

## DECLARATIONS of PROTECTIVE AND RESTRICTIVE COVENANTS

### SANCTUARY of PEACE RESIDENTIAL COMMUNITY El Paso County, Colorado

THESE DECLARATIONS of PROTECTIVE AND RESTRICTIVE COVENANTS (the “Declarations”) are made by the *Sisters of Benet Hill Monastery, through Benet Hill Monastery of Colorado Springs, Inc.*, a Colorado nonprofit corporation (“Declarant”), for their selves, their successors and assigns, to be effective upon recording of these Declarations in the public records of El Paso County, Colorado.

Declarant is the owner of certain real property which is located at 15760 Highway 83, El Paso County, Colorado, more particularly described in **Exhibit A** attached hereto (referred to herein as the “Sanctuary of Peace Property”, or the “Property”), together with all water rights and permits, and rights and entitlements to extract and use the groundwater underlying said Sanctuary of Peace Property, used on or in connection with the Property, and the rights associated therewith, and all appurtenances, easements, facilities, and improvements located or to be constructed thereon. While Declarant likewise owns adjacent property outside of the Property and operates certain facilities thereon, no infrastructure, utilities, structures or amenities associated with this Property is in common use or association with such other property. The Benet Hill Monastery is not operationally associated with the Sanctuary of Peace Property and Subdivision, despite incidences of common ownership.

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

Certain documents are recorded in the real estate records of the Clerk and Recorder of El Paso County, Colorado at the reception numbers noted below, and referred to in these Declarations as pertaining to the Subdivision. These include the Findings of Fact, Conclusions of Law, Ruling of Referee, and Decree concerning underlying groundwater and approval of a Plan for Augmentation as entered by the Water Court, Water Division No. 2 in Case No. 18CW3019 recorded at Reception No. 218100150 (“Augmentation Plan” or “Water Decree”), attached hereto as **Exhibit B**.

1. Definitions. The following terms utilized herein shall have the following definitions for purposes of these Declarations:

A. Act. The Act is the Colorado Common Interest Ownership Act, C.R.S. §§38-33.3-101 to 38-33.3-402, as amended from time to time. The Sanctuary of Peace Residential Subdivision is subject to the provisions of the Act.

B. Association. Declarant by these Declarations forms the Sanctuary of Peace Property Owners Association (the "Association"), to be incorporated consistent with the provisions of Colorado law for non-profit corporations. The Association shall represent the owners of Lots and Units within the Subdivision, and shall have the following powers:

i. To operate the Common Interest Community in accordance with these Declarations;

ii. To promote the health, safety, welfare and common benefit of the Owners and residents of the Subdivision consistent with the terms and conditions of these Declarations;

iii. To do any and all permitted acts and to have and exercise any and all powers, rights and privileges that are granted to an Association under the laws of the State of Colorado, consistent with these Declarations, and with any Bylaws, Rules or other forming or governing documents of the Subdivision and Association.

C. Board. "Board" means the Board of Directors of the Association, and shall also be the Executive Board as defined under the Act. Except as specified herein, or in the Association's Articles of Incorporation, Bylaws, or by C.R.S. §38-33.3-303(3), the Board may act on behalf of the Association without any vote or consent of the Members.

D. Building. "Building" means a separate building improvement currently located and those hereafter constructed upon the Property, and containing two individual Units, excepting (i) the Common House, as described herein, and (ii) associated Garages near the Common House. There will be a maximum of 15 Buildings on the Property. There will be a maximum of 26 Units, plus the Common House.

E. Common House/Community Center. The "Common House", and the associated parking structures, as described herein, are "Common Elements" to be maintained by the Association, though ownership of the Common House, and Lot 1 upon which it is located, is to be retained by Declarants. The Common House shall be available for use by Owners and their guests as a community amenity akin to a "Community Center", with reservations made through the Declarant during the period of Declarant Control, and through the Association thereafter. Declarant, as the owner of the Common House, shall have a right to the use of the Common House, utilizing the reservation process as may be further established by the Bylaws of the Association, when implemented.

F. Common Elements. The “Common Elements” are any and all real estate of the Common Interest Community which is not part of a “Lot” or Residential Unit, but including Lot 1 as depicted on the **Exhibit C** Plat map. Common Elements include but are not limited to: any and all private streets, roads, parking areas, or trails, any traffic control facilities, any culverts or other drainage facilities, centrally located mailboxes or monument signs, the “augmentation well” as described herein and all associated water and wastewater systems, open space, and guest parking, and any and all appurtenant easements to the same, some of which shall remain in the ownership of Declarant, but all of which shall be managed by the Association.

G. Common Expenses. The “Common Expenses” are the expenses or financial liabilities for the operation of the Subdivision by the Association, including as necessary for the upkeep, maintenance, repair, restoration and replacement of Common Elements. “Common Expense Assessments are funds required to be paid by each Lot Owner in payment of such Owner’s pro-rata share of Common Expenses. These expenses may include, but are not limited to:

i. Expenses related to administration, maintenance, construction, improvement, repair or replacement of Common Elements;

ii. Expenses for utilities not separately metered and billed directly to Lot Owners, if any;

iii. Expenses declared to be Common Expenses by these Declarations or applicable law;

iv. Expenses agreed upon as Common Expenses by vote of the Owners;

v. Reasonable reserves established by the Association, if any, whether held in trust or by the Association for repair, replacement, or addition to the Common Elements or any other real or personal property acquired or held by the Association.

In addition, any costs and expenses imposed upon the Association which benefit fewer than all of the Lots within the Subdivision shall be a “Common Expense” but, except as otherwise stated in these Declarations, shall be assessed exclusively against those Lots benefitted.

H. Declarant. “Declarant” means the Benet Hill Monastery of Colorado Springs, a Colorado nonprofit corporation, its agents, employees, successors and assigns, to whom it specifically transfers all or part of its rights as Declarant hereunder. The Declarant hereby reserves any and all “special declarant rights” and “development rights” as created or set forth in the Colorado Common Interest Ownership Act and any other rights as set forth herein. Any such rights shall apply to

the Property and shall terminate ten (10) years from the date of the recording of these Declarations, or as otherwise provided herein.

I. Declarations. “Declarations” means these Declarations of protective and restrictive covenants, as it may be amended or supplemented from time to time as herein provided. These Declarations shall be recorded in the office of the Clerk and Recorder of El Paso County, Colorado, and shall be indexed in the grantee's index in the name of Sisters of Benet Hill Monastery, Benet Hill Monastery of Colorado Springs, and the Sanctuary of Peace Property Owners Association, and in the grantor's index in the name of the Declarant.

J. Director. A Director is a member of the Executive Board of the Association. At all times and/or until lawful amendment of these Covenants, representatives of Declarant's choosing shall be Directors in sufficient number to constitute a majority.

K. Improvements. Improvements are any construction, structure, equipment, fixture, or facilities existing, or to be constructed on, the property that is included in the Common Interest Community/Subdivision, including, but not limited to, residences, buildings, trees, and shrubbery planted by Owners, the Declarant, or the Association, utility wires, pipes, poles, light poles, painting of the exterior surfaces of any structure, additions, outdoor sculptures or artwork, sprinkler pipes, garages, barns, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, patios, porches, sheds, fixtures, signs, exterior tanks, solar equipment, exterior air conditioning and central water softeners/fixtures, septic wastewater treatment systems, grading, excavation, filling, or similar disturbance to the land, including, change of grade, change of drainage pattern, change of ground level, or change of stream bed, and any change to previously approved Improvements.

L. Lot. If used in these Declarations, the term “Lot” shall mean one of the twenty-seven Lots created through the El Paso County land use planning process for the Sanctuary of Peace Subdivision. It is Declarant's intent that the Lot numbers used herein, if at all, correspond to the Lot numbers assigned on the Subdivision Plat.

M. Member. As used in these Declarations, the term “Member” shall be a member/Owner within the Association.

N. Mortgage means an interest in a residential unit or Lot created by contract which secures payment or performance of an obligation, including, without limitation, a lien created by a mortgage, deed of trust, assignment of leases or rents or other security interest intended as security and any other consensual lien.

O. First Mortgage means and refers to a Mortgage encumbering a residential unit or Lot having priority of record over all other recorded Mortgages. “First Mortgagee” means the person(s) or parties named in the First Mortgage, their successors and assigns.

P. Mortgagee means any person or other entity or any successor to the interest of such person or entity named as the mortgagee, assignee, beneficiary, creditor or secured party in any Mortgage.

Q. Open Space. For purposes of these Declarations, Open Space shall mean all portions of the Sanctuary of Peace Property, as described on **Exhibit A** except those portions which are "Lots" and further excepting roads, driveways or other Common Elements. Open Space may include wastewater treatment systems and associated infrastructure as Common Elements, but all Open Space, shall remain in ownership and control of the Declarant, unless otherwise expressly provided herein.

R. Owner means any Person, including Declarant, who owns the record fee simple interest in a Lot, or in the case of Declarant, fee simple interest in the Open Space. The term "Owner" shall exclude any Mortgagee.

S. Owner's Proportionate Share or "Proportionate Interest" means that percentage of the total which is the Owner's undivided interest in the Common Elements.

T. Period of Declarant Control means that period during which the Declarant shall be allowed to appoint the Board of Directors of the Association. The Period of Declarant Control commences upon recording of these Declarations and terminates upon the earlier of (i) the recording in the public records in El Paso County, Colorado of a notice executed on behalf of Declarant which terminates the Period of Declarant Control; (ii) ninety (90) days after the thirteenth (13<sup>th</sup>) Lot has been sold to a 3<sup>rd</sup> Party; or (iii) ten (10) years following the date on which these Declarations are recorded.

U. Person means a natural person, a corporation, a partnership, a limited liability company, an association, a trust, or any other entity or combination thereof.

V. Plat means that certain document entitled "Plat of Sanctuary of Peace Subdivision," to be recorded in the Records of the Clerk and Recorder for El Paso County, Colorado, depicting the "Subdivision". The current version of the Plat is attached hereto as **Exhibit C**, and shall be periodically amended until approved by El Paso County planning authorities, at which time an amended and final **Exhibit C** shall be recorded and appended hereto by reference.

W. Residential Unit. Residential Unit means a single family dwelling which is contained within a Lot, and on one side adjoined to a "Paired Unit" located on an adjacent Lot, with the adjoining walls, floors and ceiling deemed to be perimeter for such adjoined side, as more particularly described in Paragraph 3, below. The term Residential Unit shall include all fixtures and improvements which are contained within a Residential Unit, together with all interior non-load bearing walls within the Residential

Unit, and all exterior load bearing walls except for to an adjoining Residential Unit, as further described herein, as well as the inner decorated and/or finished surfaces of perimeter walls, floors and ceilings. The term further includes all structural components for the Residential Unit (except as otherwise expressly provided below). The boundaries of the Residential Units shall be shown on the recorded Plat map which shall be incorporated herein by this reference, preliminary version attached hereto as **Exhibit C**.

X. Rules. The Rules are the regulations for the use of Common Elements and for the conduct of persons within the Common Interest Community, as may be adopted by a simple majority of Owners from time to time pursuant to these Declarations.

2. Residential Unit/Paired Home Properties. The Residential Units within the Subdivision are "paired homes", with each such unit adjoining another on one party wall, which likewise forms a property line between the associated Lots.

A. Repair and Maintenance of Party Walls. All "party walls", i.e., common walls built as part of the original construction, being the adjoined wall of paired homes, as also form the dividing lines between Lots, shall be repaired and restored by the Owners who share the party walls in the event of damage caused by fire or other casualty. The affected Owners shall share equally in the cost of the repairs. Notwithstanding the foregoing, an Owner who, by the Owner's own negligent or willful act, causes damage to a party wall shall bear the whole cost of repairing such damage. Each Owner shall be responsible for maintaining and making cosmetic repairs to the interior surface of and wall coverings on any party wall within the Owner's Residential Unit. The Association shall not be responsible for enforcement of any payment obligations of an Owner under this Paragraph 2.

B. Right to Contribution to Run With the Land. The right of an Owner to contribution from another Owner for repair or restoration of a party wall shall be personal to the Owner and shall additionally be appurtenant to the Lot and pass to such Owner's successors in interest in such Lot. The obligation of an Owner to contribute to the cost of repair or restoration of a party wall shall be personal to the Owner and shall additionally be appurtenant to the Lot and pass to such Owner's successors in interest in such Lot.

C. Party Wall Easement. Each Owner and the Owner's agents and contractors are granted a non-exclusive easement in, over, under and upon adjacent Lots for the purpose of party wall repair and maintenance, upon reasonable notice to the affected Owner(s). Any damage to the adjacent/adjoining Lot or Residential Unit caused by the exercise of this easement shall be the responsibility of the Owner whose act or omission caused such damage.

D. Party Wall Encroachments. It is intended that the adjoining Residential Units shall be placed and constructed on the Lots so that the common Lot

lines separating two adjoining Residential Units shall be located between the two adjacent Residential Units, along the center of the party wall, and shall separate the adjacent Residential Units. However, easements for encroachments are hereby created and granted along and adjacent to said common Lot lines so that if any part of any Residential Unit, as a result of original construction, encroaches across a Lot line and onto an adjacent lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Encroachments referred to in this paragraph include but are not necessarily limited to encroachments caused by minor error in placement of the original construction of Townhomes, minor jogs in the foundations or structure of walls, and minor deviations between the dimensions shown on the recorded Plat of the Lots involved and the actual location of the Lot lines in the field.

E. Mechanic's Liens. Each Owner's Residential Unit shares a party wall with an adjacent Residential Unit, and each Owner agrees to indemnify and hold harmless the Owner of the adjoining Residential Unit for any claims, causes of action, losses, costs, expenses (including reasonable attorneys' fees), damages, judgments and mechanics' and materialmen's liens arising in connection with any material supplied or services rendered to make repairs or replacements for which the first-mentioned Owner is responsible.

F. Modification of Residential Unit Exterior or Landscaping. To assure uniformity in the appearance of the community and the Residential Units therein, no Owner may materially modify the front yard of the Owner's Lot, including any landscaping, or any portion of the exterior of the Owner's Residential Unit, including porches, decks, fences, driveways, sidewalks and the like, without the prior written approval of the Board in accordance with these Declarations.

G. Insurance on Residential Units. Property casualty and other insurance insuring the Residential Units will be provided by the Association and assessed against each Townhome Owner as either part of annual assessments, or as a special assessment as provided herein, provided the Association Board has approved the provision of such insurance for the Residential Units. Owners shall be solely responsible, at their own expense, for providing all other insurance covering loss or damage to that Owner's fixtures, appliances, furniture, furnishings or other personal property supplied, maintained or installed in the Residential Unit by the Owner and covering liability for injury, death or damage occurring within the Residential Unit and upon the Lot that is not otherwise covered under insurance provided by the Association.

i. Repair or Reconstruction. Any insurance proceeds payable upon damage or destruction of a Residential Unit or Lot received by an Owner shall be applied by the Owner to repair or replace the Residential Unit or portion of the Lot damaged or destroyed, unless (a) the Association, (b) each Owner of a Residential Unit so damaged or destroyed, (c) the holders of any note secured by mortgages or deeds of trust which encumber such Residential Units, (d) each Owner of an undamaged Residential Unit; and (e) the holders of any notes secured by mortgages or deeds of trust encumbering such undamaged Residential Units, all elect not to rebuild.

In such latter event, the damaged or destroyed Residential Unit(s) and the Lot(s) upon which they are situated shall be sold and the net proceeds received therefrom, together with the insurance proceeds applicable thereto, shall be allocated among and paid to the Owners of the Residential Units so damaged or destroyed, the holders of any notes secured by mortgages or deeds of trust encumbering such Residential Units, and the Association, as their respective interests may appear, on the basis of value of the Residential Units prior to loss, all as determined by an appraiser selected by (f) the Association and Owners of damaged property; or (g) if they cannot agree within 20 days, then by the Association alone.

ii. Insufficient Insurance Proceeds. If the proceeds from an Owner's insurance are not sufficient to cover the full cost of repair or replacement, the Owner shall be liable for such deficiency of funds. If two adjoined Residential Units sharing a party wall are repaired or rebuilt under this paragraph, but the insurance proceeds are insufficient to pay all of the cost, the Owners of the Residential Units involved each will contribute to the extent that the insurance proceeds allocable to their respective Residential Unit are inadequate to cover the repair costs. If the Owners involved are unable to agree on the allocable amounts, the amount to be contributed by each Owner will be determined by an appraiser appointed in the manner described above. Reconstruction shall be in accordance with the original specifications for the Residential Unit(s) or changes agreed upon by Owner and the Association. Reconstruction shall begin within 60 days after an insurance settlement agreement has been reached, unless a later date is agreed upon by Owner and the Association.

H. Right of First Refusal. Declarant does hereby expressly reserve a Right of First Refusal upon each Residential Unit within the Sanctuary of Peace planned community, effective upon any transfer of title thereof. Such exclusive and irrevocable right of first refusal and first option to purchase, is and shall be upon the terms and conditions hereinafter set forth, unless more specific or contrary terms are contained in a specific deed or instrument of conveyance for a specific Residential Unit. The absence of a specific term identifying this right of first refusal in such a conveyance instrument shall have no bearing upon the right of first refusal reserved in these covenants.

i. Exercise of First Option: This right of first refusal or first option to purchase may only be exercised by Declarant, and must be so exercised within 90 days of notification by the seller/owner of a Residential Unit/Lot that said Owner desires to sell the subject Residential Unit, or upon any non-sale transfer of ownership (*i.e.* gift, devise, foreclosure, etc.). Each Owner is expressly required by these covenants to provide Declarant with written notice of intent to sell as a prerequisite to any sale to a third party, and any entity involved in a non-sale transfer of a Residential Unit/Lot (*i.e.* a Receiver, Personal Representative, Trustee, etc.) shall notify Declarant prior to any such transfer being effective. Should Declarant not express in writing within said 90-day period its intent to purchase the Residential Unit under this Right of First Refusal, such right is forfeit and said Owner may sell to a 3<sup>rd</sup> party without regard to such right of first refusal. Notwithstanding the foregoing,

Declarant's Right of First Refusal shall be binding upon such new 3<sup>rd</sup> party Owner if and when such Residential Unit is again placed or sale.

iii. Terms of Purchase under Right of First Refusal: Should an Owner elects to sell a Residential Unit, and Declarant within the above referenced 90 days expresses its desire to exercise the first refusal rights granted under the terms of these covenants, the terms of purchase by Declarant shall be as follows:

a. \$1,000.00 more than the highest bona fide written offer to purchase said Residential Unit/Lot received by Seller from any third party;

b. \$1,000.00 more than the established "market value" of said Residential Unit/Lot for any non-sale transfer of property. For purposes of this Paragraph 2.H.iii.b., "market value" shall be determined by an MAI appraiser selected by Declarant, whose appraisal fee shall be paid by Declarant, based upon typical appraisal methods generally utilized.

iv. Title: Within fifteen (15) days after the Declarant has exercised his or her right of first refusal, the Owner selling such Residential Unit/Lot shall deliver to the Declarant a Certificate of Title or title abstract covering the subject Residential Unit which shall reflect that marketable fee simple title to the subject property is vested in said Owner and that same is insurable by a title insurance company licensed to do business in the State of Colorado. Said Certificate or abstract shall be subject only to taxes for the current year, easements, and rights of way of record, and prior mineral reservations consistent with the description of such interests in these Covenants. Should said Certificate or Abstract reflect any other exceptions to the title unacceptable to Declarant, Declarant shall notify the Owner in writing of any defects within fifteen (15) days (the title review period) and the Owner shall have a reasonable time (but not more than 25 days) in which to make the title good and marketable or insurable, and shall use due diligence in an effort to do so. If after using due diligence the Owner is unable to make the title acceptable to Declarant within such reasonable time, it shall be the option of the Declarant either to accept the title in its existing condition with no further obligation on the part of the Owner to correct any defect, or to cancel the Right of First Refusal as to the subject Residential Unit, in which instance this Right of First Refusal shall be forfeit, and the Owner shall be free to sell the Residential Unit to 3<sup>rd</sup> parties, subject to the ongoing Right of First Refusal of Declarant upon such 3<sup>rd</sup> parties in the future described in this Paragraph 2.H.

I. Consistent with the timelines and valuation mechanisms described in Paragraph 2.H., above, Declarant likewise reserves a right of first refusal for the benefit of the Association, should the Declarant at any time elect to divest its self of ownership and control of Lot 1, the Common Areas or the Open Space. The Association shall have a right of first refusal in the acquisition of all such interests, in such event.

3. Name and Type of Common Interest Community. The name of the Common Interest Community is Sanctuary of Peace. Sanctuary of Peace is a planned community.

A. Association. The name of the Association is Sanctuary of Peace Homeowners Association, Inc., a Colorado non-profit corporation.

B. Subject to the Act. The property covered by the Subdivision is subject to CCIOA/the Act.

4. Maintenance, Use, Valuation and Taxation of Lots/Property.

A. Individual Lots. It shall be the obligation of each Owner of a Lot within the Subdivision, at such Owner's expense, to make all efforts to keep neat, attractive, and in good order such Owner's residence and the exterior portions of the dwelling thereon, and to maintain, repair, and replace the same, consistent with the terms, conditions, covenants and restrictions provided herein. Notwithstanding the foregoing, the Association shall be generally responsible for the maintenance and upkeep of all structures within the Sanctuary of Peace, including all Residential Units and Common Elements, excepting routine cleaning and maintenance.

B. Duties of the Association. The Association shall maintain, repair, replace, keep free from snow and in good order, to the extent that such functions are not expected to be performed by any political subdivision of the State of Colorado, all of the Common Elements, including, but not limited to, any private common roadways and as depicted on the Plat, the central water system, central wastewater system, and open space. "Maintenance" or "repair" includes, but is not limited to, graveling, paving, draining, removing snow, clearing, or providing any other maintenance or repair-type service however defined, on any private roadway which may be part of the Common Elements. The Association may, from time to time, hire and/or contract with third parties to achieve the objectives of this Paragraph 4.B., including licensed water and wastewater operators. If any such expense is attributable to a specific Owner, such expense may be assessed following Notice and Hearing.

C. Common Elements Cannot be Partitioned. The Common Elements shall be owned as fractional undivided interests appurtenant to the Lots and shall remain undivided. No party, including Owner(s) nor the Association, shall bring an action for partition or division thereof, it being agreed that this restriction is necessary in order to preserve the rights of the Owners, and each Owner hereby expressly waives any and all such rights of partition he may have by virtue of his ownership of a Lot.

D. Separate Taxation. All taxes, assessments and other charges of the State of Colorado or of any political subdivision or of any special improvement district or of any other taxing or assessing authority, shall be assessed against and collected on each Lot separately, and each Lot shall be carried on the tax books as a separate and distinct parcel. For the purpose of valuation for assessment, the valuation

of the Common Elements shall be apportioned among the Lot owners in proportion to the fractional undivided Proportionate Interests in Common Elements. Tax exempt entities owning Lot(s) or portions of the Common Elements, if any, shall maintain such tax-exempt status notwithstanding anything to the contrary in these Declarations. The Association or the Declarant shall deliver to the County Assessor of the County of El Paso, Colorado any written notice required by the Act, setting forth descriptions of the Lots and Residential Units thereon, and shall furnish all necessary information with respect to such apportionment of valuation of Common Elements for assessment. The lien for taxes assessed to any Residential Unit or Lot shall be confined to that Residential Unit or Lot. No forfeiture or sale of any Lot for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Lot, nor shall any such liens in any manner attach to or otherwise affect Common Elements. In the event that such taxes or assessments for any year are not separately assessed to each Owner, but rather are erroneously assessed on the Property as a whole, then each Owner shall pay his Proportionate Interest thereof in accordance with his ownership interest in the Common Elements, and in said event, such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Owners their proportionate share of taxes or assessments for any year in which taxes are erroneously assessed on the Property as a whole.

E. Ownership and Title. A Lot may be held and owned by more than one Person as joint tenants, tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado. Each such Owner shall have and be entitled to the exclusive ownership and possession of his Residential Unit and the use of his Lot, subject to the provisions of these Declarations and applicable law.

F. Use of Common Elements. Subject to the restrictions herein, each Owner, and, his guests and permittees, shall have the non-exclusive right to use and enjoy the Common Elements for the purpose for which they are intended, subject to the rules and regulations of the Association, without hindering or interfering with the lawful rights of other Owners. It is expressly acknowledged that open space surrounding the Lots within the Subdivision, while available for Members' use as though it were a Common Element as specifically described herein, remains in the ownership of the Declarant, along with Lot 1 and the Common House thereon.

G. Charges for Use. Except for the assessments and other sums set forth herein, no Lot Owner shall be required to pay any additional fees or charges in connection with such Owner's use of any of the Common Elements; provided, however, the Association may undertake on a contractual basis any activity, function or service, for the benefit of all, some, or any Owners who agree to pay therefore, separate and apart from the assessments hereunder.

H. The Declarant, and the Association, shall have the right to construct new additions to the Common Elements upon written consent of all of the

Owners, or if by Declarant, during the period of Declarant Control as provided herein without such consent. If the Declarant or the Association makes any new additions of Common Elements to be constructed hereafter, then, except as may be otherwise provided herein, (i) each Owner shall be responsible for his Proportionate Interest of any increase in Common Expenses created thereby, and (ii) each Owner shall thereafter have an undivided Proportionate Interest in the new additions as with all Common Elements, exception such Common Elements as remain in Declarant's ownership.

5. Easements. The Property, and all portions thereof, shall be subject to all recorded licenses and easements including, without limitation, any as shown on any recorded plat affecting the Property, or any portion thereof, and as shown on the **Exhibit C** Plat map, as may be amended.

A. Ingress and Egress and Support. Each Owner shall have a perpetual non-exclusive easement for the purpose of vehicular and pedestrian ingress and egress over, upon, and across the Common Elements necessary for access to that Owner's Lot, public or private streets, and each Owner shall have the right to the horizontal and vertical support of his Unit.

B. Association Use.

i. The Association, its officers, agents and employees shall have a non-exclusive easement to make such use of and to enter into, upon, across, under or above the Common Elements as may be necessary or appropriate to perform the duties and functions which it is permitted or required to perform pursuant to these Declarations or otherwise, including but not limited to the right to construct and maintain on the Common Elements any maintenance and storage facilities for use by the Association.

ii. The Association shall have a non-exclusive easement to make use of and to enter into, upon, across, under or above the Common Elements as may be necessary or appropriate to perform the duties and functions to which it is permitted or required to perform pursuant to these Declarations or otherwise.

C. Repairs - Ordinary and Emergency. If any Common Elements, or portions thereof, are located within a Residential Unit or upon a Lot (*i.e.* water/septic infrastructure), or are conveniently accessible only through a Residential Unit/Lot, the Association, its officers, agents or employees shall have a right to enter such Residential Unit/Lot after service of reasonable written notice and during regular business hours, for the inspection, maintenance, repair and replacement of any of such Common Elements or after service of such notice, if any, as is reasonable under the circumstances, at any time as may be necessary for making emergency repairs to prevent damage to the Common Elements or Lots or Residential Units. The Association expressly reserves a non-exclusive easement for such purposes. Damage to any part of a Residential Unit or Lot resulting from the above-described repairs or any

damage caused to another Residential Unit or a Lot by the Common Elements located outside of the Residential Unit, including without limitation broken sewer/septic lines or water lines, shall be a Common Expense of all of the Owners, unless such damage is the result of the misuse or negligence of one or more particular Owners, or their permittees, in which case such Owner or Owners shall be responsible and liable for all of such damage and may be charged for any cost thereof by special assessment. No diminution or abatement of assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of the above-described repairs or from action taken to comply with any law, ordinance or order of any governmental authority. Damaged improvements, fixtures or personalty shall be restored to substantially the same condition in which they existed prior to the damage.

D. Encroachments. If any part of the Common Elements encroaches upon a Residential Unit or Lot, a valid easement for such encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Residential Unit or Lot encroaches upon the Common Elements, or upon any adjoining Lot or Residential Unit, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. In the event that a Residential Unit is partially or totally destroyed and then rebuilt, the Owners agree that minor encroachments of parts of the Common Elements due to such construction activities shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Residential Unit or appurtenance thereto constructed on the Property, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction. Such encroachments and easements shall not be considered or constructed to be encumbrances on the Common Elements or on the Residential Units or Lots. In interpreting any and all provisions of these Declarations, subsequent deeds, mortgages, deeds of trust or other security instruments relating to Residential Units and Lots, the actual location of a Residential Unit and established Lot lines shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Lots and Residential Units on the **Exhibit C** Plat map, as may be amended.

E. Utilities. Easements for the benefit of the Association are hereby declared and granted to install, lay, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components running through the Common Elements, Lots, and the walls of the Residential Units whether or not within the intended Lot or Residential Unit boundaries, and easements are hereby declared for the purposes of installing utilities or services.

F. Public Servants and Emergencies. Subject to the provisions of these Declarations, a non-exclusive easement is further granted to all police, sheriff, fire protection, ambulance and all similar persons to enter upon the streets, Common Elements, and the Property in the proper performance of their duties.

G. Easements Deemed Created. The easements, uses and rights herein created for an Owner shall be deemed appurtenant to the Lot and Residential Unit, or other property, of that Owner, and all conveyances of Lots hereafter made, whether by Declarant, the Association, or otherwise, shall be construed to grant or reserve the easements, uses and rights set forth herein, even though no specific reference to such easements or this paragraph appears in the instrument for such conveyance.

H. Construction - Declarant's Easement. The Declarant reserves the right to perform warranty work, repairs, and construction work on all Lots and Common Elements, to store materials in secure areas, and to control, and have the right of access to, work and repairs until completion of Declarant's work within the Subdivision. All work may be performed by the Declarant and his agents and assigns without the consent or approval of the Association. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising their rights, whether arising under the Act or reserved in these Declarations. This easement includes the right to convey access, utility, and drainage easements to utility providers, special districts, El Paso County, or the State of Colorado.

I. Granting of Future Easements. The Common Interest Community may be subject to other easements or licenses granted by the Declarant if provided for by these Declarations.

J. Easements Reserved and Restrictions on Drainage Easements. Easements and rights of way are reserved on, over, and under the Common Elements and the Lots as shown on the Plat, or as may be constructed at the time of the sale of Lots, for construction, maintenance, repair, replacement, and reconstruction of poles, wires, pipes and conduits for lighting, heating, air conditioning, electricity, gas, telephone, drainage and any other public or quasi-public utility service purposes, for sewer and pipes of various kinds, and for any other necessary maintenance or repair, and specifically for drainage and septic systems associated with the Subdivision.

6. Signs and Marketing. The Declarant reserves the right to post and maintain signs and displays on any Lot owned by Declarant and in the Common Elements in order to promote sales of Lots. Declarant also reserves the right to conduct general sales activities in a manner that will not unreasonably disturb the rights of Lot owners.

7. Declarant's Property. The Declarant reserves the right to remove and retain all his property and equipment used in the sales, management, construction, and maintenance of the Property, whether or not they have become fixtures.

8. Declarant Control of the Association.

A. Subject to Paragraph 8.B. below, there shall be a period of Declarant control of the Association, during which a Declarant, or any persons designated by the Declarant, may appoint and remove the officers of the Association, and Directors of the Executive Board, and such persons are not required to be Lot owners. The period of Declarant control shall terminate no later than the later of:

i. Two years after conveyance to Lot owners other than a Declarant of 75 percent of the Lots that may be created in the Common Interest Community (i.e. 60 days following the sale of the 21<sup>st</sup> Lot); or

ii. Two years after the last conveyance of a Lot by the Declarant in the ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove officers of the Association, and Members of the Executive Board, before termination of the period described above. In that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective; or

iii. Ten years after recording of these Declarations.

B. Not later than 60 days after conveyance to Lot owners other than a Declarant of 25 percent of the Lots (*i.e.* 7 Lots), at least one Director of the Executive Board shall be elected by Lot owners other than the Declarant. Not later than 60 days after conveyance to Lot owners other than a Declarant of 50 percent of the Lots (*i.e.* 14 Lots), not less than 2 of the Members of the Executive Board must be elected by Lot owners other than the Declarant.

C. Not later than the termination of any period of Declarant control, the Lot owners shall elect an Executive Board of at least five Directors, all of whom shall be Lot owners, except for such Directors who are appointed representatives of Declarant. If any Lot is owned by a partnership, limited liability company, corporation, or similar entity, any officer, partner, manager, member, or employee of that Lot owner shall be eligible to serve as a Director of the Executive Board and shall be deemed to be a Lot owner for the purposes of the preceding sentence. The Executive Board shall elect the officers. The Executive Board Directors and officers shall take office upon election.

D. Notwithstanding any provision of these Declarations, or the Bylaws to the contrary, following proper notice, the Owners, by a vote of 67 percent of all Owners present and entitled to vote at a meeting of the Owners at which a quorum is present, may remove a Director of the Executive Board, with or without cause, other than a Director appointed by the Declarant. Declarant's appointed Executive Board Director, as described above at Paragraph 1.J., shall at all times be the the President of the Association, notwithstanding anything to the contrary herein.

9. Limitations on Special Declarant Rights. Unless terminated earlier by an amendment to these Declarations executed by the Declarant, any Special Declarant

Right as described by statute may be exercised by the Declarant until the later of the following: as long as the Declarant (a) is obligated under any warranty or obligation; (b) owns any Lot/Unit; (c) owns any Security Interest in any Lot/Unit; or (d) ten (10) years have elapsed after recording of these Declarations. Earlier termination of certain rights may occur by statute.

10. Liability for the Common Expenses. Except as expressly provided elsewhere in these Declarations, the percentage of liability for Common Expenses allocated to each Lot shall be based *pro rata* to the total number of Lots in the Common Interest Community (*i.e.*, 1/27<sup>th</sup> per lot). Even should an Owner combine two Lots with the intent of utilizing the combined lots as a single residence, such combined Lots shall nonetheless be assessed as individual lots on a 1/27<sup>th</sup> basis for purposes of assessments. Nothing contained in this Paragraph 10 shall prohibit certain Common Expenses from being apportioned to particular Lots consistent with the terms and conditions of these Declarations, when such expenses are not related to all lots equally.

11. Votes. The Owners in the Common Interest Community, including the Declarant as to any Lots owned by the Declarant and as to the Open Space, shall have one vote in the affairs of the Association per lot owned provided, with additional votes allocated to the Open Space based upon acreage, Common Elements thereon, and preservation equities, equivalent to 26 Lots; however, that if an Owner combines two or more Lots with the intent of utilizing the combined lots for a single residence, such resulting combined Lots shall have only a single vote. If more than one person owns a Lot, those persons must agree on how to cast that Lot's membership vote. Co-owners may not cast fractional votes. A vote by a co-owner for the entire Lot's membership interest shall be deemed to be pursuant to a valid proxy, unless another co-owner objects at the time the vote is cast, in which case such Lot's membership vote shall not be counted. Combined Lots shall each have one vote (*i.e.*, thereby resulting in fewer total votes).

12. Architectural Control.

A. No portion of the Property shall be used at any time for any purpose other than residential purposes, either temporarily or permanently, excepting home-office type purposes as may be permissible under El Paso County zoning and land use regulations applicable to the Property, provided no traffic or non-residential parking is associated with such home-office/business uses.

B. No Owner shall undertake any work to the interior or exterior of his or her Residential Unit or Lot inconsistent with the terms and conditions of these Declarations without the express written consent of the Board, or the Declarant during the Declarant's period of control, including but not limited to alteration of exterior appearance of a residential unit, painting of a residential unit, and installation of accessory structures or features on an Owner's Lot outside of a Residential Unit, so as to maintain the quality, uniqueness and uniformity of the community.

C. No Owner shall undertake any work in his Residential Unit or Lot which would jeopardize the soundness or safety of any other Residential Unit, Lot or Common Element, including an adjoining Residential Unit, nor which might reduce the value thereof or impair an easement thereon or thereto. Neither shall any Owner make any changes or additions to any Common Elements or enclose, by means of fencing, screening or otherwise, any Common Element without having first obtained the prior written approval of the Board, including with respect to the materials, design and specifications for such enclosure, as more particular provided in this paragraph.

13. Building/Subdivision Restriction. The Subdivision consists of twenty-six (26) Lots and single family Residential Units thereon, plus one (1) Lot containing the Common House/Community Center and community parking facilities, and extensive Common Element open space subject to the "Open Space and Forest Preservation" requirements described herein. By these Declarations, a building restriction is hereby placed on all Lots and Common Element open space within the Sanctuary of Peace subdivision prohibiting the construction of any permanent structures, buildings or above ground improvements on any platted drainage/stormwater easements, public utility easements, building setbacks, or other vested rights of way. No further subdivision of any Lot shall be permitted.

A. Open Space and Forest Preservation. It is Declarant's intent to maintain ownership of the Open Space surrounding the Lots within the Subdivision, as well as tracts between and adjacent to such Lots, though all such Open Space and tracts shall be managed by the Association as Common Elements for the Owners' use, as provided herein and as subject to the terms and conditions of these Declarations, as well as the Articles of Incorporation, Bylaws, and Rules of the Association, if any. It is the Declarant's express intent to maintain the natural and native beauty and characteristics of the Open Space and tracts, prohibiting the construction of any permanent structures thereon, and utilizing only sustainable and fire wise land management on the Open Space and tracts, as depicted on the **Exhibit C** Plat map. However, notwithstanding the foregoing, certain portions of the Open Space and tracts shall be and are intended to be utilized for construction of central water systems/wells/well fields and wastewater treatment systems, and nothing in this Paragraph 13.A. shall limit the size, location or scope of such utilities as necessary for provision of services to the subdivision, as preliminarily depicted on the **Exhibit C** Plat Map. Such utilities may, in Declarant and Association's discretion, be relocated in the future to other areas of the Open Space or tracts without the consent of the Owners and without the need to amend these Declarations. No further subdivision or development of the Open Space or tracts may occur absent express amendment of these Declarations with approval of 100% of the Owners in the Subdivision, as well as any necessary approvals of applicable regulatory authorities.

14. Maintenance of Natural Forest/Vegetation. The Sanctuary of Peace Subdivision is located in the Black Forest, a natural environment of Ponderosa pine, Douglas fir and associated montane ecosystems. While the land within the Sanctuary of Peace Subdivision was not impacted by the 2013 Black Forest Fire, Declarant has

undertaken extensive fire mitigation efforts, though stands of mature Ponderosa pine and Douglas fir trees remain throughout the Subdivision as of the time of these Declarations, which create natural visual/sight barriers between neighboring properties, as well as maintain the natural ecosystem for local flora and fauna. Except for purposes of disease and blight control, public safety, and to the extent necessary to prepare building sites for a primary residence upon a platted Lot and construction or related appurtenances and community infrastructure by Declarant and/or the Association, no portion of the remaining natural Ponderosa/Fir tree barrier described in this Paragraph 14. may be removed, timbered, cut down, or otherwise materially altered, absent amendment of these covenants by unanimous consent of the members of the Association, or by Declarant.

15. Dwelling Area Requirements/Limitations. No dwelling structure shall be constructed with ground floor area, *i.e.* footprint area, of the main structure exclusive of open porches, basements, and garages, of more than two thousand (2,000) square feet, with all such structures being one-story dwellings. In the event of the destruction of a particular Residential Unit, such reconstructed Residential Unit shall be of the same design/architecture as that destroyed, and of the same size. Further, while renovations and improvements to the Residential Units may occur with permission of the Association and proper permitting from applicable El Paso County authorities, no such renovation or improvement may at any time include the addition of any bedroom (*i.e.* rooms with a closet attached used for residential bedroom purposes) to any Residential Unit, nor to the Common House, absent express written consent of the Association, which shall not be provided without first obtaining written confirmation from all applicable regulatory authorities that such additional bedroom will not cause any compliance issue with water and water rights, nor with El Paso County Department of Health permitting, regulation and administration of wastewater systems.

16. Construction Type. All construction shall be new, and all construction shall be completed by the Declarant, the Association, or their assigns consistent with these Declarations and the Plat. No building previously used at another location, nor any building or structure originally constructed as a "mobile home" type dwelling or manufactured housing (to the extent such structures have the appearance of "mobile homes" or "doublewides"), nor domes may be moved onto any Lot within the Subdivision. Panels and major house components may, in Declarant's discretion, be manufactured off-site, provided that the assembly is conducted on-site and the resulting structure does not have the appearance generally associated with manufactured housing.

17. Underground Utilities. All future newly installed utilities, except for lighting standards and customary service devices for meters, transformers, access, control or use of utilities, shall be installed underground. Small satellite dishes for telecommunications shall be permissible.

18. Wells and Mineral Excavation. No portion of any Lot or any Common Element open space within the Subdivision shall be used to explore for or to remove

any water, soil, hydrocarbons, or other minerals of any kind, with the exception of properly permitted and authorized water wells as described in these Declarations and the Augmentation Plan.

19. Maintaining of Drainage. There shall be no interference with the established drainage pattern as planned by Declarant for the entire Subdivision, including those drainage structures identified and included on the Plat.

20. Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on a Lot, the owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the Association, or the owner shall cause the damaged or destroyed Improvement to be demolished, removed, and the Lot to be suitably landscaped, subject to the approval of the Association, so as to present a pleasing and attractive appearance, consistent with the uniformity of the Sanctuary of Peace community.

21. Accessory Building and Yard Items. No accessory buildings/structures shall be constructed on any Lot without the express written consent of the Board, or the Declarant during the period of Declarant Control. Any such accessory buildings, or structures, or yard items, whether movable or immovable, including without limitation, children's play or swim sets, basketball hoops, equipment or appliances, fountains, yard ornaments, masonry figures, and above-ground swimming pools, shall be permitted only if they are designed and installed to blend in with the overall architecture of the main dwelling structures. Metal and pre-manufactured storage sheds will not be allowed, except to the extent they likewise blend in with the overall architecture of the main dwelling structure.

22. Trailers, Campers, Boats and Other Vehicles. No boat, trailer, camper (not installed on its supporting vehicle), tractor, commercial vehicle, mobile home, motor home/RV, trail bikes, mini-bikes, motorcycles, all-terrain vehicles, snowmobiles, or any other type of recreational vehicle, or any towed trailer or truck, excepting pickup trucks solely for private use of the residents of a dwelling, shall be parked on any street at any time, nor within any Lot outside of a garage. There shall be no on-street parking within the Sanctuary of Peace Subdivision.

23. Abandoned/Project Vehicles. No stripped down, abandoned, unlicensed, partially wrecked or junk motor vehicle or part thereof shall be permitted to be parked on any street or on any Lot within the Subdivision in such a manner as to be visible at ground level from any neighboring Lot within the Subdivision, or street.

24. Vehicle Repairs. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat or machine or device may be carried on within the Subdivision except within a completely enclosed Structure, or at such location as screens the sight and sound of the activity from the street and from adjoining Lots within the Subdivision.

25. Solar Collectors. Solar collectors or other solar devices may be permitted, if approved in advance by the Association, so long as they are designed and installed to blend in with the overall architecture of other improvements on the Lot and the community as a whole, and so long as the design and installation of any such solar amenities are completed with the advance written approval of the Declarant and/or Association.

26. Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices, except for built-in speakers on the decks and patios adjoined to or in the immediate vicinity of primary dwelling structures, and for security devices used exclusively for security purposes, shall be located, used or placed on any structure or within any Lot. Volumes of such permitted exterior sound devices shall be maintained at such a level as to maintain the peace and tranquility of the community and subdivision.

27. Weeds. Lot owners are responsible for removing plants infected with noxious insects or plant diseases which are likely to cause a spread of noxious insects or plant diseases to neighboring properties, and for controlling and removing weeds declared noxious by applicable governmental authorities and in accordance with Colorado and El Paso County weed control rules and regulations, whether or not structures have been constructed thereon.

28. Animals.

A. No animals or livestock of any kind shall be housed, raised or kept on any Lot within the Subdivision, either temporarily or permanently, except as expressly provided in this Paragraph 28, such exceptions being as follows: (i) commonly accepted domesticated birds, fish, dogs, cats, and other small domestic animals permanently confined as household pets; (ii), an aggregate of not more than three (3) domesticated dogs and cats or similar animals may be maintained in or kept within each Residential Unit on each Lot. No such domesticated animals may be kept or maintained in violation of provisions of the Water Decree, attached as **Exhibit B**, nor in violation of any government regulation, and all such domesticated animals must be thoroughly secured and maintained within the Lot of the owner of such animals. There shall be no fencing installed on any lot, nor any dog runs of any kind, and therefore all pets must be on-leash and accompanied when outside of a residential unit, or contained utilizing electronic "invisible fencing" or similar.

B. No animal of any kind shall be permitted which produces sounds or smells that may be reasonably regarded as offensive, or as a nuisance.

C. No kennels, whether for breeding, rent, or sale shall be allowed within the Subdivision.

D. Incessantly barking and/or off-leash dogs, and loose cats, may harm wildlife and disturb the peace of the Subdivision, and are therefore prohibited. Dogs shall not be permitted to run loose and shall be kept under the control of the Owner at all times. No exterior doghouses or kennels will be permitted.

29. Antennas. Attic antennas inside any dwelling (as opposed to roof antennas) are effective, are less vulnerable to damage, and are encouraged. Visible antennas are prohibited. Small satellite dish antennas may be installed where they will be unobtrusive. Only devices 28 inches in largest dimension or smaller shall be permitted, unless screened in a manner that precludes unattractive views from public roads and adjoining Lots within the Subdivision.

30. Nuisance. No noxious or offensive activity shall be permitted upon any Lot or Common Element, nor shall actions intended to or tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood be permitted on any Lot or Common Element. No hazardous activities may be permitted upon any Lot or Common Element, nor in any Residential Unit. No annoying lights, sounds or odors shall be permitted to emanate from any Lot or Residential Unit. Outdoor lighting will be permitted to the extent it does not create a visual nuisance to neighboring or nearby property Owners. Any exterior lighting on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb residents of adjacent or nearby Lots within the Subdivision. Lighting designs consistent with the design provisions of the "International Dark-Sky Association" are encouraged, minimizing local and regional light pollution. No activities which pollute or have the potential to pollute any well, surface water right, groundwater aquifer, or other water resource shall be permitted within the Subdivision. No trail bikes, mini-bikes, motorcycles, all-terrain vehicles, snowmobiles, or other such noise causing vehicles shall be operated within the Subdivision other than on county roads and going to and from residences, or for use in maintenance activities upon a Lot, or during emergency situations including but not limited to flood, fire, and blizzard/snow emergencies. No activity shall be permitted which will generate a noise level sufficient to interfere with the peaceful and reasonable quiet enjoyment of the persons on any adjoining or nearby Lots within the Subdivision. No hunting of any kind by any form or device, nor the discharge of any type of firearm, explosive or fireworks devices shall be permitted.

31. Storage and Trash Restrictions/Common Drop Off Locations. Except for common trash bins maintained and located in accordance with rules and regulations adopted by the Board, all garbage and trash shall be placed in receptacles which are kept within the garages of Residential Units except on the day of pick up. The Board may, in its discretion, enter into agreements or arrangements for common trash and garbage removal from all Residential Units, or from common drop off locations at locations to be determined by the Declarant and/or Association at various locations upon the property to which Owners will be required to deliver their respective trash for pick up on a regular schedule.

32. Parking. Except as provided for below, there shall be no parking of automobiles, trucks or vehicles of any type upon any part of the Subdivision except within the garages attached to each Residential Unit and within areas designated for parking on the **Exhibit C** Plat map, or as may be permitted in writing by the Association's Board under specific limited circumstances in the Board's discretion. Violation of this provision shall permit the Board to remove the offending vehicle at the expense of the owner of the vehicle. Driveways and roadways are to be kept clear of parked vehicles.

33. Water Augmentation Plan – Wastewater Disposal.

A. Decree. The Subdivision shall be subject to the obligations and requirements as set forth in the August 28, 2018 Judgment and Decree affirming the August 6, 2018 Findings of Fact and Ruling of Referee granting underground water rights and approving a plan for augmentation, as entered by the District Court for Water Division 2, State of Colorado, in Case No. 18CW3019 (consolidated with Division 1 Case No. 18CW3040), as recorded at Reception No. 218100150 of the El Paso County Clerk and Recorder, which is incorporated by reference ("Augmentation Plan"). The Augmentation Plan concerns the water rights and water supply for the Subdivision and creates obligations upon the Association, and the Owners, which run with the land. The water supply for the Subdivision shall be by community well(s) to the not-nontributary Dawson aquifer, under the Augmentation Plan, with wastewater treatment to occur through an Association-owned and operated septic system(s).

B. Water Rights and Facilities Ownership.

i. Declarant will transfer and assign to the Association all right, title and interest in the Augmentation Plan and water rights thereunder, except as set forth below. Those water rights assigned include a portion of the ground water in the nontributary Arapahoe aquifer (at least 1,097 acre-feet), and all of the Laramie-Fox Hills aquifer (at least 1,414 acre feet) of the Denver Basin, as adjudicated in the Augmentation Plan, and as reserved for replacement of any injurious post-pumping depletions.

ii. Declarant will further transfer and assign to the Association a minimum of 2,511 acre feet (8.37 annual acre feet based on a 300-year aquifer life) in the not-nontributary Dawson aquifer of the Denver Basin as adjudicated in the Augmentation Plan as the physical source of supply for all Lots from the community Benet Well No. 1 and any additional or replacement wells required. The Dawson aquifer well shall be augmented per the Augmentation Plan as operated and administered by the Association.

iii. The Declarant will further assign to the Association all obligations and responsibilities for compliance with the Augmentation Plan, including pumping, monitoring, accounting and reporting obligations, as well as all well, water and wastewater infrastructure necessary for the production and use of the water and water

rights consistent with the Augmentation Plan. The Association shall assume and perform all such obligations and responsibilities, which expressly include design, installation, operation and maintenance of an appropriate non-evaporative central septic disposal system(s). By this assignment to the Association, the Declarant is relieved of any and all responsibilities and obligations for the administration, enforcement and operation of the Augmentation Plan. Such conveyance shall be subject to the obligations and responsibilities of the Augmentation Plan and said water rights may not be separately assigned, transferred or encumbered by the Association, nor by the Owners. The Association shall maintain such obligations and responsibilities in perpetuity, unless relieved of such augmentation responsibilities by decree of the Water Court, or properly entered administrative relief.

iv. The Association's water rights in the not-nontributary Dawson aquifer underlying the Subdivision shall remain subject to the Augmentation Plan, and shall, not be severable from the property, and the Association covenants that it cannot sell or transfer such ground water rights to any party separate from the conveyance of the entirety of the property.

v. All not-nontributary Denver Basin groundwater in the Denver aquifer, and a portion of the groundwater in the nontributary Arapahoe aquifer not reserved and assigned to the Association for augmentation of any injurious post-pumping depletions, consistent with the Augmentation Plan, are otherwise retained by Declarant.

C. Water Administration.

i. The pumping of the community Dawson aquifer well (Benet Well No. 1 and additional/replacement wells) is limited to a maximum of 8.37 acre feet annually, consistent with the Augmentation Plan. The Association shall ensure that the allocations of use of water resulting from such pumping as provided in the Augmentation Plan is maintained, as between in-house, irrigation, and other allowed uses. The Association shall ensure that all domestic-type water usage on the property is treated utilizing a central non-evaporative septic system(s) in order to ensure that return flows from such system(s) are made to the stream system to replace depletions during pumping, and that such return flows shall not be sold, traded or used for any other purpose. The Association, as the owner of all obligations and responsibilities under the Augmentation Plan, shall administer and enforce the Augmentation Plan as applies to pumping from the community Dawson aquifer well and non-evaporative septic system(s). Such administration shall include, without limitation, accountings to the Colorado Division of Water Resources under the Augmentation Plan and taking all necessary and required actions under the Augmentation Plan to protect and preserve the ground water rights. Each Owner, and the Association, have the right to specifically enforce, by injunction if necessary, the Augmentation Plan, for any failure to comply with the Association's obligations under the Augmentation Plan, including the enforcement of the terms and conditions of well permit(s) issued pursuant to the Augmentation Plan, and the reasonable legal costs and fees for such enforcement shall

be borne by the party against whom such action is necessary, to the prevailing party. The use of the not-nontributary Dawson ground water rights owned by the Association is restricted and regulated by the terms and conditions of the Augmentation Plan and these Declarations, including, without limitation, maximum annual well pumping of 8.37 acre feet. Failure of the Association to comply with the terms of the Augmentation Plan may result in an order from the Division of Water Resources under the Augmentation Plan to curtail use of ground water rights.

ii. The Association shall fully account for total pumping from the community well to the not-nontributary Dawson Aquifer, including for any irrigation, or other permitted/allowed uses as may be required under the Augmentation Plan. The frequency of such accounting shall be annually, unless otherwise reasonably requested by the Division of Water Resources. The Association shall provide the Division of Water Resources with integrated accounting for pumping of all not-nontributary individual Dawson aquifer wells on an annual basis, unless otherwise reasonably requested by the Division of Water Resources.

iii. At such time as construction of an Arapahoe and/or Laramie-Fox Hills aquifer well is required for replacement of post-pumping depletions under the Augmentation Plan, the Association shall be responsible for all cost and expense in the construction of said well, as well as all reasonable reporting requirements of the Division of Water Resources associated therewith. The Association shall have authority to impose a reasonable fee or assessment upon all Lot owners in advance of construction so as to ensure sufficient funding is available to meet all post-pumping depletion replacement obligations, consistent with the terms and conditions of these Declarations.

D. Well Permits.

i. The Association, or Declarant, shall be responsible for obtaining a well permit for the community Benet Well No. 1 to the not-nontributary Dawson aquifer for provision of water supply to the Subdivision, and any replacement or additional not-nontributary Dawson aquifer wells to provide such supplies. Such Dawson aquifer well(s) shall be constructed and operated in compliance with the Augmentation Plan, the well permit(s) obtained from the Colorado Division of Water Resources, and the applicable rules and regulations of the Colorado Division of Water Resources. The costs of the construction, operation, maintenance and repair of such community well, any applicable treatment of water produced thereby, and delivery of water therefrom to the Residential Units located on each Lot, shall be a Common Expense subject to assessments by the Association. The Association shall comply with any and all requirements of the Division of Water Resources to log the well(s) and shall install and maintain in good working order an accurate totalizing flow meter on the well in order to provide the diversion information necessary for the accounting and administration of the Augmentation Plan.

ii. The Association shall further be responsible for obtaining any well permits, rights and authorities necessary for the construction of wells to the nontributary Arapahoe and/or Laramie Fox Hills aquifer, though such well(s) shall be constructed only for purposes of replacing any injurious post-pumping depletions, consistent with the Augmentation Plan, and shall not be constructed unless and until such post-pumping depletions must be replaced. The Association shall comply with any and all requirements of the Division of Water Resources to log such wells, and shall install and maintain in good working order an accurate totalizing flow meter on the well in order to provide all necessary accounting under the Augmentation Plan.

iii. No party guarantees to the Lot owners the physical availability or the adequacy of water quality from the community Benet Well No. 1, or additional and replacement wells, or augmentation wells, to be drilled under the Augmentation Plan. The Denver Basin aquifers which are the subject of the Augmentation Plan are considered a nonrenewable water resource and due to anticipated water level declines the useful or economic life of the aquifers' water supply may be less than the 100 years allocated by state statutes or the 300 years of El Paso County water supply requirements, despite current groundwater modelling to the contrary.

E. Compliance. The Owners and the Association, respectively, shall perform and comply with all terms, conditions, and obligations of the Augmentation Plan, and shall further comply with the terms and conditions of any well permits issued by the Division of Water Resources pursuant to the Augmentation Plan, as well as all applicable statutory and regulatory authority.

F. Amendments. No changes, amendments, alterations, or deletions to this Paragraph 33 of these Declarations may be made which would alter, impair, or in any manner compromise the Augmentation Plan, or the water rights of the Owners without the written approval of said parties, El Paso County, and from the Water Court.

G. El Paso County Requirements. El Paso County may enforce the provisions regarding the Augmentation Plan as set forth in these Declarations, should the Owners and/or Association fail to adequately do so.

H. Septic Systems and Leach Fields. As described in Paragraph 5, above, the Association is vested with all easements necessary for the installation, construction, use, maintenance and repair of a community septic wastewater treatment system(s) for treatment of water utilized within each Residential Unit, consistent with the terms and conditions of the Augmentation Plan. It is anticipated that each 5-7 Residential Units may share a "sub" wastewater system, but no such sub-system shall have a discharge of greater than 1,999 gallons per day, and the entire system shall in no instance exceed 6,000 gallons per day of discharge. Such wastewater treatment system(s) shall be Common Elements, and repair to any such sub-systems shall be allocable amongst all Lots/Residential Units, regardless of whether a particular Residential Unit utilizes a particular sub-system. Such system(s) may be located within

any portion of the open space within the Subdivision, whether owned by Declarant or the Association, at Declarant's discretion, and the **Exhibit C** Plat map shall be updated and appended to these Declarations by recording, in order to provide an as-built description of such septic system/sub-systems and associated easements when completed.

34. Terms of Covenants and Severability. These Declarations shall run with the land and shall remain in full force and effect until amended or terminated, in whole or part, by the owners of the entirety of the Subdivision (*i.e.* all Owners and the Association) and filed for record with the Clerk and Records of El Paso County. If any of these Declarations be held invalid or become unenforceable, the other Declarations shall not be affected or impaired but shall remain in full force and effect.

35. Amendment of Declarations. Except as expressly mandated by applicable law, and except as limited by express provisions herein, these Declarations and the Plat may be amended only by vote or agreement of at least 67 percent of the Owners. For purposes of this Paragraph 35, Declarant shall be deemed an owner of each Lot until such time as such Lot(s) are transferred to a third party.

A. Amendment of Declaration by Declarant. Until such time as Declarant has conveyed any Lots to a third party, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in these Declarations may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination. Declarant reserves the right to unilaterally amend these Declarations in all circumstances permitted by law and which do not conflict with applicable statutes, rules or decrees. Notwithstanding anything contained within these Declarations, and to the extent permitted by law, if Declarant determines that any amendments to these Declarations shall be necessary in order for existing or future mortgages or other security instruments to be acceptable applicable authorities, then Declarant shall have and hereby specifically reserves the right and power to make, execute and record any such amendments without obtaining approval of Lot owners or mortgagees (or any percentage thereof).

B. Limitation of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Paragraph 35 may not be brought more than one year after such amendment is recorded.

C. Recordation of Amendments. Each amendment to these Declarations must be recorded in the records of the Clerk and Recorder for El Paso County, Colorado, and the amendment is effective only upon recording.

D. Unanimous Consent. Except to the extent expressly permitted or required by other provisions of these Declarations, an amendment may not create or increase the number of Lots, change the boundaries of a Lot, change the vested

property interests of a Lot or Lot owner, or the uses to which a Lot is restricted except by unanimous consent of the Owners.

E. Execution of Amendments. An amendment to these Declarations required to be recorded, as set forth herein, by the Association, which has been adopted in accordance with these Declarations, must be prepared, executed, recorded, and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

36. Termination. Termination of the Common Interest Community may be accomplished by unanimous consent of the Owners; however, the covenants and restrictions herein regarding compliance with the Augmentation Plan shall not terminate unless the requirements of the Augmentation Plan are also terminated by order of the appropriate water court and a change of water supply is approved by El Paso County.

37. Assessment and Collection of Common Expenses.

A. Apportionment of Common Expenses. Except as otherwise expressly provided in this Paragraph 37, all Common Expenses shall be assessed against all Lots in accordance with their percentage interests in the Common Expenses as a portion of the total number of Lots, *i.e.* initially 1/27<sup>th</sup> per Lot, subject to the Declarant's/owners' right, if any, to combine Lots, thereby reducing the total number of Lots and reallocating the percentage interests in the Common Expenses. This shall include, but not be limited to, Common Expenses for reasonable maintenance and replacement of the Common Elements, including drainage and mailboxes, notwithstanding the fact that such maintenance and replacement could be viewed as benefiting one particular Lot over another. Without limiting any other authority regarding assessments provided for in these Declarations, assessments may, but shall not be required to, (i) be made monthly for snow plowing, and (ii) be made in advance for any maintenance or repairs to the other Common Elements.

B. Common Expenses Attributable to Fewer than all Lots.

i. Any Common Expense for services approved by the Association and provided by the Association to an individual Lot, or some Lots but fewer than all the Lots, at the request of the particular Lot owner or Owners shall be assessed only against the requesting Lot(s).

ii. An assessment to pay a judgment against the Association may be made only against the Lot(s) in the Common Interest Community at the time the judgment was entered in proportion to their Common Expense liabilities.

iii. If a Common Expense is incurred by the action or inaction of a Lot owner, the Association may assess that expense exclusively against that Lot owner's Lot.

iv. Fees, charges, taxes, impositions, late charges, fines, collection costs, and interest charged against a Lot owner pursuant to these Declarations, or any Rules and Bylaws lawfully enacted by the Association, and the Act are enforceable as Common Expense assessments.

C. Association Lien.

i. The Association is hereby granted, and shall have, a lien on a Lot for a Common Expense assessment levied against the Lot for fines imposed against its Lot owner. Fees, charges, late charges, attorneys' fees, fines, and interest charged pursuant to the Association's authority under these Declarations, any Rules or Bylaws lawfully enacted by the Association, and the Act, are enforceable as assessments under this Paragraph 37. The amount of the lien shall include all those items set forth in this Subparagraph 37.C. from the time such items become due. If a Common Expense assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

ii. A lien under this Paragraph is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of these Declarations; (2) a first Security Interest on the Lot recorded before the date on which the Common Expense assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Subparagraph does not affect the priority of mechanic's or materialmen's liens or the priority of a lien for other assessments made by the Association. By purchasing a Lot, a Lot owner waives all federal and state homestead and other exemptions with respect to the lien for Common Expense assessments.

iii. Recording of these Declarations constitutes record notice and perfection of the lien. Further recording of a claim of lien for a Common Expense assessment under this Paragraph is not required.

iv. A lien for an unpaid Common Expense assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the Common Expense assessment becomes due, except that if an owner of a Lot subject to a lien under this Paragraph 37 files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

v. This Paragraph 37 does not prohibit an action to recover sums for which Subparagraph i. of this paragraph creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

vi. A judgment or decree in any action brought under this Paragraph 37 shall include costs and reasonable attorneys' fees for the prevailing party, which shall be additional Common Expense assessments.

vii. A judgment or decree in an action brought under this paragraph is enforceable by execution under Colorado law.

viii. The Association's lien must be foreclosed by the same judicial procedure by which a mortgage on real estate is foreclosed under Colorado law.

D. Payment of Assessments.

i. Certificate of Payment of Assessments. The Association, upon written request, shall furnish a Lot owner with a written statement setting out the amount of unpaid assessments against the Lot. The statement must be furnished within 14 calendar days after receipt of the request and is binding on the Association, and each Lot owner. A reasonable fee, established by the Association, may be charged for such statement.

ii. Monthly Payment of Common Expenses. All Common Expenses assessed under these Declarations shall be due and payable monthly unless otherwise determined by the Association. At the option of the Association Common Expenses may be assessed each month after actual expenses are incurred.

iii. Acceleration of Assessments. In the event of default in which any Lot owner does not make the payment of any assessment levied against his Lot within 10 days of the date due, the Association shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year immediately due and payable.

iv. Commencement of Assessments. Assessments shall begin on the first day of the month in which conveyance of the first Lot to a third party Lot owner other than the Declarant occurs. Assessments shall be levied against and payable by the owners of all Lots, including Lots still owned by Declarant.

v. No Waiver of Liability for Common Expenses. No Lot owner may become exempt from liability for payment of the Common Expense assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Common Expense assessments are made.

vi. Personal Liability of Lot Owners. The Lot owner, at the time a Common Expense assessment or portion of the assessment is due and payable, is personally liable for the Common Expense assessment. Personal liability for the Common Expense assessment shall not pass to a successor in title to the Lot unless the successor agrees to assume the obligation. Each Lot Owner, including Declarant, covenants and agrees to pay, and shall be personally obligated to pay to the

Association, in the manner, amounts and times prescribed herein, all assessments, charges, fines, fees and other sums described in these Declarations and/or imposed by the Association related to Common Elements and expenses related thereto. All Owners shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to them and/or their respective Lot. In addition to the foregoing assessments, charges, fees and other sums, each Owner shall have the obligation to pay all applicable real property taxes, ad valorem taxes, and assessments imposed by Colorado governmental subdivisions or entities against his Lot, as well as all charges for separately metered utilities servicing his Residential Unit.

vii. Enforcement of Personal Obligation. In addition to the lien mechanisms described herein, the Association may, at its option, suspend all voting rights and the right to use any Common Elements, until all delinquent payments owed by an Owner are received, and/or may bring an action in law or equity against any Owner to collect any unpaid assessments, charges, fees and other sums, For any such action, the Association shall be additionally entitled to recover, and the Owner obligated to pay, interest thereon at the rate determined by the Board, an administrative charge as may be set forth in the Association's rules and regulations, court costs, and other collection costs, and reasonable attorneys' fees. Notwithstanding any terms and provisions of these Declarations to the contrary, but subject to the Act, the sale or transfer of any Lot shall not affect the personal liability or the lien for assessments, charges, fees or other sum levied hereunder. No sale, transfer, foreclosure or any proceeding in lieu thereof shall relieve either any Owner or any Lot from liability or the lien for any assessments, charges, fees or other sums thereafter becoming due.

viii. Reserve Fund. The Association may in its own discretion maintain a reserve fund to meet foreseen and unforeseen expenditures and may establish assessments for the same.

ix. Annual Assessments. The annual assessment shall be based upon the Board's annual budget of the requirements needed for the Common Expenses and the administration and performance of its duties during such assessment year. The annual budget shall be adopted consistent with C.R.S. §38-33.3-303(4). Any surplus funds of the Association remaining after the payment of or provision for Common Expenses and any prepayment of or provision of reserves shall be applied as the Board in its sole discretion determines appropriate; the Board is not required to credit, refund, or pay such funds to Owners. The annual assessments shall also include, at the Board's discretion, but shall not be limited to the following:

a. Any costs and expenses related to management and to the activities and property of the Association;

b. Any taxes and special tax assessments on the activities and property of the Association;

c. Premiums for all insurance which the Association is required or permitted to maintain and any deductibles or expenses attributable to such insurance;

d. Such repairs, restorations, replacements, improvements, and maintenance of the Common Elements which are the responsibility of the Association; provided, however, such work shall not require the prior approval of the Association regardless of the expense or amount thereof unless a Special Assessment is required pursuant to these Declarations;

e. Legal and accounting fees;

f. Any deficit remaining from a prior assessment year;

g. The creation of reasonable reserves, surpluses and sinking funds for the periodic replacement, repair and maintenance of the Common Elements and for other periodic expenses, and are payable in regular installments, rather than by special assessments, and adequate reserves for insurance deductibles.

x. Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part:

a. The cost of any emergency situation or any construction, demolition, reconstruction, repair or replacement of all or a substantial part of the Subdivision, including without limitation the Common Elements and any fixtures and appurtenances thereto, or

b. The expense of any other contingencies or unbudgeted costs.

xi. Procedure for Special Assessments. Written notice of any meeting called for the purpose of taking any action by the Association concerning a Special Assessment shall be sent by the Board to all Owners not less than ten (10) days nor more than fifty (50) days in advance of the meeting. Said notice shall specify the amount of the proposed Special Assessment and the date of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty-seven percent (67%) of all the votes shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be fifty percent (50%) of the required quorum at the preceding meeting. Such subsequent meeting shall not be held more than sixty (60) days following the preceding meeting. Any such Special Assessment shall require the assent of sixty-seven percent (67%) of the votes which are cast at such a meeting where a quorum is present.

xii. Unit Assessments. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of an Owner or his guests or permittees, or any breach by any of such parties of any of the provisions of these Declarations, the Association's By-Laws or the Association's rules and regulations, and the same is not paid for by insurance, the cost thereof shall be an assessment against that Owner and his Lot, and if unpaid shall be both a personal obligation of such Owner and a Lien as herein provided. Additionally, except as otherwise provided in these Declarations, the Board may impose assessments against particular Owners and Lots pursuant to C.R.S. §38-33.3-315(3)(a) and (b).

38. Mechanics'/Other Liens.

A. Mechanics' Liens - Association Work. Labor performed, or services or materials furnished for the Common Elements, if duly authorized by the Board, shall be deemed to be performed or furnished at the express consent of each Owner, provided, however, any Owner may remove his Residential Unit and Lot from any such lien against the Subdivision, or against the Common Elements or a portion thereof, by payment to the holder of the lien of the fraction of the total sum secured by such lien, based upon the Proportionate Share, and the Board shall have no authority to bind the Owners beyond their Proportionate Share as provided above.

B. Mechanics' Liens - Owner Work. In the event a lien arises from work or material furnished for use and incorporated in any Residential Unit or Lot with the consent of or at the request of the Owner thereof or his agent or his contractor or subcontractor, and not requested by the other Owners or the Board, such Owner shall indemnify, defend and hold harmless all other Owners and the Association from and against any liability or loss arising from the claim of any such lien. In no event shall the claim of any such individual lien be the basis for the filing of a lien against a Lot or Residential Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements; the filing of any such lien against the Lot or Residential Unit of a non-consenting Owner or against the Common Elements shall, to the extent permitted by law, be null and void and shall entitle such Owner or the Association to recover damages and expenses, including without limitation attorneys' fees, from the lienor.

C. Other Liens. As required by the Act, Declarant hereby states that it is possible that additional liens, other than mechanics' liens, assessment liens or tax liens, may be obtained, to the extent permitted by law and by these Declarations, against the Common Elements. To the extent permitted by law, all liens shall be subject to the covenants, terms and provisions of these Declarations.

39. Persons and Lots Subject to Declarations, Rules, Bylaws.

A. Compliance with Documents. All Owners, tenants, occupants of dwellings on Lots, and, to the extent they own Lots, mortgagees and the Declarant, shall comply with these Declarations, and any rules or bylaws subsequently enacted by

the Association, including any such rules incorporated within the Associations' Articles of Incorporation (collectively the "Documents") and shall be subject to all rights and duties under the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Lot constitutes agreement that the provisions of the Documents are accepted and ratified by that Lot owner, tenant, mortgagee, or occupant. All provisions recorded in the Documents are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Lot.

B. Adoption of Rules. The Association may adopt Rules regarding the use and occupancy of Lots as they affect the Common Elements and the activities of occupants, subject to Notice and Comment.

C. Enforcement. The Association, as well as any aggrieved Owner, is hereby granted a right of action against any Lot owner who fails to comply with the provisions of the Documents or to comply with lawful decisions made by the Association. Each and every Lot owner is also granted a similar right of action against the Association. In any action maintained under this paragraph, the prevailing party shall be awarded its reasonable attorneys' fees and costs.

40. Insurance.

A. Coverage. To the extent reasonably available, the Association may obtain and maintain insurance coverage as set forth in this Paragraph 40. If such insurance is not reasonably available, or the Association determines that any insurance described in this paragraph will not be maintained, the Association shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Lot owners and first lien Security Interest holders at their respective last known addresses. Nothing herein shall be deemed to require that the Association maintain any insurance and such determination shall be made by the Association in its sole discretion.

B. Property Insurance Coverage.

i. Association property insurance, if any, will cover:

a. The facilities, consisting of (1) all Common Elements; and (2) all personal property owned by the Association, if any.

ii. The community insurance will be for an amount (after application of any deductions) equal to 100 percent of the community facilities' actual cash value at the time the insurance is purchased and at each renewal date. Personal property owned by the Association will be insured for an amount equal to its actual cash value.

iii. The Association is authorized to obtain appraisals periodically for the purpose of establishing replacement cost of the community facilities

and the actual cash value of the personal property, and the cost of such appraisals shall be a Common Expense.

iv. The maximum deductible for insurance policies shall be as determined by the Association and shall be a Common Expense, unless caused by the act or omission of a Lot owner and assessed in accordance with these Declarations.

v. The insurance shall afford protection against "all risks" of direct physical loss commonly insured.

vi. Insurance policies required by this paragraph should further provide that:

a. The insurer waives the right to subrogation under the policy against a Lot owner or member of the household of a Lot owner.

b. An act or omission by a Lot owner, unless acting within the scope of the Lot owner's authority on behalf of the Association, will not void the policy or be a condition of recovery under the policy.

c. If, at the time of a loss under the policy, there is other insurance in the name of a Lot owner that covers the same risk covered by the policy, the Association's policy provides primary insurance.

d. Losses to be adjusted with the Association.

e. Insurance proceeds to be paid to any insurance trustee designated in the policy for that purpose and otherwise to the Association, but, in any case, the proceeds are to be held in trust for each Lot owner and the Lot owner's mortgagee.

f. The insurer may not cancel or refuse to renew the policy until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, to each Lot owner, and to each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

C. Liability Insurance. Liability insurance, including medical payments insurance, will be maintained by and in an amount determined by the Association, but in no event shall it be less than \$1,000,000. This insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of, or in connection with, the use, ownership, or maintenance of the Common Elements and the activities of the Association. Insurance policies carried pursuant to this Paragraph shall provide that:

i. Each Lot owner is an insured person under the policy with respect to liability arising out of the Lot owner's membership in the Association;

ii. The insurer waives the right to subrogation under the policy against a Lot owner or member of the household of a Lot owner;

iii. An act or omission by a Lot owner, unless acting within the scope of the Lot owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy;

iv. If, at the time of a loss under the policy, there is other insurance in the name of a Lot owner covering the same risk covered by the policy, the policy of the Association provides primary insurance; and

v. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Lot owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

D. Owner Policies. An insurance policy issued to the Association does not preclude, nor require, Lot owners from obtaining insurance for their own benefit, and all Lot owners are and shall be required to purchase insurance policies in amounts and with designated terms and beneficiaries described in Association Rules, Regulations and Bylaws. Nonetheless, each Lot Owner shall maintain "Loss Assessment Coverage" for additional coverage of losses otherwise covered by the Associations' policy, including of associated deductibles.

E. Other Insurance. The Association shall carry such other insurance as may be required by any first lien Security Interest holder and may carry other insurance that the Association considers appropriate to protect the Association.

F. Premiums. Insurance premiums for insurance carried or to be carried by the Association shall be a Common Expense.

G. Insurance Proceeds Insufficient. If the insurance proceeds are insufficient to repair and reconstruct the damaged or destroyed improvement(s), such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Lots. Such special assessment shall be a Common Expense and made according to each Owner's Proportionate Interest and shall be due and payable within thirty (30) days after written notice thereof, and only in this instance shall such Special Assessment not require approval of the members consistent with the provisions of Paragraph 35.D.xi. The Association shall have full authority, right, and power as attorney-in-fact, to cause the repair, replacement or restoration of the improvement(s) using all of the insurance

proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment.

H. Consequences of Condemnation. If at any time all or any part of the Subdivision shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the Association and Owners shall be bound by the Act, including, but not limited to, the provisions of C.R.S. §38-33.3-107, as it may be amended from time to time, and notwithstanding any provision herein to the contrary.

41. Restoration of Common Elements.

A. Duty to Restore. All or any portion of the Common Interest Community for which insurance carried by the Association is in effect, must be repaired or replaced promptly by the Association unless:

- i. The Common Interest Community is terminated; or
- ii. Repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety.

B. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

C. Plans and Specifications. The damaged property requiring restoration or repair must be repaired and restored in accordance with either the Plat or other plans and specifications that have been approved by the Association, a majority of voting Owners, and 51 percent of first lien Security Interest holders.

D. Insurance Proceeds. The Trustee or, if there is no Trustee, the Association, acting by appointed representative, shall hold any insurance proceeds in trust for the Association, Lot owners, and lien holders as their interests may appear. Subject to the provisions of these Declarations, the proceeds shall be disbursed first for the repair or restoration of the damaged Property. The Association, Lot owners, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the property has been completely repaired or restored or unless the Common Interest Community is terminated.

E. Replacement of Less Than Entire Property.

i. The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community.

ii. Except to the extent that other persons will be distributes, the remainder, if any, of the proceeds must be distributed to each Lot owner or lien

holder, as their interests may appear, in proportion to the Common Expense assessment percentages of all the Lots.

F. Certificates By Association. The Trustee, if any, may rely on the following certifications in writing made by the Association:

i. Whether or not damaged or destroyed property is to be repaired or restored; and

ii. The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

G. Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Lot owners or mortgagees, then the Association, and the Trustee, if any, shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the records from the date of the recording of the original Declarations, stating the names of the Lot owners and the mortgagees.

H. Association as Attorney-in-Fact; Damage and Destruction. All of the Lot owners irrevocably constitute and appoint the Association as their attorney-in-fact, for them and in their names, respectively, to deal with the Common Interest Community upon its destruction, repair, or obsolescence as in these Declarations provided. As attorney-in-fact, the Association, by its president and secretary, acting pursuant to authorization from the Association, shall have full and complete authority, right, and power to receive the proceeds of any insurance in the names of the Lot owners or the Association, and to make, execute, and deliver any contract, deed, or any other instrument with respect to the interest of a Lot owner that is necessary and appropriate to exercise the powers in these Declarations granted.

#### 42. Association Powers and Requirements.

A. Association Records and Minutes of Association Meetings. The Association shall permit any Owner, or holder, insurer, or guarantor of first mortgages secured by Lots, to inspect the records of the Association and the minutes of Association and committee meetings during normal business hours.

B. Powers and Duties. The Association, subject to the limitations contained in these Declarations and its Articles of Incorporation, shall have the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community, which shall include, but not be limited to, the following:

i. Adopt and amend Bylaws, Rules, and regulations;

ii. Adopt and amend budgets for revenues, expenditures, and reserves;

- iii. Collect Common Expense assessments from Lot owners;
- iv. Hire and discharge managers;
- v. Hire and discharge independent contractors, employees, and agents other than managing agents;
- vi. Institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of, or otherwise enforce, the Association's Declarations, Bylaws, or Rules in the Association's name, on behalf of the Association, or two or more Lot owners on matters affecting the Common Interest Community;
- vii. Make contracts and incur liabilities, including debt for the general benefit of the community;
- viii. Regulate the use, maintenance, repair, replacement, and modification of the Common Elements, and, to the extent set forth in these Declarations, including but not limited to enforcing parking restrictions within the property, which may be more restrictive than those required by El Paso County and/or any other entity having jurisdiction;
- ix. Cause additional Improvements to be made as a part of the Common Elements;
- x. Acquire, hold, encumber, and convey, in the Association's name, any right, title, or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only as provided herein;
- xi. Grant easements for any period of time, including permanent easements, and leases, licenses, and concessions through or over the Common Elements;
- xii. Impose and receive a payment, fee, or charge for the use, rental, or operation of the Common Elements and for services provided to Lot owners;
- xiii. Impose a reasonable charge for late payment of assessments, and after Notice and Hearing, levy reasonable fines for violations of these Declarations, the Bylaws, Rules, and regulations of the Association;
- xiv. Impose a reasonable charge for the preparation and recordation of amendments to these Declarations and for a statement of unpaid assessments;

xv. Provide for the indemnification of the Association's officers and Board, if any, and/or maintain directors' and officers' liability insurance;

xvi. Assign the Association's right to future income, including the right to receive Common Expense assessments to such parties and entities as may be approved by the Associations membership consistent with the provisions herein;

xvii. Exercise any other powers conferred by these Declarations, the Bylaws, or applicable law;

xviii. Exercise any other power that may be exercised in this state by legal entities of the same type as the Association;

xix. Exercise any other power necessary and proper for the governance and operation of the Association; and

xx. By resolution, establish permanent and standing committees to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Lot owners.

C. Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend these Declarations, to terminate the Common Interest Community, or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

43. Enforcement. In the event that a dispute regarding an alleged violation of these Declarations cannot be resolved through discussion and negotiation of the parties, or subsequently by mediation, enforcement shall be by proceedings at law or in equity against any person(s) violating or attempting to violate any provision of these Declarations, including actions to restrain or enjoin such violation, and to recover damages. Venue shall be proper in the District Court for El Paso County, Colorado. The Owners and the Association shall abide by any injunctions so entered, without necessity of bond, in order to simplify judicial proceedings to remedy violations of these Declarations. In addition, if a judicial action is necessary to prohibit or correct a violation of these Declarations, the prevailing party shall be entitled to recovery of all costs of the enforcement proceeding, including reasonable attorney's fees.

44. Captions. The captions contained in these Declarations are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of the Declarations or the intent of any provision thereof.

45. Gender. The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of these Declarations so require.

46. Waiver. No provision contained in these Declarations is abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

47. Invalidity/Severability. The provisions of these Declarations shall be deemed to be independent and severable and if any of the provisions of these Declarations or any clause, paragraph, sentence, phrase or word, or the application thereof, in any circumstances be invalidated by judgment or Court Order, such invalidity shall not affect the validity of the remainder of these Declarations, which other provisions shall remain in full force and effect.

48. Conflict. These Declarations are intended to comply with the requirements of the Act, including C.R.S. §§38-33.3-105 to 38-33.3-107, If there is any conflict between these Declarations and the Act, or any other applicable statutes, the provisions of such statutes shall control.

49. Binding Affect – Amendment.

A. Covenants Running With Property. The benefits, burdens, and all other provisions contained in these Declarations shall be covenants running with and binding upon the Property and all Lots created thereon, respectively.

B. Binding Effect. The benefits, burdens and all other provisions contained in these Declarations shall be binding upon, and inure to the benefit of the Declarant, the Association and all Lot Owners, and upon and to their respective heirs, executors, administrators, personal representatives, successors and assigns. Any right or any interest reserved or contained in these Declarations to or for the benefit of the Declarant may be transferred or assigned by the Declarant, either separately or with one or more of the rights or interests, to any person, corporation, partnership, association or other entity.

C. Amendment.

i. The covenants and restrictions of these Declarations and the Lots described herein and created hereby/through the Plat, shall run with and bind the land for a term of twenty (20) years from the date of the recording of these Declarations, after which time these Declarations shall be automatically extended for successive periods of ten (10) years each, until such time as these Declarations are terminated or revoked in the manner herein provided.

ii. Except as is otherwise provided herein, these Declarations shall not be revoked or terminated unless all of the Owners, and all First Mortgagees

which have given the Association notice of their interest in any Residential Unit/Lot, consent and agree to such termination or revocation by an instrument duly recorded; such termination and revocation shall also comply with C.R.S. §39-33.3-218. Except as provided in this Paragraph 49, these Declarations shall not be amended or modified unless the voting Owners, including Open Space Owner, having at least sixty-seven percent (67%) of the Proportionate Interests and the First Mortgagees of at least sixty-seven percent (67%) of the Residential Units/Lots which have provided the Association notice of their interest in any Residential Unit/Lot have agreed to such amendment; provided, however, (a) that any section in these Declarations which requires a particular percentage of Owners and/or Mortgagees may be amended only by written consent of the specified percentage of those parties; (b) that this Paragraph may be amended by an instrument signed by Owners of at least ninety percent (90%) of the voting interests, and one hundred percent (100%) of all First Mortgagees who have given the Association notice of their lien; (c) that an Owner's Proportionate Interest in the Common Elements appurtenant to each Lot as set forth herein shall have permanent character and shall not be altered without the consent of all of the Owners and all of the First Mortgagees of which have provided the Association notice of their interest in any Residential Unit/Lot; and (d) that the Declarant hereby reserves the right until the Period of Declarant Control is terminated, but without the vote of the Owners, to make such amendments to these Declarations, the Articles of Incorporation and/or the Bylaws of the Association, as may be necessary to correct typographical errors or ambiguities in said documents, and each Lot Owner and Mortgagee by accepting a deed or other instrument to a Lot within the Subdivision appoints Declarant as his attorney-in-fact for purposes of executing in said Lot Owner's name and recording any such amendments to these Declarations, and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Residential Unit/Lot and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of the power to the Declarant to make, execute and record any such amendments.

iii. The consent of any junior Mortgagee shall not be required under the provisions of this Paragraph 49. In determining whether the appropriate percentage of Mortgagee approval is obtained, each First Mortgagee which has provided the Association notice of their interest in any Residential Unit/Lot shall have one (1) vote for each First Mortgage owned.

iv. To be effective, all amendments to these Declarations must be recorded in the public records of El Paso County, Colorado, and an amendment must be indexed in the grantee's index in the name of the common interest community and the Association and in the grantor's index in the name of each person executing the amendment. The amendment shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose, or in the absence of designation, by the president of the Association. All expenses associated with preparing and recording an amendment to the Declaration shall be the sole responsibility of the party designated in C.R.S. §38-33.3-217(6).

v. Recording of Amendments. To be effective, all amendments to or revocation or termination of these Declarations must be recorded in the office of the Clerk and Recorder of the County of El Paso, Colorado, and must contain evidence of the required approval thereof.

50. Acceptance of Documents/Waiver of Homestead. The conveyance, sale, transfer, lease or encumbrance of a Residential Unit or Lot shall be deemed to include the acceptance of all of the provisions of these Declarations, the Articles of Incorporation and Bylaws of the Association, and the waiver of any homestead rights and any exemptions under any state or federal law and shall be binding upon each grantee and mortgagee without the necessity of inclusion of such an express provision in the instrument of conveyance or encumbrance.

51. No Waiver. Failure to enforce any provisions of these Declarations shall not operate as a waiver of any such provision or of any other provision of these Declarations.

52. Governing Law. These Declarations shall be governed by, and construed in accordance with, the laws of the State of Colorado, and venue shall be proper in a Court of competent jurisdiction in El Paso County, Colorado.

53. Remedies Cumulative. The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by law or equity and may be exercised concurrently, independently or successively without effect or impairment upon one another.

54. Implied Approval by Mortgagees. Notwithstanding any provision of these Declarations, when any matter requires First Mortgagee approval, such approval will be assumed when that First Mortgagee fails to submit a written response to any written proposal for an amendment within thirty (30) days after it receives written notice of the proposal, provided the notice was delivered by certified or registered mail with a "return receipt" requested. Any First Mortgagee shall be given notice of any proposed action requiring its consent, if the First Mortgagor has sent a written request to the Association, stating both its name and address and the Lot number/Lot address on which it has (or insures or guarantees) the Mortgage.

IN WITNESS WHEREOF, the Declarant has caused these Declarations to be executed this \_\_\_ day of \_\_\_\_\_, 201\_\_.

By: \_\_\_\_\_  
\_\_\_\_\_, as \_\_\_\_\_  
of Declarant, Benet Hill Monastery  
of Colorado Springs