation and render a decision. The Declarant has the right to assess fines against an Owner or Person found to be in violation. The decision shall be final and binding.

4.03 Failure to Remedy Violation. If an Owner is found to be in violation of the Declaration after Notice and Hearing, and fails to remedy such violation within forty-five days after a decision under Section 4.02 is rendered, the Declarant may record a notice of noncompliance or notice of lien on the Owner's Lot. The notice will substantially set forth:

- (a) the amount of the monetary lien or description of the violation;
- (b) the interest and expenses of collection which have accrued, if any;
- (c) the legal description and street address of the Lot against which the lien is claimed or violation has occurred; and
- (d) the name of the record Owner.

The notice shall be signed and acknowledged by an officer of the Declarant or its duly authorized agent. The amounts claimed under the lien may include, without limitation, all collection expenses, attorney fees, court costs, recording costs and filing fees. Upon an Owner's payment in full or the remedying of the violation, the Declarant shall execute and record a release of the notice on the Owner's Lot. 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 foreclosures of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. In addition to, or as an alternative to, recording a notice on an Owner's Lot, if an Owner or Person has failed to remedy the violation within forty-five (45) days after a decision under Section 4.02 is rendered, the Declarant may remove the violation or otherwise remedy the noncompliance, and the Owner or Person responsible for the violation shall reimburse the Declarant, upon demand, for all costs and expenses incurred by the Declarant in remedying the violation.

**4.04 Delegation of Authority.** Subject to limitations set forth elsewhere in this Declaration, the Declarant shall have the right to delegate all or a portion of its design review and covenant enforcement rights and obligations under this Declaration to the Board of another District within which the Property is located, or to one or more owners associations within the Community. Such delegation will occur by separate written agreement between the Declarant and the entity to whom such rights and obligations are being delegated. A delegation to an owners association by the Declarant shall also include the right of the owners association to levy and collect assessments from Owners to pay for the obligations of the owners association delegated to it under this Declaration. Notwithstanding such delegation, the Declarant shall always maintain the right, but not the obligation, to enforce the provisions of this Declaration, Design Guidelines and the Rules and Regulations if the Board, an owners association, Owner or Declarant fails to enforce the same.

**5. Easements.**

**5.01 District Easement.** An easement to enforce its rights or perform its obligations pursuant to this Declaration is hereby granted to the District, its officers, agents, employees, representatives and assigns, upon, across, over, in and under all property within the Community, but only the exterior portions of all Lots, together with the right to make such use of the Community as may be necessary or appropriate in carrying out such maintenance or other rights or obligations.

**5.02 Easements for Utilities.** Declarant hereby creates and reserves to itself until Declarant no longer owns any real property within the Property, and thereafter, to District, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the utility easements of each Lot as shown on a Plat for the placement of utilities, drainage structures or other similar purposes, together with a blanket easement across, over and under the District Properties for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities and drainage facilities.

**5.03 Drainage Easement.** Declarant hereby reserves, to itself and to the District, easements for drainage and drainage facilities across the five (5) rear, five (5) front, and five (5) side feet of each Lot; provided, however, that if a Home is located upon any of the areas

described in this sentence, then such easement shall be reduced in width to the width of the distance from the nearest lot line of such Lot to the exterior wall of the residence on such Lot that is nearest to such lot line. Except for residences as provided in the preceding sentence, no Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such rear, front or side yard drainage easements. Declarant reserves to itself and to the District the right to enter upon each such rear, front and side yard drainage easements to construct, repair, replace or change drainage pipes, structures or drainage ways, or to perform such grading, drainage or corrective work as Declarant or the District may deem necessary or desirable; provided, however, that such right and authority in the Declarant shall cease at such time that Declarant no longer owns in real property in the Property, at which time said reserved right shall vest in the District.

5.04 Easement for Emergency Vehicles. An easement is granted for emergency vehicles, including fire, police and ambulance, to enter upon any portion of the Community for emergency and other official purposes.

5.05 Matters of Record. In addition to the easements created in this Article and on any Plat, the Property is subject to all other easements, reservations and restrictions of Record.

## **6. Special Declarant Rights; Additional Reserved Rights**

6.01 Exercise of Special Declarant Rights. For so long as Declarant owns real property in the Property, Declarant reserves for itself and its successors and assigns the right to perform the acts and exercise the rights specified below (the “Special Declarant Rights”). Special Declarant Rights include the following rights:

- (a) to exercise any Development Right. The exercise of Development Rights as to some portions of the real property owned by Declarant will not obligate the Declarant to exercise them as to other portions;
- (b) to maintain sales offices, sales trailers, construction offices, construction trailers, management offices, model homes and signs advertising the Community and/or Lots;
- (c) to use easements through the Common Area for the purpose of making Improvements within the Community or within real estate which may be added to the Community;

All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any times, and from time to time.

6.02 Additional Reserved Rights. In addition to the Special Declarant Rights set forth above, Declarant reserves for itself and its successors and assigns the following additional rights for so long as Declarant owns real property in the Property:

- (a) The right to amend this Declaration without Owner consent or approval in connection with the exercise of any Development Rights or in connection with the qualification or continued qualification for loan guarantees, and for compliance with the requirements of

government financing programs. Declarant also shall have the right to amend this Declaration to comply with the requirements of Applicable Law if any provision contained in this Declaration does not comply with applicable law; and

(b) The right to amend this Declaration without Owner consent or approval in order to correct clerical, typographical or technical errors, or to clarify any provision of this Declaration.

## **7. MANDATORY DISPUTE RESOLUTION**

**7.01 Statement of Clarification.** Without modifying or restricting the scope of this Article 7 and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a Claim (as defined herein), that the mandatory dispute resolution provisions contained in this Article are required. Alternative Method for Resolving Disputes. Declarant, the District, their officers, directors, affiliates, agents, employees and contractors, all Owners, consultants, and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (including any subcontractors and suppliers), each such entity being referred to individually as a "Bound Party" and collectively as the "Bound Parties," agree to encourage the amicable resolution of disputes involving the Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, except as otherwise agreed to in writing between any Bound Parties, each Bound Party covenants and agrees to submit all Claims to mediation, and if such mediation is not successful, final binding arbitration, as set forth below in this Declaration, and not to otherwise bring legal or equitable action in any court. Claims. Except as specifically excluded in this Section 7.03 or as otherwise agreed to in writing between any Bound Parties, including without limitation any purchase and sale agreement or similar document (each a "Superseding Agreement"), all claims, disputes and other controversies arising out of or relating in any way to the: interpretation, application or enforcement of this Declaration;

(b) design, construction, sale, maintenance, habitability or condition of any improvements within the Community or any alleged defect therein, including without limitation any "action" as defined in C.R.S. §13-20-802.5(1);

(c) rights, obligations and duties of any Bound Party under this Declaration, and/or any breach or alleged breach thereof;

are hereinafter referred to as a "Claim" or "Claims." All Claims shall be subject to and resolved in accordance with the terms and provisions of this Article 7.

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

(d) any legal action by the District or Declarant to obtain a temporary or permanent restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the District or Declarant to act under and enforce the provisions of Article 2 (Covenants to Preserve the Character of the Community Design Approval) or Article 3. (Design Review and Approval); and



(e) any legal action to enforce an arbitration award provided in this Article 7.

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

7.04 Notice of Claim. Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”) shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely: the nature of the Claim, including the Persons involved and Respondent’s role in the Claim; the legal or contractual basis of the Claim (i.e., the specific authority out of which the claim arises); and the specific relief and/or proposed remedy sought. Timely Initiation. All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen, and in no event shall a Claim be made after the date when institution of legal or equitable action based on such Claim would be barred by the applicable statute of limitations or repose. Right to be Heard. Upon receipt of a Claim and prior to commencing any arbitration proceeding which may fall within the scope of this Article 7, the Respondent shall have the right to be heard by the Claimant in an effort to resolve the Claim. The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any party may appoint a representative to assist such party in negotiations. With respect to the foregoing, the Claimant and Respondent shall individually (i.e. without the joinder or inclusion of other Owners or such Claimant serving as a class representative for or becoming a class member of other Owners) mediate all Claims prior to proceeding under Section 7.08 below. The mediation shall be conducted by a single mediator. If such parties are unable to agree upon the selection of a mediator within fifteen (15) days of initiation of the Claim, then a single mediator shall be chosen in accordance with the rules governing the selection of an arbitrator under the Colorado Uniform Arbitration Act (the “CUAA”). All mediation fees shall be split equally among the Claimant and Respondent. Prior to conducting such mediation, and consistent with Colorado law, the parties thereto shall agree in writing to limit the admissibility in arbitration or any court action of anything said, any admission made, and any documents prepared in the course of the mediation. If Claimant or Respondent commences an arbitration or other action based upon a Claim without first attempting to resolve the Claim through mediation, such party shall not be entitled to recover the costs of such action, even if the same would otherwise be available in such arbitration or other action. Right to Inspect. If the Claim is asserted against Declarant and/or its officers, directors, affiliates, agents, employees, contractors or consultants and is based on a defect in the design or the construction of any Improvements within the Community, subject to Owner’s prior written approval, which shall not be unreasonably withheld, Declarant shall have the right to access the affected area for purposes of inspecting the condition complained of, and the correction thereof, including any necessary redesign. This shall include, but not be limited to, notice prior to conducting any investigative or destructive testing. The Claimant shall meet with Declarant and/or its designees to discuss, in good faith, ways to resolve the Claim. In the exercise of the inspection rights contained herein, the inspecting party (“Inspecting Party”) shall be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party. The Inspecting Party shall use best efforts to avoid causing any damage to, or interference with, any improvements on the property being inspected (“Inspection Property”) and minimize any disruption or inconvenience to any person who occupies the Inspection Property; shall remove all debris placed on the Inspection Property by the Inspecting Party on a timely basis; and in a reasonable and timely manner, at the Inspecting Party’s sole cost and expense, promptly remove

equipment and materials from the Inspection Property placed on the Inspection Property by the Inspecting Party, and repair, replace and restore the Inspection Property to the condition of the Inspection Property as of the date of entry thereon by the Inspecting Party. The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the use of its rights to accrue against or attach to the Inspection Property. The repair, replacement and restoration work includes, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other Improvements on the Inspection Property that were damaged, removed or destroyed by Inspecting Party. The Inspecting Party shall indemnify, defend and hold harmless the Owners, tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorneys' fees, resulting from or in performance of this Section 7.07, or as a result of any Inspecting Party's breach of this Section 7.07.

**7.08 Final Binding Arbitration.** If the Parties do not reach a settlement of the Claim within 30 days after the mediation was conducted, binding arbitration shall be the sole means for resolving the Claim, and the Claimant shall have 30 additional days after conducting the mediation to submit the Claim to binding arbitration in accordance with the arbitration procedures set forth below: The parties agree that where any Claim is submitted to arbitration, and any other Bound Party other than another Owner may have liability with respect thereto, all parties to the dispute agree that other Bound Parties (other than another Owner) related to such dispute or any intertwined or connected dispute, may be joined as additional parties in such arbitration, or if separate arbitrations exist or are separately initiated, to the consolidation of all such arbitrations. Notwithstanding anything to the contrary herein, each arbitration shall be conducted on an individual Owner basis to address the applicable Claim (i.e. without the joinder or inclusion of other Owners or such Claimant serving as a class representative for or becoming a class member of other Owners).

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

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

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

(e) No person shall serve as the arbitrator who may have any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all parties any circumstance likely to affect the appearance of impartiality and/or actual impartiality, including any bias or financial or personal interest or relationship in the outcome of the arbitration ("Arbitrator's Disclosure"). If any party objects to

the service of any arbitrator within 14 days after receipt of that Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner as provided in Section 7.08(c) above.

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

(g) Subject to the provisions of these procedures, the arbitration shall be conducted in accordance with rules and procedures determined by the arbitrator.

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

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

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

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

7.09 Amendment: Servitude in Gross. The rights, terms and provision of this Article 7 are enforceable by Declarant, and shall not be amended without the written consent of Declarant. Further, this Article 7 and the rights, terms and provisions contained herein constitute a servitude in gross for the benefit of Declarant and its officers, directors, affiliates, agents, employees, contractors and consultants, shall inure to the benefit of the foregoing, and all of the foregoing are third party beneficiaries thereof, regardless of ownership of any portion of the Community. **Binding Effect. BY TAKING TITLE TO ANY PORTION OF THE COMMUNITY, EACH OWNER THEREOF ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 7 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP THE COMMUNITY, CONSTRUCT IMPROVEMENTS AND SELL DWELLING UNITS, AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS Article 7, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP THE COMMUNITY, CONSTRUCT IMPROVEMENTS OR SELL DWELLING UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO SUCH PORTION OF THE COMMUNITY, EACH OWNER**

ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 7 LIMIT HIS OR HER RIGHTS WITH RESPECT TO THE RIGHTS AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A POTENTIAL OR ACTUAL CONSTRUCTION DEFECT AFFECTING THE IMPROVEMENTS OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION ANY HOME. **Miscellaneous.**

8.01 Persons Entitled to Enforce Declaration. Subject to the provisions of Article 7 above, the District (acting by authority of the Declarant); any Board or owners association with enforcement authority which has been delegated to it by written agreement with Declarant; the Declarant, the Design Review Committee, or any Owner (acting on such Owner's own behalf), shall have the right, but not the obligation, to enforce any or all of the provisions, covenants, conditions or restrictions contained in this Declaration. Subject to the provisions of Article 7 above, 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 Declaration, and all other rights and remedies provided in the Declaration or available at law or in equity.

8.02 Term of Declaration. This Declaration shall be effective for twenty (20) years following the date this Declaration was originally recorded, and thereafter shall be automatically extended for successive periods of ten (10) years each unless it is terminated by the written approval of Declarant (until such time as Declarant no longer owns real property within the Property and thereafter, the Board) and Owners of at least sixty-seven percent (67 %) of all Lots in the Community. The written agreement shall be duly acknowledged by the Declarant (or Board) and the Owners and recorded in the Records.

### 8.03 Amendment of Declaration.

(a) Except as otherwise provided in this Declaration, and subject to the written approval of Declarant (until such time as Declarant no longer owns real property within the Property and thereafter, the Board), any provision, covenant, condition, or restriction in this Declaration may be amended, rescinded, added or modified upon written approval by Owners of at least sixty-seven percent (67%) of all Lots in the Community.

(b) This Declaration may be amended at any time by Declarant without the consent or approval of any other Owner or any other Person, in order to comply with the requirements, standards, or guidelines of the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, including the Federal Housing Administration, the Veterans Administration, or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities. Declarant's right of amendment herein shall terminate at such time as Declarant no longer owns land within the Property.

(c) No action to challenge an amendment of this Declaration may be brought more than one (1) year after the date of recordation of such amendment.

(d) An amendment to this Declaration shall be acknowledged by the Declarant (or Board) and shall contain a certification that written approval of such amendment was given

by Owners of at least sixty-seven percent (67%) of all Lots within the Community, and shall be recorded in the Records.

**8.04 Notices.** Unless otherwise required by applicable law or this Declaration, any requirement to deliver any notice, statement, demand, document or record to an Owner shall be deemed satisfied by sending the same to the applicable Owner by electronic delivery if the Owner has provided an electronic mail or delivery address to the Association. Otherwise, any notice given under this Declaration shall be in writing and may be served either personally, by mail or by any other lawful means. If served by mail, the notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the District for the purpose of service of such notice, or to the Lot of such Person if no address has been given to District, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the U.S. Postal Service. Such address may be changed from time to time by notice in writing to Declarant.

**8.05 Violations of Law.** Any violation of any federal, state, county or municipal law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any portion of the Property 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. There shall be no obligation or duty of Declarant to undertake the enforcement of the laws, ordinances, rules or regulations of other governmental entities.

**8.06 Remedies Cumulative.** Each remedy provided under the Declaration is cumulative and not exclusive.

**8.07 Limitation on Liability.** District, Declarant, the Design Review Committee, and their officers, directors, shareholders, managers, members, partners, agents or employees, shall not be liable to any Person for any action or for any failure to act if such action or failure to act was in good faith and without malice.

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

**8.09 Disclaimer Regarding Safety.** DECLARANT, THE DISTRICT AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROPERTY. BY ACCEPTING A DEED TO A LOT WITHIN THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE DISTRICT AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN IF ANY, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROPERTY.

**8.10 Costs and Attorney Fees.** In any action or proceeding to enforce any provision of the Declaration, except as otherwise provided herein, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney fees, court costs, and collection costs.

**8.11 Governing Law.** The Declaration shall be construed and governed in accordance with the laws of the State of Colorado. Exclusive venue for any legal proceeding shall be in El Paso County, Colorado.

**8.12 Severability.** Each of the provisions of the Declaration 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.

**8.13 Number.** Unless the context requires a contrary construction, as used in the Declaration, the singular shall include the plural and the plural, the singular.

**8.14 Declarant Resolves Questions of Construction.** If any doubt or question should arise concerning the true intent or meaning of any of the provisions, covenants, conditions and restrictions contained in this Declaration, the Declarant shall determine the proper construction of the provisions in question and shall set forth the meaning, effect, and application of the provision in a written document acknowledged by the Declarant. This determination will thereafter be binding on all parties so long as it is not arbitrary or capricious.

[Remainder of page intentionally left blank – signature on following page]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first written above.

DECLARANT:

Tralon Homes LLC, a Colorado limited liability company, formally Saint Aubyn Homes LLC, a Colorado limited liability company

By: [Signature]  
Name: JEFF MARK  
Title: President

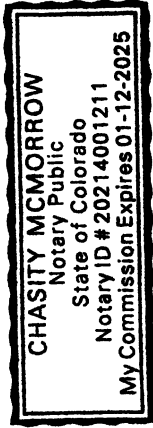
STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of April, 2022, by Jeff Mark as President of Tralon Homes LLC, a Colorado limited liability company, formally Saint Aubyn Homes LLC, a Colorado limited liability company, on behalf thereof.

Witness my hand and official seal.

{ S E A L }

Chasity McMorrow  
Notary Public



My Commission expires: 01-12-2025

**EXHIBIT A**

**PAINT BRUSH HILLS FILING NO. 14 (88.624 ACRES)**

**LEGAL DESCRIPTION**

A PARCEL OF LAND IN THE NORTHEAST QUARTER (NE 1/4) OF SECTION 26, T12S, R65W OF THE 6TH P. M., EL PASO COUNTY, COLORADO, SAID PARCEL BEING TRACT E, "PAINT BRUSH HILLS FILING NO. 13E", RECORDED UNDER RECEPTION NO. 219714420 IN THE RECORDS OF EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE QUARTER CORNER COMMON TO SECTIONS 23 AND 26, T12S, R65W OF THE 6TH P. M.;

THENCE N88°44'51"E ALONG THE SOUTH LINE OF "PAINT BRUSH HILLS FILING NO. 3" RECORDED IN PLAT BOOK U-3 AT PAGE 79 OF THE EL PASO COUNTY RECORDS 2289.18 FEET;

THENCE S00°23'09"E ALONG THE WEST LINE OF TRACT A "PAINT BRUSH HILLS FILING NO. 13E" A DISTANCE OF 847.61 FEET;

THENCE ALONG THE NORTHERLY LINES OF LOTS 117 THROUGH 120, "PAINT BRUSH HILLS FILING NO. 13E" THE FOLLOWING FIVE (5) COURSES;

- (1) THENCE N60°39'45"W A DISTANCE OF 136.44 FEET;
  - (2) THENCE N75°42'34"W A DISTANCE OF 136.62 FEET;
  - (3) THENCE S82°53'35"W A DISTANCE OF 58.52 FEET;
  - (4) THENCE S74°48'58"W A DISTANCE OF 68.80 FEET;
  - (5) THENCE S25°20'15"W A DISTANCE OF 45.28 FEET TO THE RIGHT-OF-WAY LINE OF DEVENCOVE DRIVE AS PLATTED ON "PAINT BRUSH HILLS FILING NO. 13E";
- THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES;

- (1) THENCE N64°40'00"W A DISTANCE OF 56.87 FEET;
- (2) THENCE S25°20'00"W A DISTANCE OF 50.00 FEET;
- (3) THENCE S64°40'00"E A DISTANCE OF 16.86 FEET TO THE WEST RIGHT-OF-WAY LINE OF KEATING DRIVE AS PLATTED ON "PAINT BRUSH HILLS FILING NO. 13E".

THENCE ALONG SAID WEST RIGHT-OF-WAY LINE THE FOLLOWING FIVE (5) COURSES;

- (1) THENCE S25°20'15"W A DISTANCE OF 823.72 FEET TO A POINT OF CURVE;
- (2) THENCE 264.76 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 470.00 FEET, A CENTRAL ANGLE OF 32°16'34", THE CHORD OF 261.28 FEET BEARS S41°28'32"W TO A POINT OF REVERSE CURVE;
- (3) THENCE 430.28 FEET ON THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 861.00 FEET, A CENTRAL ANGLE OF 28°38'00", THE CHORD OF 425.82 FEET BEARS S43°17'49"W TO A POINT OF COMPOUND CURVE;

(4) THENCE 123.89 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 530.00 FEET, A CENTRAL ANGLE OF 13°23'34", THE CHORD OF 123.60 FEET BEARS S22°17'02"W TO A POINT OF TANGENT;

- (5) THENCE S15°35'15"W A DISTANCE OF 76.75 FEET;

THENCE ALONG THE NORTH LINES OF LOT 2 THROUGH LOT 5 AND ALONG THE NORTH LINE OF TRACT A "PAINT BRUSH HILLS FILING NO. 12" AS RECORDED UNDER RECEPTION NO. 205077511 IN THE EL PASO COUNTY RECORDS THE FOLLOWING SIX (6) COURSES;

- (1) THENCE N74°25'08"W A DISTANCE OF 231.02 FEET;
- (2) THENCE S34°46'45"W A DISTANCE OF 75.34 FEET;
- (3) THENCE S62°22'54"W A DISTANCE OF 141.21 FEET;
- (4) THENCE N80°50'04"W A DISTANCE OF 149.93 FEET;
- (5) THENCE N42°52'08"W A DISTANCE OF 142.64 FEET;
- (6) THENCE S89°26'02"W A DISTANCE OF 299.04 FEET TO THE NORTH-SOUTH CENTERLINE OF SECTION 26;



THENCE N00°34'35"W ALONG SAID NORTH-SOUTH CENTERLINE 2169.63 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 3,860,479 S. F. (88.624 ACRES MORE OR LESS).

**BASIS OF BEARING:**

THE SECTION LINE BEING THE NORTH LINE OF TRACT A, TRACT E, AND A PORTION OF TRACT F "PAINT BRUSH HILLS FILING NO. 13E", AS RECORDED UNDER RECEPTION NO. 219714420, BEING MONUMENTED AT THE QUARTER CORNER COMMON TO SECTIONS 23 AND 26, T12S, R65W OF THE 6TH P. M. WITH A 2.5" ALUMINUM CAP ON NO. 6 REBAR STAMPED "1/4 COR, S23 S26, 1999, PLS 4842", AND AT THE SECTION CORNER COMMON TO SECTIONS 23, 24, 25 AND 26 WITH A 1.5" ALUMINUM CAP ON NO. 5 REBAR STAMPED "(PARTIALLY ILLEGIBLE) LS 9646", SAID LINE BEARS N88°44'51"E A DISTANCE OF 2640.30 FEET.