

AFTER RECORDING, RETURN TO:

CLASSIC SRJ LAND, LLC

2138 Flying Horse Club Drive

Colorado Springs, CO 80921

EL PASO COUNTY CLERK AND RECORDER: INDEX IN GRANTEE INDICES UNDER STERLING RANCH EAST AND STERLING RANCH EAST HOMEOWNERS ASSOCIATION, INC. AND UNDER GRANTOR, **CLASSIC SRJ LAND, LLC**, A COLORADO LIMITED LIABILITY COMPANY.

AMENDED AND RESTATED

D E C L A R A T I O N

of

Covenants, Conditions, Restrictions and Easements

for

STERLING RANCH EAST

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DECLARATION
of
Covenants, Conditions, Restrictions and Easements
for
STERLING RANCH EAST

PREAMBLE

This **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR STERLING RANCH EAST** is made effective as of _____, 2023, by **CLASSIC SRJ LAND, LLC**, a Colorado limited liability company, in order to create a common interest community.

ARTICLE 1
GENERAL

Section 1.1 Common Interest Community. The community created by this Declaration is a common interest community as defined in the CCIOA, at C.R.S. § 38-33.3-103(8). The name of the community is Sterling Ranch East.

Section 1.2 Property Affected. Declarant is the owner of real property in the County, as more particularly described on Exhibit A, attached to and made part of this Declaration.

Section 1.3 Purpose of Declaration. The purpose of this Declaration is to: (a) further a common and general plan for those parcels of land that are part of the Community Area; (b) protect and enhance the quality, desirability and attractiveness of all property within the Community Area; (c) define the duties, obligations, powers and rights of Declarant; (d) define the duties, obligations, powers and rights of the Association; (e) define certain duties, obligations, powers and rights of Owners; and (f) provide for Declarant and the Association to hold, maintain and manage certain common properties and amenities in the Community Area and to perform certain functions for the benefit of Association Members or the Owners, if and to the extent any Plat within the Community Area creates property for the common benefit of the Owners to be maintained by Declarant, the Association or the District.

Section 1.4 General Scheme and Plan of Community Area. The Community Area created by this Declaration encompasses all of the property described in Exhibit A. Declarant reserves the right to add to the Community Area all or portions of the real property described on Exhibit B, attached to and made part of this Declaration (the "Expansion Property"). Declarant may elect to add all or portions of the Expansion Property to the Community Area from time to time. If none or only a portion of the Expansion Property is added to the Community Area pursuant to this Declaration, the validity of this Declaration shall not be affected, and this Declaration shall remain in full force and effect as to the real property then comprising the Community Area. Unless and until a particular portion of the Expansion Property is added to the Community Area, such portion of the Expansion Property shall not be a part of the Community Area and this Declaration shall not apply thereto. For the avoidance of doubt, the Community Area shall only include the

property described on Exhibit A and those portions of the Expansion Property that have been added to the Community Area pursuant to the terms of this Declaration.

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

ARTICLE 2 **DEFINITIONS**

Unless otherwise expressly provided in this Declaration, the following capitalized terms, whenever used in this Declaration, shall have the meanings specified in this Article 2. All section and article references in this Declaration shall mean and refer to the numbered sections and articles in this Declaration, with the exception of section references in Exhibit A and Exhibit B, references to sections and articles of the Articles of Incorporation, and statutory section references.

Section 2.1 AC Approval. Prior written approval from the Architectural Control Committee concerning matters requiring approval under the terms of this Declaration or the other Association Documents following a Person's submission of all information and documentation required as a condition to or in facilitation of obtaining such approval. For the avoidance of doubt, "prior" approval shall mean before the subject work is commenced, including without limitation prior to installation or construction, as applicable.

Section 2.2 Antenna/s. Any antenna, aerial, satellite dish, receivers, transmitters, or other device used for reception or transmission of radio, television, telephone, broadcast, or other electronic signals.

Section 2.3 Architectural Control Committee. The applicable approving authority then in effect as described in Section 6.1. All references in this Declaration to the Architectural Control Committee shall be deemed to refer to the Architectural Control Committee for the Community Area, whether Committee Members are appointed by Declarant or the Board.

Section 2.4 Articles of Incorporation. The Articles of Incorporation of the Association, as may be amended from time to time.

Section 2.5 Assessment/s. A Common Assessment, pursuant to Section 11.3, a Special Assessment, pursuant to Section 11.8, and/or a Site Assessment, pursuant to Section 11.9, as applicable.

Section 2.6 Association. The Sterling Ranch East Homeowners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns. For the avoidance of doubt, any action by the Association may be taken by and through the Board or any other Person authorized by the Board to take such action on behalf of the Association.

Section 2.7 Association Documents. The operative documents of the Association, whether recorded or adopted at this time, and as may be amended or supplemented from time to time, all of which are incorporated herein by this reference, including without limitation the Articles of Incorporation, the Bylaws, this Declaration, the Plats for property within the Community Area, the Development Plan, and the Community Standards, which for the avoidance of doubt includes the Rules and Regulations.

Section 2.8 Association Member/s. A member of the Association, who must also be an Owner. Membership in the Association shall be appurtenant to, and may not be severed from, ownership of a Lot. For the avoidance of doubt, an Association Member must be an Owner, but an Owner is not necessarily an Association Member.

Section 2.9 Association Property/ies. All real and personal property, if any, together with any and all Improvements located within the Community Area and appurtenances and rights thereto, hereafter owned by the Association as shown on a Plat. The Association may, from time to time, be granted Association Properties by a Plat of the Expansion Property which is hereafter annexed into the Community Area pursuant to Section 10.4. For the avoidance of doubt, and as otherwise provided in this Declaration and the other Association Documents, the Association shall be obligated to maintain all aspects of any Association Properties which are granted to it, other than those aspects specifically identified on the Plats or in the public record as being the obligation of another Person, and will be responsible for enforcement of Lot site design, architectural design and landscape design review and maintenance standards on a case by case basis.

Section 2.10 Board. The governing board of directors of the Association.

Section 2.11 Board Member/s. A member of the Board.

Section 2.12 Boat/s. Any type of floating vessel or craft propelled on water by oars, paddles, sails, or an engine, including by way of illustration, and not limitation, recreational boats, sailboats, fishing boats, catamarans, kayaks, and canoes, and any major part or parts of any such floating vessel or craft, including by way of illustration, and not limitation, decks, sails, hulls, and engines.

Section 2.13 Bylaws. The bylaws of the Association, as may be adopted and amended from time to time.

Section 2.14 CCIOA. The Colorado Common Interest Ownership Act, at Colorado Revised Statutes (C.R.S.) § 38-33.3-101 *et. seq.*

Section 2.15 Certificate of Occupancy. A certificate of occupancy or its equivalent issued by the applicable Governmental Authority for a Dwelling Unit within the Community Area.

Section 2.16 Claim. Any claim against Declarant, the Association, the Architectural Committee, or their respective Representatives, whether in contract or tort, at law or in equity, or pursuant to statutory rights, including without limitation those governed by the CCIOA. When the word is not capitalized, it shall have its ordinary meaning within the context of its use.

Section 2.17 Claimant. As defined in Section 14.6(e).

Section 2.18 Commencement of Construction. For a Dwelling Unit, the earlier of obtaining necessary building permits or excavating earth for a foundation, and for all other Improvements, the undertaking of any visible exterior work.

Section 2.19 Committee Member/s. A member of the Architectural Control Committee for the Community Area.

Section 2.20 Common Assessment/s. As defined in Section 11.3.

Section 2.21 Community Area. The real property described on Exhibit A, together with any and all Improvements now or hereafter located on such real property and appurtenances and rights to such real property. The Community Area shall also include those portions of the Expansion Property that have been made subject to this Declaration as provided in Section 1.4 and Section 10.4. Other than the Expansion Property, the Community Area will not be expanded to include any property without the written approval of a majority of the Owners in the Community Area. For the avoidance of doubt, unless and until any real property that is not described on Exhibit A is added to the Community Area in accordance with the terms of this Declaration, such real property shall not be part of the Community Area and this Declaration shall not apply thereto (other than in respect of the provisions concerning future expansion.)

Section 2.22 Community Standards. The Sterling Ranch East standards, design guide and architectural guidelines as further described in Section 6.2, together with all Rules and Regulations as further described in Section 8.9, in all cases as amended from time to time.

Section 2.23 Completed Dwelling Unit. A Dwelling Unit on a Lot in the Community Area that is completed as evidenced by a Certificate of Occupancy.

Section 2.24 Costs and Expenses. All reasonable costs and expenses actually incurred by the Person seeking reimbursement and/or the entry of judgment pursuant to the terms of the Association Documents, including without limitation the following to the extent applicable: reasonable attorneys' fees and costs; expert fees and costs; witness expenses; court and administrative costs; filing costs; mediation, arbitration and other alternative dispute resolution costs and expenses; fines and penalties; late charges and fees; insurance deductibles; increases in insurance premiums directly attributable to such claim or occurrence; third-party charges;

maintenance, repair and replacement costs; removal and disposal costs; labor and equipment costs; and interest charges.

Section 2.25 County. The County of El Paso in the State of Colorado.

Section 2.26 Declarant. **CLASSIC SRJ LAND, LLC**, a Colorado limited liability company, and its successors and assigns. A Person shall be deemed a successor or assign of Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor or assign of Declarant only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the written instrument, which may be all of them. Notwithstanding the foregoing, a successor to Declarant by consolidation or merger shall automatically be deemed a successor and/or assign of Declarant under this Declaration.

Section 2.27 Declarant Control Period. A period of twenty (20) years commencing on the day after the date this Declaration is recorded in the County's real property records or such earlier date when Declarant ceases to own any real property within the Community Area.

Section 2.28 Declaration (or Covenants). This Declaration of Covenants, Conditions, Restrictions and Easements for Sterling Ranch East, in its entirety, all attached exhibits, and any subsequent amendments and supplements, including without limitation any annexation-related amendments and removal-related amendments.

Section 2.29 Development Plan. The "planned unit development" (commonly referred to as "PUD") development plan approved by the applicable Governmental Authority and recorded in the County's real property records, as amended and as may be amended from time to time for any portions or all of the Community Area.

Section 2.30 District/s. Sterling Ranch Metropolitan District No. 1 and No. 2, as applicable and as referenced in Consolidated Service Plan for Sterling Ranch Metropolitan District Nos. 1, 2 and 3 dated June 9, 2010, and recorded on May 21, 2014, at Reception No. 214042782 recorded in the County's real property records.

Section 2.31 Dwelling Unit/s. An Improvement on a Lot which is intended to be, or used as, a single family detached home or private residence.

Section 2.32 Expansion Property. The real property described on Exhibit B, together with all appurtenances thereto and all Improvements now or hereafter located thereon. For the avoidance of doubt, the Expansion Property or any part thereof may be annexed into the Community Area pursuant to Section 10.4.

Section 2.33 FCC Protected Structure/s. A customer-end Antenna that is subject to the Federal Communication Commission's "over the air reception devices rule," as amended and as may be amended from time to time, at C.F.R. § 1.4000. The rule applies to Antenna that meet certain size limitations and are used to receive video programming or to receive or transmit fixed wireless signals. Background information concerning the rule is available to the public at www.fcc.com.

Section 2.34 Final Inspection. As defined in Section 17.8.

Section 2.35 First Mortgage. Any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the County's real property records, pertaining to a Dwelling Unit or Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.36 First Mortgagee/s. Any Person named as a mortgagee or beneficiary under any First Mortgage or any successor to the interest of any such Person under such First Mortgage, which may include without limitation Governmental Authorities providing government-secured or government-backed loans.

Section 2.37 Force Majeure Event. Any event that prevents a Person from fulfilling an obligation and that is not within such Person's reasonable control, including without limitation as a result of an act of terrorism, terrorist threats, war, invasion, armed conflict, insurgency, civil disturbance, radiation, blockade, or embargo; civil disobedience, civil unrest, riot, sabotage, vandalism, or collapse of law and order; epidemic, pandemic, plague, quarantine, or other public health emergency; government action, government-ordered closure, government shutdown, or government-declared emergency; condemnation or taking; change in laws or regulations; strike, labor dispute, work stoppage, material or fuel shortage, supply chain disruption, industrial disturbance, communication outage, power or grid failure, transportation disruption, market closure, or change in market conditions; lack of reasonably available funding; any natural disaster; any Casualty; or any other cause not within the reasonable control of the Person, whether or not of the same kind or nature as the particular matters listed herein.

Section 2.38 Governmental Authority/ies. Any governmental or quasi-governmental authority, including without limitation any agency, department, bureau, executive office, commission, board, authority, instrumentality, legislative body, assembly, council, metropolitan district, court, or tribunal, whether federal, state or local.

Section 2.39 Home Occupation Provisions. Home occupation regulations of the applicable Governmental Authorities.

Section 2.40 Improvement/s. All structures, fixtures, equipment, and facilities and any appurtenances thereto or components thereof, of every type, nature, or kind, including by way of illustration, and not limitation, Dwelling Units, buildings, outbuildings, sheds, concrete additions, stones, pavers, gardens, swimming pools, hot tubs, sports facilities such as basketball backboards and supporting structures, decks, porches, patios, patio covers or screening, awnings, painting or other finish material of any exterior surfaces or any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler systems, lighting, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, fixtures, Landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, swamp coolers, solar and wind energy devices, generators, and exterior air conditioning and water softener fixtures. Improvements shall also mean an excavation or fill the volume of which exceeds two cubic yards, and any excavation, fill, ditch, diversion dam or other thing or device that affects or alters the natural flow of surface waters upon or across any Lot, or that affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

Section 2.41 Interpretative Authority. As defined in Section 15.23.

Section 2.42 Landscape/Landscaping. A type of Improvement consisting of the treatment of ground surface with live plants, wood chips, pebbles, stones, rocks, mulch materials or other decorative surfacing materials, whether natural or artificial, including by way of illustration, and not limitation, planted trees, bushes, shrubs, hedges, and grasses. For purposes of this definition, the term Landscape shall include all other derivations of the word, such as Landscaped and Landscaping.

Section 2.43 Landscape Assurance. As defined in Section 17.1.

Section 2.44 Law/s. All applicable laws, statutes, rules, regulations, ordinances, codes, decrees, orders, judgments, licenses, and permits of (or required by) any Governmental Authority or, if applicable, a specified Governmental Authority, in all cases as amended and as may be amended from time to time.

Section 2.45 Lot. A parcel of land within the Community Area which is shown as a lot on the Plats upon which at least one Dwelling Unit may be constructed pursuant to applicable Law, and which is not part of the Association Properties. Each Lot constitutes a “unit” as defined in the CCIOA, at C.R.S. § 38-33.3-103(30).

Section 2.46 Lot Line/s. Each boundary line, whether one or more, between a Lot and any street or right of way. A front Lot Line is each boundary line (whether one or more) between the Lot and any street or right of way. A side Lot Line is any boundary line that meets and forms an angle with a street except that for a corner Lot with two front Lot Lines, the side Lot Line is the boundary that forms an angle with the street that affords the principal access to the Lot; all other Lot Lines are rear Lot Lines.

Section 2.47 Maintenance Area/s. Any property located in the Community Area, other than Association Properties, that is managed, operated, cared for, maintained and repaired by the Association or the District if some or all of the Association Members would benefit thereby, if the applicable Plat or the Development Plan requires it, or if it is in the common interests of the Association or the Association Owners.

Section 2.48 Mediation Period. As defined in Section 14.6(e).

Section 2.49 Notice of Article 14 Lien. As defined in Section 14.4(e).

Section 2.50 Notice of Claim. As defined in Section 14.6(e).

Section 2.51 Notice of Lien. As defined in Section 11.16.

Section 2.52 Occupancy/ies. The regular, exclusive occupancy of a Lot or Dwelling Unit by any Person, including without limitation any such occupancy by, through or under a lease or rental agreement, but excluding the Owner and any Related Person who is not a lessee, renter, or contract purchaser.

Section 2.53 Open Space Fencing. Any fence of any type, material, length, or height located on Lot Lines adjacent to Tracts.

Section 2.54 Owner/s. The record title holder, including without limitation Declarant (whether one or more Persons), of fee simple title to a Lot or Dwelling Unit, including without limitation Persons who are considered sellers under executory contracts as provided by Colorado Law.

Section 2.55 Perimeter Wall/s. Any type of wall, fence, or physical vertical barrier around the perimeter of any part or all of the Community Area, including without limitation adjacent to, along the property line of, or located on any part of a Tract or Lot, composed of any material, constructed to an appropriate height for its purpose, and intended to separate space, mitigate noise, block or reduce sound, provide privacy, demarcate a border or boundary, add to the aesthetics of all or any portion of the Community Area, or prevent, control, or limit ingress or egress.

Section 2.56 Period of Declarant Control. A period of twenty (20) years following the date on which this Declaration is recorded in the County's real property records.

Section 2.57 Person. A natural person, a corporation, a limited liability company, a partnership (including without limitation general, limited and limited liability partnerships), or any other public or private entity, including without limitation those recognized as being capable of owning real property under applicable Law.

Section 2.58 Plats or Plat. The plat(s) that are the current plats of all or any portion of the Community Area, together with any supplemental plats recorded in the County's real property records for any portion of the Community Area.

Section 2.59 Related User/s. (a) Any Person who resides with an Owner within the Community Area; (b) a guest or invitee of an Owner; (c) an occupant, tenant or contract purchaser of any Dwelling Unit; and (d) any Representative, family member, guest, licensee, invitee or cohabitant of any of the foregoing Persons.

Section 2.60 Representative/s. Any Person's officers, directors, trustees, employees, and managers acting in such capacity, and for any Person all other Persons designated to act as such Person's representative or agent. For the avoidance of doubt, a Representative as defined herein includes contractors and consultants.

Section 2.61 Reserve Study. A study of the level of Reserves suggested at any time and from time to time prepared by a qualified independent third party.

Section 2.62 Reserves. A reasonable amount of funds, if any, held in reserve by Declarant or the Association for specific purposes relating to the Community Area or any portion thereof, including without limitation for use as contingencies, surpluses, and sinking funds so that adequate funds are available for maintenance, repair, replacement, and care of Association Properties.

Section 2.63 Respondent. As defined in Section 14.6(e).

Section 2.64 Rules and Regulations. The rules and regulations, if any, adopted by the Association in accordance with Section 8.9, which for the avoidance of doubt shall be considered part of the Community Standards.

Section 2.65 Security Interest Holder/s. As defined in Section 12.4.

Section 2.66 Site Assessment. As defined in Section 11.9.

Section 2.67 Site Visibility Easement. A public improvement and site visibility easement as shown on a Plat.

Section 2.68 Special Assessment/s. As defined in Section 11.8.

Section 2.69 Start Date. As defined in Section 11.4(b)(1).

Section 2.70 Sterling Ranch East. As defined in Section 1.1.

Section 2.71 Termination Date. As defined in Section 17.8.

Section 2.72 Tract/s. A parcel of land designated as a tract within a Plat.

Section 2.73 Vehicle/s. All modes of transportation propelled by an engine or battery power on land (not by rail or cable), including by way of illustration, and not limitation, cars, trucks, sport utility vehicles, recreational vehicles, motor homes, trailers, all-terrain vehicles, utility task vehicles, snow mobiles, motorcycles, scooters, carts, three-wheelers, skid steers, bobcats, and tractors, and any major part or parts of any such mode of transportation, including by way of illustration, and not limitation, bodies, chassis, and engines.

ARTICLE 3 **PRESERVATION OF RESIDENTIAL CHARACTER**

Section 3.1 Property Uses.

(a) Single-Family Residential Purposes. Except as otherwise provided in this Article 3, all Lots in the Community Area will be used exclusively for private single-family residential purposes in accordance with the Community Area's applicable residential zoning and the Association Documents. Human service establishments, including without limitation elder care facilities, human service homes, residences, facilities and shelters, health care support facilities, hospices, youth homes, limited group homes, and group homes (including as each such term and derivations of such terms may be defined by applicable Laws, whether similar or dissimilar) are strictly prohibited on a Lot and within the Community Area. For the avoidance of doubt, no Dwelling Unit erected or maintained within the Community Area shall be used or occupied for any purpose other than for a single family residential dwelling.

(b) Home Occupations. No business, profession or other activity conducted for gain shall be carried on or within any Lot or Dwelling Unit; provided that any uses that are permitted under the County's Home Occupation Provisions shall be permitted. If the Home Occupation Provisions are hereafter repealed, then for purposes of this Declaration and its

enforcement, the Home Occupation Provisions in effect at the time of the recordation of this Declaration shall be incorporated herein as a part of this Declaration. Declarant and the Association shall each have the right, from time to time, to establish Rules and Regulations as provided by Section 8.9 regarding the use of a Dwelling Unit for any home occupations, including regarding safety, disturbances, noise, hours of operation, increased traffic within the Community Area. Commercial or business uses with any adverse external effect on the nature, perception, operation, or ambiance of the Community Area as a first class residential community are prohibited with the prior written authorization of Declarant or the Association. Any violation of the Home Occupation Provisions or associated Rules and Regulations shall be deemed to be a violation of this Declaration.

Section 3.2 Improvements. Only detached single family Dwelling Units that have AC Approval or are otherwise expressly allowed under the terms of the Association Documents, or Improvements which Declarant or its designees place or construct within the Community Area, shall be erected within the Community Area. All Improvements shall be required to comply with this Declaration, the Rules and Regulations, the Development Plan and the Community Standards. No Improvement, other than a Dwelling Unit, and no trailer, mobile home, tent or other similar or dissimilar temporary quarters may be used for living or residential purposes. No other Improvement may be placed on any Lot before completion of the Dwelling Unit upon such Lot except with the prior written approval of Declarant, the Association or the Architectural Control Committee.

Section 3.3 Construction Type. All construction shall be new. Neither a building previously used at another location nor any building or Improvement originally constructed as a mobile dwelling may be moved onto a Lot except as expressly provided in Section 3.8 for temporary construction, sales or administration buildings.

Section 3.4 Building Materials. No building materials shall be stored on any Lot except temporarily during continuous construction or alteration of an Association-approved Improvement unless such building materials are stored in the garage on the Lot or, subject to AC Approval, otherwise enclosed and fully screened from streets and neighbors.

Section 3.5 Substantial Completion. A Dwelling Unit shall not be occupied in the course of original construction until substantially completed and, if required by applicable Law, until a Certificate of Occupancy has been issued by the Pikes Peak Regional Building Department (or its successor agency) and any other necessary Governmental Authority. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 3.6 Construction Completion. The exterior of all Dwelling Units and final grading of Lots must be completed within **nine (9) months** after the Commencement of Construction. Landscaping must be completed **within six (6) months** after the issuance of a Certificate of Occupancy for the Dwelling Unit in accordance with the terms of Section 5.8. Construction of any Improvements on a Lot, other than a Dwelling Unit and Landscaping, must be completed within **nine (9) months** after Commencement of Construction. The deadlines set forth in this Section 3.6 shall apply except where such completion is impossible or would result in great hardship due to a Force Majeure Event and except if the Architectural Control Committee approves

a longer period of construction due to unusual circumstances. If construction is not completed within the time periods set forth in this Section 3.6 or such later time approved by the Architectural Control Committee, or if construction shall cease for a period of forty-five (45) days without permission of the Architectural Control Committee, the Architectural Control Committee may give the responsible Owner written notice of such fact, and if construction on such Improvement is not diligently commenced within thirty (30) days after such notice and thereafter diligently prosecuted to completion, the unfinished Improvement or unfinished portion thereof may be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner. The time limits established in this Section 3.6 shall not apply to Improvements constructed or installed by Declarant.

Section 3.7 Temporary Structures. Temporary structures used as construction, administration, or sales offices may be erected or maintained only by Declarant or with the permission of Declarant or the Architectural Control Committee. Model homes may be used and exhibited as model homes and/or for public purposes only by Declarant or with the permission of Declarant or the Architectural Control Committee, which in each case shall specify the period of time such use is permitted. Such temporary structures shall be kept secure, and shall be removed promptly when their use is no longer required on a regular basis, in no event later than a time period established in the Community Standards.

Section 3.8 Construction Debris. When construction is commenced upon a Lot, the Owner shall provide a trash container and cause it to be properly used and maintained during construction. During the progress of construction, the Owner of a Lot and the Owner's contractors and subcontractors shall use reasonable efforts to ensure that the Lot is kept free of trash and debris, all of which shall be deposited in a designated trash container or receptacle provided by the Owner. Such trash containers and receptacles must be placed within the boundaries of the Owner's Lot unless Declarant or the Architectural Control Committee, in its sole discretion, authorizes its location on the street or adjacent to the Lot. The Owner shall use reasonable efforts to ensure that no construction materials, debris or trash shall be allowed on the property of others, and the Owner shall promptly retrieve and properly dispose of any materials, trash or debris blown off the Owner's Lot. In addition, the Owner of a Lot shall cause all excess dirt that may be generated from excavation on the Lot to be removed from the Lot or street as soon as reasonably practicable, not later than the date the Certificate of Occupancy is issued.

Section 3.9 Drilling Structures. No derrick or other Improvements designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under any Lot. The foregoing is not intended to prohibit temporary drilling to obtain samples in connection with the investigation of soils or temporary drilling necessary in the construction of Improvements.

Section 3.10 Service Providers. Each Owner hereby acknowledges that certain services will be provided to the Community Area by various entities as follows or their successors: (a) water and sewer service shall be supplied by the Falcon Area Water and Wastewater Authority; (b) electric service shall be provided by Mountain View Electric Association; (c) natural gas service shall be provided by the City of Colorado Springs; and (d) fire protection shall be provided by the Black Forest Fire Protection District.

Section 3.11 Stormwater Drainage. In addition to, and not in limitation of, any other obligations contained in this Declaration and/or the Community Standards, including without limitation Section 5.16, each Owner is solely responsible for maintaining proper stormwater drainage in and through such Owner's Lot. Improvements and Landscaping that could impede the flow of runoff shall not be placed in drainage easements. Public drainage easements specifically noted on the Plats shall be maintained by the applicable individual Lot Owners unless otherwise expressly provided in writing by Declarant, the Association, or applicable Law. Each Owner shall be required to take appropriate action to prevent unauthorized discharge of sediment or contaminants from such Owner's Lot.

Section 3.12 District Maintenance. The District shall: (a) be responsible for the aesthetic maintenance of Tract A in Sterling Ranch East Filing No. 1 and Tract B in Sterling Ranch East Filing No. 1A, (b) own and maintain Tracts B through I in Sterling Ranch East Filing No. 1, (c) own and maintain Tracts A and C in Sterling Ranch East Filing No. 1A, (d) own and maintain the roads within the Community Area, until preliminary acceptance of the public improvements in accordance with the requirements of the Land Development Code, the Engineering Criteria Manual, and the Subdivision Improvements Agreement, (e) own and maintain all community mailboxes installed within the Community Area, and (f) own and maintain any Open Space Fencing.

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

Section 4.1 Limitation on Dwellings and Subdivisions. No more than one (1) Dwelling Unit shall be constructed or maintained within any Lot. No Lot shall be replatted or otherwise subdivided without AC Approval. Applications for such approval will not be favored in the absence of extreme hardship. Lot Line adjustments are not permitted, except that Lot Line adjustments that do not result in an increase in the number of Lots and that are made to accommodate building plans approved by the Architectural Control Committee may be approved by the Architectural Control Committee in its sole discretion. An Owner will be solely responsible for obtaining all required approvals from Governmental Authorities for any Lot line adjustments, and AC Approval shall not remove that obligation. This Section 4.1 does not apply to and shall not restrict Declarant's rights under Article 10.

Section 4.2 Setbacks, Easements and Site Visibility. From and after the Commencement of Construction, all construction must conform to setback requirements under applicable Law, including without limitation as set forth on the applicable Plan with respect to all Lot Lines. All Lots are subject to the minimum setbacks and easements for public utilities and drainage purposes as set forth on the Plat or the Development Plan. All corner Lots that are located adjacent to public streets are subject to any applicable Site Visibility Easement. Each Owner of a Lot upon which a Site Visibility Easement is located shall be solely responsible for the maintenance thereof. **No Improvements, including without limitation fences, hedges, trees, shrubbery or Landscaping, may be installed within any Site Visibility Easement, other than approved Landscaping that at no time obstructs visibility at the intersection and that will not be permitted to exceed three feet (3') in height at any time.**

Section 4.3 Community Standards. Each Owner is encouraged to review the Community Standards carefully to determine various requirements and conditions impacting the Community Area, including without limitation with respect to construction of Improvements.

Section 4.4 Antennas. Except as provided in this Section 4.4 and except for any such device installed by Declarant, no Antenna shall be maintained on the roof of any building, nor shall any such Antenna be mounted at any location so as to be visible from neighboring properties or adjacent streets. Each Owner must obtain AC Approval of Plans for Improvements relating to Antenna, with the exception of FCC Protected Structures. If the Architectural Control Committee disapproves the plans, the party requesting approval may modify the plans to eliminate the Architectural Control Committee's objections and submit the modified plans for AC Approval. If any Antenna is installed without AC Approval, the Architectural Control Committee shall have the rights set forth in this Declaration, which shall include the right to demand its prompt removal at Owner's expense. FCC Protected Structures shall be permitted for residential use so long as the means, method and location of such Antenna comply with the rules adopted from time to time by the Architectural Control Committee. No Antenna used to transmit signals to, and/or receive signals from, multiple customer locations will be permitted. No unreasonable delay or unreasonable increase in the cost of installation or maintenance of an FCC Protected Structure shall be imposed by such rules, nor shall the rules prevent reception or otherwise make reception impossible for any Owner who shall seek to install an FCC Protected Structure, other than for health and safety reasons. All Antennas must comply at all times with the Association Documents and applicable Law.

Section 4.5 Rebuilding or Restoration. If any Dwelling Unit or other Improvement is destroyed in whole or in part by fire, windstorm, flood or any other cause or act of God, it must be rebuilt or all debris must be removed and the Lot restored to a slightly condition. Such rebuilding or restoration must be commenced within three (3) months after the damage or destruction occurs and thereafter diligently pursued to completion within a reasonable time, not to exceed one (1) year after the date the damage occurred or such longer period of time as may be approved by the Architectural Control Committee in the case of unusual circumstances. If restoration, rebuilding or removal is not completed within the time periods set forth in this Section 4.5 or such later time as may be approved by the Architectural Control Committee, or if the restoration, rebuilding or removal shall cease for a period of sixty (60) days without permission of the Architectural Control Committee, the Architectural Control Committee will give the subject Owner written notice of such fact, and if the restoration, rebuilding or removal of the Improvements is not diligently commenced within thirty (30) days after such notice, the damaged or destroyed Improvements shall be deemed a nuisance. The Association shall have the right thereafter to enter upon the Lot and remove the damaged or destroyed Improvements at the expense of the Owner. Such an entry and removal shall not be deemed a trespass and the Owner shall be liable for all Costs and Expenses incurred in connection with the removal.

Section 4.6 Fences. The only fences (including without limitation privacy fences, animal pens, dog runs, and other enclosures) permitted within the Community Area shall be fences constructed by Declarant or the Association or those which have been received AC Approval and that are consistent with the Development Plan and the Community Standards. The height, location, and material used in the construction of all fences, animal pens, dog runs, and other similar items must be approved by Declarant or must receive AC Approval. Chain link or similar wire fencing

shall not be allowed. The total fencing of front yards is not permitted. In addition, no fence or hedge more than two feet (2') high shall be installed or maintained (a) closer than five feet (5') to a side Lot Line adjacent to a street, or (b) closer to a front Lot Line than the dwelling or any other Improvement located on the Lot, except with AC Approval. The Architectural Control Committee may from time to time establish standards for fences within the Community Area, which shall be enforced pursuant to the terms of this Declaration and which shall be subject to the Development Plan and Section 4.7.

Section 4.7 Open Space Fences, Perimeter Walls and Landscaping.

(a) Authority to Construct or Install. Declarant, the Association, and the District each reserve the right, but shall not have the obligation other than as imposed under the Development Plan, to construct or install in its sole discretion Open Space Fencing, Perimeter Walls, and Landscaping on all Tracts generally along the perimeter of all or any portions of the Community Area.

(b) Maintenance. Such Open Space Fencing, Perimeter Walls, and Tract-related Landscaping shall be maintained and kept in good condition and repair by **the designated authority**. Notwithstanding the foregoing, each Owner shall be responsible for maintaining that portion of the Open Space Fencing and Perimeter Walls located adjacent to the Owner's Lot, in the manner prescribed in this Declaration and the other Association Documents.

(c) Physical Features. The length, height, design, color, appearance, and/or other aspect of Open Space Fencing and Perimeter Walls may not be increased, altered or modified by any Owner without AC Approval. No additions, extensions, or attachments, including without limitation lighting and solar or wind energy devices, shall be made or affixed, temporarily or permanently, to any Open Space Fencing or Perimeter Walls, other than connecting Side Lot Fences to such Open Space Fencing or Perimeter Walls. Except as otherwise approved in writing by the Architectural Control Committee, any fence proposed to be installed on a Lot that abuts Open Space Fencing or Perimeter Walls shall be required to conform, in addition to the overall fencing requirements set forth in Section 4.6 and this Section 4.7, to the fencing standards contained in the Association Documents.

(d) Signs. No sign of any type shall be displayed from Open Space Fencing, Perimeter Walls, or Tract-related Landscaping, other than promotive sales signs for initial Lot or home sales by Declarant or Persons authorized by Declarant or the Architectural Control Committee, and not for home resales or unauthorized home builders.

(e) Access. Entry on an applicable Lot by Declarant, the Association, or the District, or their respective Representatives, in order to construct, maintain or repair Open Space Fencing or Perimeter Walls shall not be deemed a trespass. Except in a case of an emergency, prior notice will be given to the applicable Lot Owner before any such entry by Declarant, the Association, or the District. Neither Declarant, the Association, nor the District shall be liable for any loss, damages, or Costs and Expenses to any Lot Owner within the Community Area relating to or resulting from erection, installation, construction, inspection, maintenance, repair, replacement or reconstruction of Open Space Fencing, Perimeter Walls and Tract-related

Landscaping, except to the extent caused by their own gross negligence or willful misconduct and, with respect to the District, subject to any applicable governmental immunity.

(f) Record of Location. Declarant, the Association, or the District may from time to time record in the County's real property records a map or other documentation confirming the location of Open Space Fencing and Perimeter Walls within the Community Area.

Section 4.8 Utilities. All Utilities that will be installed within the Community Area after the execution date of this Declaration shall be installed underground. For the avoidance of doubt, this requirement shall not apply to any overhead or aboveground Utilities that were in place prior to the execution of this Declaration. Declarant may grant approval for temporary aboveground Utilities as needed during construction of an Improvement. All outdoor Utility-related equipment is subject to AC Approval, including without limitation as to location and type. For the avoidance of doubt, this includes solar and wind energy devices, heating units, generators, swamp coolers, air conditions systems, and similar equipment, which must either be architecturally and aesthetically integrated into the building they serve or screened from the view of adjacent Lots and streets in a manner satisfactory to Declarant or the Architectural Control Committee.

Section 4.9 Garage and Driveway. The Dwelling Unit on each Lot shall include a minimum of a two-car, attached, fully enclosed garage or such equivalent garage arrangements as may be the subject of AC Approval. All driveways shall be improved with concrete unless AC Approval is obtained otherwise. No Lot shall contain more than one (1) driveway which directly accesses the garage from a public right of way or flag lot or flag lot stem. No additions, alterations, or modifications (other than repairs or equivalent replacements) shall be permitted to be made to the garage or driveway following initial construction without AC Approval.

Section 4.10 Access Restriction. All Persons having any interest in any of the Lots are required to and shall each arrange and maintain any drives, dwellings, or other Improvements so that ingress and egress to and from their respective Lots is exclusively from a publicly dedicated street and not through other private property or adjoining public lands other than platted flag easements. There shall be no direct vehicular access from any Lot onto Briargate Parkway or Sterling Ranch Road.

Section 4.11 Compliance with the Development Plan and Law. All construction must comply with, and conform to, the requirements of this Declaration, the other Association Documents, the Development Plan and all applicable Law, including without limitation all Governmental Authorities having jurisdiction over the Community Area and the County's ordinances, building code, zoning code and subdivision regulations. The County's Law and/or the Development Plan may vary from the provisions of this Declaration or the other Association Documents. If the covenants and requirements of this Declaration or the other Association Documents conflict with the Development Plan or applicable Law, then the more restrictive provisions shall govern and control to protect the Community Area from loss, damage, or diminution of value, or the threat thereof.

Section 4.12 Tract Use. Each Tract within the Community Area shall be used solely for the purposes for which such Tract was established as set forth on the applicable Plat. Each Owner acknowledges that neither Declaration, the Association, nor the District will be responsible for

monitoring the use of any Tract. Each Owner hereby expressly releases Declarant, the Association, and the District, and their respective Representatives, from any and all liability related to the existence of the Tracts within the Community Area and the use thereof by any Member, Owner, Related User, or other Person.

Section 4.13 General Architectural Standards. The Architectural Control Committee shall have the right and authority to establish and amend specific Community Standards from time to time as provided in Section 6.2, which standards may differ from location to location within the Community Area.

ARTICLE 5 **LIVING ENVIRONMENT STANDARDS**

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

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

Section 5.3 Outside Storage. When not in use, all equipment for the maintenance of a Lot, Dwelling Unit or other Improvements shall be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets.

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

Section 5.5 Swing Sets and Play Areas. No swing sets, jungle gyms, slides or other similar Improvements shall be installed on a Lot unless substantially screened in a manner permitted by the Association Documents or with AC Approval.

Section 5.6 Refuse. No unsightly objects or materials, including without limitation ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside so as to be visible from any neighboring property or adjoining street, except during designated refuse collection times. After a period of two (2) weeks of continued violation of this Section 5.6, the

Association or Declarant shall have the right to enter upon the Lot involved and remove such unsightly objects or materials at the expense of the Owner. Such an entry shall not be deemed a trespass, and the Owner shall be liable for all Costs and Expenses incurred in connection therewith.

Section 5.7 Nuisances. No Person shall carry on any noxious, offensive, hazardous or illegal activity upon any Lot or in any Dwelling Unit, nor shall any Person do anything to cause embarrassment, discomfort, annoyance or nuisance to Declarant, the Association, or the District, or their respective Representatives, or to Members, Owners, or other Persons associated with the Community Area. No offensive or hazardous activities may be carried on within any Lot or in any Dwelling Unit. No annoying lights, strobes, sounds, soundwaves, vibrations, or odors shall be permitted to emanate from any Lot or Dwelling Unit. No exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for security purposes, shall be located, used or placed on any Improvement or within any Lot. With AC Approval, an Owner may install exterior stereo speakers on the exterior of an Improvement, provided that the sound levels from such speakers do not disturb the peace, are within lawful decibel limits, and do not constitute a nuisance. For the avoidance of doubt, any sound that exceeds lawful decibel limits shall be deemed a nuisance.

Section 5.8 Landscaping. Within **six (6) months** following receipt of a Certificate of Occupancy for the Dwelling Unit for a Lot, or within any extension (if any) of that period granted by the Architectural Control Committee, all yards and open spaces within that Lot shall be Landscaped and thereafter maintained and kept in good condition. Prior to commencing any Landscaping within a Lot, the Owner thereof shall be required to submit the proposed Landscape plan for AC Approval and County approval in accordance with Article 6. Landscape plans and maintenance shall comply with the requirements of this Declaration, the Community Standards and the Development Plan. All Dwelling Units and other Improvements on a Lot shall be sited, to the extent possible, to preserve existing vegetation, including without limitation scrub oak and trees and rock outcroppings.

Section 5.9 Weeds. All yards and open spaces and the entire area of every Lot on which no Improvement has been constructed shall be kept free from plants and weeds infected with noxious insects or plant diseases and from weeds which, in the reasonable opinion of the Association or Declarant, constitute a nuisance or are likely to cause the spread of infection or weeds to neighboring property, and free from brush or other growth or trash which in the reasonable opinion of the Association or Declarant creates a fire risk.

Section 5.10 Keeping Lots Clear. In order to control insects and weeds, prevent fire, and prevent and remove nuisances, each Owner of a Lot upon which a Dwelling Unit has not been constructed shall mow, cut, prune, clear and remove from such Owner's Lot brush, weeds and unsightly vegetation and shall remove trash which may collect or accumulate on the Lot.

Section 5.11 Transmitters. No electronic or radio transmitter of any kind shall be operated in or on any Improvement or Lot, with the exception of garage door openers, electronic devices and transmitters permitted by Title 47, Part 15 of the United States Code and remote control devices for televisions, stereos, video recorders, appliances, window coverings, and similar in-home devices and equipment.

Section 5.12 Animals.

(a) Types of Animals Allowed. No animals, except domesticated birds or fish and other small domestic animals permanently confined indoors and those permitted pursuant to this Section 5.12, shall be permitted within any Lot.

(b) Dogs and Cats. Domesticated dogs and domesticated cats may be kept or maintained in or on any Lot within the Community Area only if kept as pets, the total number of which may not exceed **three (3) animals per Lot**, including without limitation those designated as service or emotional support animals, and subject at all times to compliance with applicable Community Standards, the other Association Documents, and applicable Law.

(c) No Breeding. No animals shall be kept, bred or maintained within the Community Area for any commercial purposes.

(d) Permissible Restraints. No dogs or other pets shall be chained or enclosed on a Lot outside of the Dwelling Unit for any extended period of time, except by means of underground electronic fences or other invisible barriers or fences. Dog runs and other similar enclosures are generally discouraged. An Owner must obtain AC Approval for any dog run or similar enclosure, which approval will be based on the size, location, specifications, and materials used for any enclosure (as may be set forth in the Community Standards).

(e) No Animal Nuisances Permitted. Notwithstanding the foregoing, no animal of any kind shall be permitted that, in the opinion of the Association, makes an unreasonable amount of noise or odor or is a nuisance or a menace to others, is difficult to control and handle on a leash by a responsible Person, or is a safety hazard. For the avoidance of doubt, the following occurrences outdoors on any Lot or in any other part of the Community Area shall be deemed a violation of this provision: continuous, excessive barking or howling by a dog; continuous, excessive meowing or yowling by a cat; and excessive uncollected fecal matter. Noises shall be deemed “continuous” and “excessive” if they are clearly audible at a high decibel level from a neighboring Lot or Tract without a reduction in intensity or strength for a period of time longer than thirty (30) minutes.

(f) Dog-Specific Rules. All dogs shall be kept on a leash, cleaned up after, and attended to by their owners when present in any part of the Community Area, except when kept in an enclosed area on any Owner’s Lot with such Owner’s knowledge and permission, but in all events in accordance with the applicable Community Standards and other Association Documents.

(g) Responsibility. An Owner shall be solely responsible for any loss or damage caused by such Owner’s pets.

(h) Other Animal Restrictions. For the avoidance of doubt, other Association Documents may contain additional restrictions concerning, among other things, animals that may apply to an applicable portion of the Community Area and should be reviewed in conjunction with this Declaration.

Section 5.13 Vehicles and Boats.

(a) Parking. Following construction of a Dwelling Unit, no Vehicle or Boat shall be parked overnight on any street or within any Lot except in a completely enclosed building such as a garage, or unless fully screened with AC Approval. Pickup trucks having a 3/4 ton or less manufacturer's rated capacity, with or without bed toppers, and passenger vans for the private use of the residents of a Dwelling Unit as primary transportation on a day-to-day basis, shall not be considered trucks for purposes of the foregoing restrictions.

(b) Inoperative Vehicles. No unused, stripped down, partially wrecked or inoperative Vehicle or Boat, or part thereof, shall be permitted to be parked on any right-of-way or public drive, or within any Lot, unless fully enclosed in a garage. An unused Vehicle or Boat shall be any Vehicle or Boat that is not properly licensed or as otherwise determined by the Association. Nothing contained in this Section 5.13 shall permit or be deemed to permit any Owner to maintain more than one (1) inoperative Vehicle or Boat, or part thereof, within such Owner's Lot.

(c) Repairs. No maintenance, servicing, repair, dismantling, sanding or repainting of any type of Vehicle, Boat, or any other large machine or device may be carried on except within a garage that screens the sight and sound of the activity from adjoining streets and from neighboring property and otherwise in accordance with this Declaration and all other Association Documents.

(d) Signage. Appropriate "no parking" and similar signage may be installed within the Community Area by Declarant, the Association, the District or any other Governmental Authority. The lack of any signage shall not be a waiver of the limitations herein or any rules established from time to time as provided herein.

(e) Other Vehicle and Boat Restrictions. For the avoidance of doubt, other Association Documents may contain additional restrictions concerning, among other things, Vehicles and Boats that may apply to an applicable portion of the Community Area and should be viewed in conjunction with this Declaration, including without limitation additional restrictions regarding parking, storage, and loading.

Section 5.14 Signs and Flag Poles. Subject to the signage and flag pole rights created by applicable Law, the only signs or flag poles permitted on any Lot or Improvement shall be those permitted by the Community Standards. Except for permitted signs, there shall not be used or displayed on any Lot or Improvement any signs or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental, except by Declarant or with the prior written permission of Declarant. All permitted signs must be professionally painted, lettered and constructed. If a permitted sign is not in compliance with the provisions of this Section 5.14, the Association may, upon notice, require it to be modified or removed at the Owner's expense.

Section 5.15 Outdoor Burning. There shall be no outdoor fires on any Lot or any of the Association Properties, except fires in barbecue, braziers and well-contained outside fireplaces within facilities or receptacles intended for such purpose. Outdoor kitchens, fire pits, and similar built-in Improvements require AC Approval. All such outdoor facilities or receptacles shall be

subject to the Association Documents, which may include limitations on the time and manner in which fires will be permitted and may permit the Association to impose total outside fire bans. No Owner shall burn trash on a Lot, including without limitation in a barbecue, brazier, or outdoor fireplace, or permit any other condition to exist, whether natural or manmade, that creates a fire hazard on a Lot. Every Owner shall observe all fire bans imposed by any Governmental Authority.

Section 5.16 Grading and Drainage.

(a) Colorado Soils. The soils within the state of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of the Lot, the Dwelling Unit and other Improvements if not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils, and the addition of moisture to low-density soils causes a realignment of soiled grains, thereby resulting in consolidation and/or collapse of the soils.

(b) Moisture Content. An Owner shall not permit the moisture content of the soil supporting the foundation and supporting the concrete slabs forming a part of the Dwelling Unit to increase to an extent that would adversely affect the foundation, footings, and concrete slabs, and shall not introduce excessive water into the soil surrounding the Dwelling Unit. Each Owner shall maintain the grading and drainage patterns of such Owner's Lot as provided herein.

(c) Drainage Courses. An Owner shall not impede or hinder in any way the water flowing on such Owner's Lot from reaching the drainage courses established for the Lot and the Property or areas shown on the approved drainage plans.

(d) No Changes Permitted. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original, approved finish grading plan for a Lot without first obtaining Declarant's prior written approval or AC Approval. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings in order to protect foundations, footings, and slabs from excess moisture. Any construction, grading or swales should direct surface waters to a drainage easement or to the street. Each Owner acknowledges that such Owner is responsible for maintaining the grade and drainage pattern of the Owner's Lot and insuring that drainage is not impeded and is directed to the direction of flow created by Declarant. Surface waters should not be concentrated and directed differently than the historic direction of flow. Special attention should be paid to the revegetation of approved grades, cuts and fills to eliminate erosion.

(e) Grading Plans. Declarant is in no manner certifying, guaranteeing or otherwise making any representations or warranties with respect to the adequacy, sufficiency or appropriateness of any grading plan applicable to the Lot. Each Owner of a Lot acknowledges and agrees that Declarant shall have no responsibility or liability whatsoever with respect to drainage and grading issues on such Owner's Lot. **The Owner of each Lot hereby acknowledges that such Owner is solely responsible for any damage that results, directly or indirectly, from any grading or drainage patterns on such Owner's Lot, including without limitation any changes thereto.**

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

Section 5.17 **Hazardous Materials.** No materials shall be transported to, from or within the Community Area in such a way as to create a nuisance or hazard. Storage, use or disposal of asbestos or hazardous or radioactive material, as defined in applicable Law, within the Community Area is strictly prohibited. Any intensive or continuous use of pesticides or herbicides is deemed to be a use of hazardous materials.

Section 5.18 **Storage Sheds.** No storage sheds of any kind will be permitted to be constructed or installed within any Lot without AC Approval of the design, color, materials to be used, and location.

Section 5.19 **Outside Lighting.** The Architectural Control Committee may establish standards for exterior lighting, including without limitation in respect of hue and intensity. All exterior floodlights and spotlights in the Community Area require AC Approval and shall comply with all restrictions contained in this Declaration and the other Association Documents. Notwithstanding the foregoing Declarant may use floodlights and spot lights for the purpose of marketing model homes.

Section 5.20 **Mandatory Trash Collection.** In an effort to avoid multiple trash collection days and times within the Community Area, the Association may (but is not required to) select a trash collection service provider and establish a residential trash collection plan for all Completed Dwelling Units, which service provider will collect trash on a specified date for the entire Community Area or applicable portions thereof. The Association shall determine the method of payment for trash collection services. The Association is hereby authorized to include all fees related to the trash collection plan and services as part of the Association's Common Assessments. Owners should contract the Association for more information.

Section 5.21 **Occupancies.** Any Owner shall have the right to allow Occupancy of their Lot (and the Dwelling Unit contained thereon) upon such terms and conditions as the Owner may deem advisable, subject to the restrictions of this Declaration and the other Association Documents, restrictions of record, applicable Law, and the following:

(a) **Prohibited Occupancies.** Short term Occupancies of less than ninety (90) days of Lots, including without limitation transient, hotel, bed-and-breakfast, or vacation-type rentals, are prohibited without prior written permission from the Association. Any of the uses set forth in the preceding sentence shall be prohibited for any Lot even if such use is determined to be a residential use. Subleasing, meaning the rental of a leased Lot from the tenant under the lease to another Person, is prohibited.

(b) **Permitted Occupancies.** Upon the expiration of any Occupancy of at least ninety (90) days that is otherwise in conformance herewith, the Owner may thereafter extend that term on a month-to-month basis.

(c) Occupancies Subject to Association Documents. All Occupancy agreements, including for the avoidance of doubt any lease, shall be in writing, shall be for the entire Lot, and shall be subject to all of the terms of this Declaration and the other Association Documents, which shall be stated expressly in each such agreement. Owners are required to provide occupant and tenants with copies of the then-current Declaration and the other Association Documents, including for the avoidance of doubt all amendments and supplements thereto.

(d) Information Required. Each Owner who enters into an Occupancy agreement with respect to such Owner's Lot shall provide the Association, upon request, with a copy of the current terms of agreement and tenant information, including the names of all occupants, Vehicle descriptions (including license plate numbers), number and type of pets, and any other information reasonably requested by the Association or its duly authorized Representatives.

(e) Noncompliance. All Occupancy agreements of Lots shall state that the failure of the tenant, lessee, or renter, or their guests or invitees, to comply with the terms of this Declaration and the other Association Documents shall constitute a default of the Occupancy agreement and of this Declaration and such default shall be enforceable by either or both of the landlord and the Association.

(f) Right to Evict. All Occupancies shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of this Declaration. If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within thirty (30) days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner hereby delegates and assigns to the Association the power and authority to evict the tenant as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association brings an eviction action against the tenant as attorney-in-fact for the Owner, the Association shall be entitled to recover all of its Costs and Expenses. The Association shall be entitled to assess the Owner personally with any or all of the Costs and Expenses awarded, which Costs and Expenses shall also be a lien against the Lot until paid in full, at which time the lien shall be released.

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

(h) Rules and Regulations for Occupancies and Rentals. The Association shall have the authority to adopt Rules and Regulations regarding Occupancies in accordance with Section 8.9, including the implementation of this restriction, and for implementation of other restrictions in this Declaration, the other Association Documents, and as allowed by applicable Law.

Section 5.22 Drugs. Except for the growth of marijuana for personal use as permitted by Colorado Law, no Owner or occupant of a Lot may utilize such Lot for the purpose of growing, distributing, selling, bartering, or trading marijuana, medical marijuana, hash oil or any other illicit

drugs. This prohibition may be further clarified by the Association through Rules and Regulations adopted in accordance with Section 8.9. Owners will be solely responsible for any damage resulting from a violation of this restriction.

Section 5.23 Health and Safety. No Owner or occupant of a Lot may engage in any activity or practice which, in the sole discretion of the Association, is considered a threat to the health and/or safety of other Owners and residents within the Community Area, including without limitation boarding, creating conditions conducive to indoor fires, allowing Lots to fall into a state of disrepair to the point that rodents or other pests enter, or any other conditions which could cause damage or harm to other Lots in the Community Area. Each Owner shall be responsible at all times for complying with applicable Law, which includes any federal Laws that may differ from Colorado or local Laws.

Section 5.24 Use of Lots. All Lots shall be used only for those uses and/or purposes as allowed by applicable Law. Occupancies may also be subject to any Rules and Regulations adopted by the Association in accordance with Section 8.9. Except as provided in this Declaration, all Lots shall be used for residential, single family home purposes. Commercial and business uses with any adverse external effect on the nature, perception, operation, or ambiance of the Community Area as a first class residential community, as reasonably determined by the Association, are prohibited without AC Approval, are specifically allowed by this Declaration, or are allowed pursuant to restrictions of record and by Colorado or local Laws that override any contrary provisions in this Declaration.

Section 5.25 Enforcement and Fines. Declarant and the Association shall have the right to establish rules and enforcement procedures concerning compliance with this Article 5, and may impose fines against an Owner for any violation hereof, including without limitation as an aid to enforcement of such proceedings, and take any other enforcement action as may be appropriate.

ARTICLE 6 **ARCHITECTURAL CONTROL**

Section 6.1 Architectural Control Committee. Declarant has the right to appoint the Committee Members, except as otherwise provided in this Section 6.1. When Declarant has sold all of the Lots in the Community Area, the right to appoint the Architectural Control Committee shall transfer from Declarant to the Board. Declarant may, but is not obligated to, transfer to the Board the right to appoint the Architectural Control Committee before all of the Lots in the Community Area have been sold. The Architectural Control Committee shall consist of one (1) to three (3) members appointed by Declarant from time to time. After the right to appoint the Architectural Control Committee for the Community Area has been transferred to the Board, the Architectural Control Committee for the Community Area shall consist of at least three (3) and not more than five (5) individuals, all of whom shall be appointed by the Board. The Committee Members need not be Owners or Association Members. The Architectural Control Committee shall exercise the functions assigned to it by this Declaration, the Community Standards and the other Association Documents, including without limitation whether to provide AC Approval with respect to matters requiring such approval.

Section 6.2 Community Standards. The Architectural Control Committee may, at any time and from time to time, enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce a design guide and architectural guidelines for the Community Area, to interpret, and/or implement any provisions of this Declaration, which together with the Rules and Regulations shall constitute the Community Standards. The Community Standards may without limitation: (a) contain guidelines to clarify the types of designs and materials that may be considered in design approval; (b) state requirements for submission in order to obtain review by the Architectural Control Committee; (c) state procedural requirements; and/or (d) specify acceptable Improvements that may be installed without AC Approval. Any Community Standards so adopted by the Architectural Control Committee shall be consistent, and not in conflict, with this Article 6. If adopted, copies of the Community Standards will be available on the internet, or by written request in hard copy form, by the Association or the Architectural Control Committee.

Section 6.3 Approval Required. No Improvement shall be placed, erected, installed or permitted to occur or exist on any Lot, nor shall the exterior of any existing Improvements be altered, nor shall any construction be commenced on any Improvements, unless and until the plans and specifications for such Improvements shall have AC Approval or unless otherwise permitted by the Community Standards. Matters requiring AC Approval include, without limitation, the following:

- (a) the construction, installation, erection or expansion of any building, structure, or other Improvement, including without limitation the minimum floor area, height, exterior appearance, finish material, color or texture thereof;
 - (b) the installation, addition or modification of Landscaping;
 - (c) the demolition or destruction, by voluntary action, of any building, structure or other Improvement;
 - (d) grading, excavating, filling or similarly disturbing the surface of the land;
- and
- (e) any change or alteration of any previously approved Improvement, including without limitation any change to exterior appearance, finish material, color or texture.

Notwithstanding the foregoing, AC Approval is not required with respect to any Improvements installed or constructed by Declarant, the Association, or the District.

Section 6.4 Plans and Other Submissions.

(a) Required Form and Content of Submissions. All plans and specifications, samples, and other materials in support of any request for AC Approval shall be submitted to the Architectural Control Committee in duplicate, together with the fee described in Section 6.5. The minimum scale of such plans shall be 1/20th inch equals one foot. The plot plan shall show in scale the location of all buildings, drives, walks, fences and any other Improvements. Plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. Landscaping plans shall show the location of all Landscaping elements, including without limitation grass, ground cover,

shrubs, trees and other Landscape materials for all the area of the Lot not covered by Improvements. The size and type of all new plant materials shall be indicated. Neither Declarant nor the Association shall have any obligation to retain any submitted plans and specifications, samples or other materials following action by the Architectural Control Committee.

(b) Responsibility. In discharging its or their rights and obligations hereunder, neither Declarant, the Association, nor the Architectural Control Committee, or any Representative thereof, makes any representations or warranties to the Owner or any other Person concerning the construction or installation of the Improvements or Landscaping on the Lot. Neither Declarant, the Association, nor the Architectural Control Committee, or any Representative thereof, shall have any liability or responsibility for defective construction, workmanship, or materials, or similar claims, damages, or losses. Each Owner of a Lot acknowledges and agrees that, in discharging its or their rights and obligations hereunder, neither Declarant, the Association, nor the Architectural Control Committee, or any Representative thereof, is making any warranty or representation, expressed or implied, that any Improvement or Landscaping to be constructed or installed upon a Lot is suitable for that Lot or fit for a particular purpose. **Each Owner acknowledges and agrees that such Owner and all Persons acting on behalf or at the direction of such Owner are fully responsible for any design, installation, construction, suitability, or fitness for purpose of any Improvement or Landscaping upon such Owner's Lot.**

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

Section 6.6 Approval Standards. All Improvements to be constructed or installed within the Community Area must comply with the Community Standards, this Declaration, and all other Association Documents. In granting or withholding approval of matters submitted to it, the Architectural Control Committee shall consider the specific standards and specifications set forth in this Declaration, the terms of all other Association Documents, and any other factors that reasonably may be considered by the Architectural Control Committee in discharging its duties, including by way of illustration, and not limitation, any matter within the public domain or otherwise known to the Architectural Control Committee, any change or potential change in the Law, any product recalls or defects, the insolvency or threatened insolvency of a contractor or product supplier, and prior experiences with a contractor or product within the Community Area

or nearby areas. The Architectural Control Committee shall have the right to disapprove any plans, specifications or details submitted to it if it determines, in its sole discretion, that (a) the proposed Improvement is not consistent with any provision of this Declaration; (b) the plans and specifications as submitted are incomplete; or (c) the plans, specifications or details, or any part thereof, are contrary to the interest, welfare or rights of all or any part of the Community Area, the Association or the Owners. If the Architectural Control Committee believes there may be questions of structural integrity, it may, as part of the approval process, require the Owner to obtain certification of the final plans and specifications by a professional architect or engineer licensed in Colorado. The decisions of the Architectural Control Committee shall be final and binding.

Section 6.7 No Liability. Neither Declarant, the Association, nor the Architectural Control Committee, or any Representative thereof, shall be liable in damages or otherwise to any Owner or other Person submitting plans for approval or requesting a variance, or to any Owner or other Person by reason of any mistake in judgment, negligence, nonfeasance, delay or act or omission in connection with any approval, partial approval, disapproval, or failure to approve any plan, specification or variance. AC Approval shall not mean that plans and specifications comply with the requirements of any Governmental Authority having jurisdiction over the Community Area. It shall be the sole responsibility of the Owner, or such other Persons acting on the Owner's behalf in submitting plans to the Architectural Control Committee, to comply with all requirements of each and every Governmental Authority having jurisdiction thereof.

Section 6.8 Variances.

(a) Authority to Grant Variances. The Architectural Control Committee shall have the authority to grant, for any Lot, a variance or variances from the terms of this Declaration, the Community Standards, or any other Association Document subject to terms and conditions that may be fixed by the Architectural Control Committee and that will not be contrary to the interests of the Association, the Owners and residents of the Community Area where, owing to the particular circumstances, literal enforcement of this Declaration, the Community Standards or other Association Documents could result in undue hardship for an Owner. The Architectural Control Committee may charge reasonable fees to cover expenses incurred in review of all variances submitted pursuant to this Declaration, not including reimbursement or compensation to the Committee Members for their services.

(b) Variance Review Process. Any Person seeking a variance must submit a complete application to the Architectural Control Committee, setting forth all information and documentation required by the Architectural Control Committee, a detailed statement of the reasons for the requested variance, and information or documentation concerning the hardship that may result. No partial application will be considered. Following the submission of a complete variance application, the Architectural Control Committee shall, within thirty (30) days after the request for the variance is actually received by the Architectural Control Committee, determine whether to grant or deny the requested variance and may impose conditions. If the Architectural Control Committee fails to act on the request for variance within this thirty (30) day period, the variance shall be deemed not to be granted as of the expiration of such thirty (30) days. A variance granted hereunder shall be subject to any conditions imposed and shall run with the Lot for which it is granted. If a variance is denied, another application for substantially the same variance for the same Lot shall not be made for a period of at least one (1) year from the date the original request

was denied, whether such denial is by direct determination or failure to act within the thirty (30) day period, each as set forth herein above. The Architectural Control Committee may charge reasonable administrative fees to cover the Costs and Expenses incurred in reviewing any such variance application, not including reimbursement or compensation to Committee Members for their services.

ARTICLE 7 **ASSOCIATION OPERATION**

Section 7.1 Association Structure. The Association has been formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in the Association Documents.

Section 7.2 Board of Directors. The affairs of the Association shall be managed by a Board. The Board shall consist of a minimum of three (3) Board Members during the Period of Declarant Control described in Section 7.5 and thereafter shall consist of at least three (3) but not more than five (5) Board Members, as determined by the Board. The terms and qualification of the Board Members shall be fixed in the Articles of Incorporation and Bylaws. The Board may, by resolution, delegate portions of its authority to an executive committee or to other committees, and to Representatives of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for the management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board or any duly authorized Representative without a vote of Association Members, except as otherwise specifically provided in this Declaration or by Colorado Law. All lawful decisions, agreements and undertakings by the Board, or its duly authorized Representatives, shall be binding upon all Association Members, Owners, Related Users and other Persons.

Section 7.3 Membership in Community Association. Each Owner shall be an Association Member. An Owner shall automatically be the holder of the Association membership appurtenant to such Owner's Lot, and such membership shall automatically pass with fee simple title to the Lot. Declarant shall hold one (1) Association membership for each Lot owned by Declarant. Association membership shall not be assignable separate and apart from fee simple title to a Lot, except an Owner may assign some or all of the Owner's rights as an Owner and/or as an Association Member to a contract purchaser, tenant or First Mortgagee, and may arrange for such Person to perform some or all of such Owner's obligations, including without limitation such Owner's membership obligations, as provided in this Declaration. However, no such delegation or assignment shall relieve an Owner from having primary responsibility for fulfillment of the obligations of the Owner under the Association Documents. The rights acquired by any such contract purchaser, tenant or First Mortgagee shall be extinguished automatically upon termination of the sales contract, tenancy, or First Mortgage. The assignment of rights by an Owner pursuant to this Section 7.3 shall not be subject to any present or future statutory time limit for the duration of duly notarized proxy rights, but shall be in writing and delivered to the Association before such Person shall be entitled to exercise any membership rights or privileges. All rights, title and privileges of membership shall be subject to the Association Documents.

Section 7.4 Voting Rights of Association Members. Subject to the provisions of Section 7.5, which shall control, Association Members shall have the right to cast votes for the election of

the Board and on such other matters to be voted on by the Association Members to the extent provided by the Association Documents. One vote is allocated to each Lot, and Association Members shall have one (1) vote for each Lot owned. The one (1) vote for each Lot may not be split. If there is more than one Owner of the Lot, and if the Owners are unable to determine how to cast the one (1) vote allocated to their Lot pursuant to the provisions of the CCIOA, at C.R.S. § 38-33.3-310, then the Owners shall be deemed to have abstained. Voting rights and procedures may be further defined in the Articles of Incorporation, Bylaws and other Association Documents.

Section 7.5 Board Composition.

(a) Declarant's Reserved Rights Regarding Board Composition. Declarant hereby reserves the right to appoint the Board, to control the Association, and to appoint and remove the officers and Board Members at all times subsequent to the date of recordation of this Declaration and continuing for the Period of Declarant Control. Declarant may voluntarily surrender the right to appoint and remove officers and Board Members before termination of the Period of Declarant Control. In that event, Declarant may require, for the duration of the Period of Declarant Control, which specified actions of the Association, as described in a recorded instrument executed by Declarant, shall be approved by Declarant before such actions may become effective. It is hereby expressly acknowledged that any action by Declarant to surrender its authority over the Association will in no way limit Declarant's rights and authority with respect to architectural control matters or Declarant's rights and authority to consent to modifications to the terms of this Declaration, unless such rights are expressly terminated or waived by Declarant in writing.

(b) Milestones Requiring Change in Board Composition. Not later than sixty (60) days after conveyance to Owners, other than a Declarant, of twenty-five percent (25%) of the Lots that may be created, then at least one (1) Board Member, and not less than twenty-five percent (25%) of the Board Members, must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance to Owners, other than Declarant, of fifty percent (50%) of the Lots that may be created, then at least one (1) Board Member, and not less than one-third (1/3) of the Board Members, must be elected by Owners other than Declarant. Except as otherwise provided above in this Section 7.5, not later than the termination of any Period of Declarant Control, the Owners shall elect a Board of at least three (3) but not more than five (5) Board Members, at least a majority of whom must be Owners other than Declarant, or duly authorized Representatives of Owners other than Declarant. The Board as so constituted shall elect the officers, and the Board Members and officers so constituted shall take office upon termination of the Period of Declarant Control.

(c) Removal of Board Members by Owners. Notwithstanding any provision of the Declaration, Bylaws or other Association Documents to the contrary, the Owners, by a sixty-seven percent (67%) vote of all those present and entitled to vote at any meeting of the Owners at which a quorum is present following the termination of the Period of Declarant Control, may remove any Board Member with or without cause, other than a Board Member appointed by Declarant.

(d) Declarant's Delivery of Property and Items. Within sixty (60) days after the Owners, other than Declarant, elect a majority of the Board Members, Declarant shall deliver to the Association all property and items described by the CCIOA, at C.R.S. § 38-33.3-303(9).

ARTICLE 8 **DUTIES AND POWERS OF ASSOCIATION**

Section 8.1 General Rights, Powers and Duties of the Association. The Association is formed to further the common interests of the Association Members and to maintain Association Property. Except as expressly provided in the Association Documents or by Colorado Law, the Association shall act through the Board and Persons authorized by the Board to so act, without a vote or meeting of the Association Members. The Board may exercise all rights, powers and interests of the Association as described in this Article 8 and as otherwise provided in the Association Documents. The Association, acting through the Board or other authorized Persons, shall have the rights, powers, and duties given non-profit corporations, including without limitation those set forth in this Declaration and the other Association Documents, including without limitation the power to take, or to cause the Board or other authorized Persons to take, such action as may be necessary or desirable to further the common interests of the Association Members, to maintain, improve and enhance Association Properties, to improve and enhance the attractiveness, desirability and safety of the Community Area, and to use Association funds to enforce this Declaration and the other Association Documents. The Association shall have and may exercise all powers enumerated in the CCIOA, at C.R.S. § 38-33.3-302, except as expressly provided by Article 14, the Association Documents, or Colorado Law.

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

Section 8.3 Duty to Manage and Care for Property. To the extent owned by the Association and not maintained by the District, or if the Association is charged with maintenance responsibility pursuant to a Plat, the Association, to the extent commercially reasonable and financially feasible, shall manage, operate, care for, maintain and repair all Association Properties and keep the same in an attractive and desirable condition for the use and enjoyment of the Association Members; provided, however, maintenance responsibilities for any Association Properties shall not commence until Common Assessments commence. In addition, the

Association may manage, operate, care for, maintain and repair property, other than Association Properties, if the Association determines that some or all of the Association Members would benefit thereby or if such Association action is required pursuant to the Plats or the Development Plan. The properties and Improvements the Association is, or will be, required to maintain include without limitation Association Properties, and all other Improvements and areas required to be maintained by the Association by this Declaration, Declarant, the Plats, the Development Plan, or any other Association Document. For the avoidance of doubt, the foregoing is intended to be exemplary and shall not be a limitation on the power and authority of the Association to maintain other items not specifically listed in this Section 8.3 where such maintenance would be in the common interests of the Association and the Association Members. In addition, if the Board in its discretion determines, after reasonable notice and an opportunity to cure, that the Tracts and/or Improvements for which the District is responsible are not being maintained to the detriment of the Community Area, the Association may undertake such maintenance and assess Owners for the cost thereof to the extent recovery is not sought and/or obtained from the District.

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

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

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

Section 8.7 Power to Provide Security. The Association shall have the right, but not the obligation, to provide for the security of the Community Area, or any part thereof, by hiring a security patrol or security services, and performing any other lawful functions relating to safety and security, that may be authorized by the Board or the Association Members. No such security patrol or security services shall be a substitute for Governmental Authorities, such as police and sheriff.

Section 8.8 Power to Acquire and Maintain Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners, including without limitation Improvements and personal property. The Association may construct or reconstruct Improvements on property and may demolish existing Improvements. The Association shall have the power to maintain public or private rights of way and to perform maintenance on any portion of the Community Area, whether or not owned by the Association.

Section 8.9 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce such Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the other Association Documents, and matters related thereto, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community Area, including without limitation Lots. Any such Rules and Regulations shall be reasonable and uniformly applied with respect to those subject thereto, as determined by the Board in its sole discretion, and may be adopted for different areas of development within the Community Area. Rules and Regulations shall be effective upon adoption by resolution of the Board. Written notice of the adoption, amendment or repeal or any Rule or Regulation shall be provided by the Association to all Association Members, and copies of the currently effective Rules and Regulations shall be made available to each Association Member upon request along with payment of the cost associated with copying the materials. Each Owner, Related User, Association Member and other Person subject hereto shall comply with such Rules and Regulations, and each Owner shall be responsible for ensuring that such Owner's Related Users comply with the Rules and Regulations. Rules and Regulations shall take effect upon adoption by resolution of the Board, and shall have the same force and effect as if they were set forth in and part of this Declaration. In the event of any conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall govern and control.

Section 8.10 Power to Enforce Declaration and Other Association Documents.

(a) Notice of Violations of Association Documents. The Architectural Control Committee, the Association or Declarant, including without limitation their respective duly authorized Representatives, may give notice to the Owner of the Lot where a violation of this Declaration or the other Association Documents occurs or which is occupied by the Persons causing or responsible for the violation. The notice shall state the nature of the violation and the intent of the Architectural Control Committee, the Association or Declarant, as applicable, to invoke the remedies available to them under this Section 8.10 unless within a period stated in the notice which period shall not be less than ten (10) calendar days from the date notice is given, unless a shorter period of time is allowed by this Declaration or the Association Documents, the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence.

(b) Failure to Cure. If the subject violation is not cured and terminated as required by the notice, or if the cure and termination are begun but not thereafter prosecuted with diligence, the Architectural Control Committee, the Association, or Declarant (whichever gives the notice) may, but shall not be obligated to, cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry upon such Owner's Lot as necessary for such purpose shall not be deemed a trespass. Each Owner of a Lot hereby grants a license to Declarant, the Association and the Architectural Control Committee for the purpose of entering onto a Lot to remedy violations or breaches of this Declaration and the other Association Documents. Declarant, the Association and the Architectural Control Committee may delegate their cure rights hereunder to their duly authorized Representatives, including without limitation independent contractors they may authorize for such purpose.

(c) Costs and Expenses. The Costs and Expenses incurred by the Architectural Control Committee, the Association or Declarant, as applicable, shall be paid by the Lot's Owner and the Person or Persons responsible for the breach. If not paid within thirty (30) days after such Owner and Persons have been provided written notice of the amount due, such amount, plus interest at the rate of eighteen percent (18%) per annum, and all Costs and Expenses of enforcement and collection shall be a lien on the ownership interest in the Lot (including without limitation Improvements thereon) and shall in all respects be the personal, primary obligation of the Lot's Owner. Such lien shall be junior to all other liens or encumbrances of record with respect to the Lot on the date the lien is recorded, but shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado Law or federal Law, and shall be released when all Costs and Expenses due and owing have been paid in full. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against the lien established in this Section 8.10.

(d) Action at Law; Foreclosure of Lien. The Architectural Control Committee, the Association or Declarant, as applicable, may also bring an action at law for recovery of the Costs and Expenses incurred by them, plus Costs and Expenses of enforcement and collection against the Owner, and may bring an action to foreclose the lien against the Lot and the Improvements that are subject to the lien. There shall be added to the amount of such obligation the Costs and Expenses of enforcement and collection, and the judgment in any such action shall include all such Costs and Expenses. The waiver of homestead exemption set forth in this Section 8.10 shall apply to any foreclosure action for the lien imposed by this Section 8.10. The foregoing specified rights and remedies shall not limit the right of any Lot Owner to enforce this Declaration pursuant to Section 14.5 or as otherwise may be provided herein or by law or equity; provided, however, that only the Architectural Control Committee, the Association, and Declarant shall have the right to proceed under this Section 8.10.

(e) No Liability for Entry. In the event that Architectural Control Committee, the Association, or Declarant, whether acting for themselves or through their duly authorized Representatives, elect to exercise the right to enter upon a Lot to remedy a violation of this Declaration, they shall not be liable to the Owner of the Lot or any other Person for any loss or damage occasioned by the entry on the Lot unless damage is caused (1) to the Lot or Improvements thereon that is unrelated to the remediation of the breach of the Declaration, and (2) by the willful and wanton acts of the Architectural Control Committee, the Association or Declarant. In no event shall there be any liability for damage to a Lot or an Improvement in circumstances where such Lot or Improvement is in violation of this Declaration or any other Association Documents.

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

Section 8.12 Power to Provide Special Services. The Association shall have the power to provide special services beyond this Declaration to an Association Member, group of Association Members, and or any other Person subject to the terms of this Declaration and the other Association Documents. Any such service or services shall be provided pursuant to an Agreement in writing, or through one or more amendments to this Declaration, which shall provide for payment to the Association by such Association Member, group of Association Members, or other Persons of the Costs and Expenses that the Association estimates it will incur in providing such services, which

shall additionally include a fair share of the overhead expenses of the Association, and shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Association Member, group of Association Members, or other Persons, as applicable, and may be collected in the same manner as a Site Assessment, or, if the written agreement so provides, in installments as part of the Common Assessments, or in any other manner permitted by the Association Documents or applicable Law.

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

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

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

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

Section 8.17 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act and all rights, powers and duties contained in the CCIOA, subject to any limitations,

restrictions, or requirements expressly set forth in the Association Documents to the extent permitted by Colorado Law.

Section 8.18 Other Powers. The Association shall have the right and power, but not the duty, to regulate the days and hours during which trash, solid waste and recycling may be collected or put out for collection in any portion of the Community Area, and the Association may require all Owners to use a common collection Person or Persons selected by the Association. The Association shall have the right and power, but not the duty, to sponsor or conduct various community activities or special events of a social or recreational nature, and to provide general informational services which may include, without limitation, a community newsletter, blogs, internet broadcast, virtual calendar of events, dedicated websites, and similar publications or services.

ARTICLE 9 **ASSOCIATION PROPERTIES**

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

Section 9.2 Property to be Conveyed to the Association. Declarant shall be obligated to convey to the Association any Tract and other property that is to be owned by the Association. Title to the properties to be conveyed to the Association shall be transferred to the Association, free and clear of all liens and encumbrances except as otherwise provided in this Declaration or the other Association Documents, on or before the expiration of the Period of Declarant Control under Section 7.5, and such conveyance shall exclude all water rights, if any. Declarant is not obligated to convey any other real property to the Association. The Association shall be obligated to accept title to each such Tract when conveyed to it by Declarant.

Section 9.3 No Partition of Association Properties. No Owner shall have the right to partition or seek partition of the Association Properties or any part thereof.

Section 9.4 Liability for Damage. Each Owner and Association Member shall be liable to the Association for any damage to Association Properties or for any Costs and Expenses or liabilities incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of any negligence, willful misconduct, or violation of the Association Documents by Owner, Owner's Related Users, or an Association Member. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Site Assessment against Association Members, Owners, Lots, Related Users, and/or other Persons (each to the extent subject hereto) to cover such Costs and Expenses and liabilities incurred by the Association.

Section 9.5 Damage to Association Properties. In the event of damage to or destruction of all or a portion of the Association Properties due to fire or other adversity or disaster, the insurance proceeds, if sufficient to repair (which may include replacement) and/or reconstruct the

damage, shall be applied by the Association to such repair and reconstruction. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and/or reconstruct the damage or destruction, then the Association shall levy a Special Assessment in the aggregate amount of such insufficiency pursuant to this Declaration and shall proceed with such repairs and/or reconstruction, unless the Owners and First Mortgagees by a majority vote agree not to repair or reconstruct such damage or destruction in accordance with the terms and provisions of this Declaration. No distributions of insurance proceeds shall be made to the Owners, unless made jointly payable to the Owners and the First Mortgagees, if any. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair and reconstruction, the Association may use the excess proceeds for future maintenance, repair, and operation of, and improvements to, Association Properties or distribute part or all of such proceeds jointly to the Owners and First Mortgagees on a pro rata (per Lot) basis.

Section 9.6 Association Powers in the Event of Condemnation.

(a) Notice of Condemnation Proceedings. If proceedings are initiated by any Governmental Authority seeking to take the Association Properties or any interests therein or part thereof, including any Improvements, the Association shall give prompt notice thereof to all Owners. The notice shall include a description of the part of or interest in the Association Properties or Improvements that are subject to the condemnation proceedings.

(b) Resolution of Condemnation Proceedings. The Association shall have full power and authority to defend the Association's and the Owners' interests in the condemnation proceedings, and to represent the Association and the Owners in any negotiations, settlements and agreements with a Governmental Authority for acquisition of the Association Properties, any part thereof, or any interest therein, and each Owner hereby appoints the Association as the Owner's attorney-in-fact for such purposes. Any award or proceeds of settlement shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

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

(d) Apportionment if Less than All Association Properties Taken or Condemned. If less than all of the Association Properties are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance of condemnation, the condemnation award shall first be applied by the Association to the rebuilding and replacement of those Improvements on the Association Properties that are damaged or taken by the Governmental Authority, if such rebuilding or replacement is reasonably practical, unless Association Members with at least sixty-seven percent (67%) of all Association Member votes together with at least sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each First Mortgage held) agree

otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement shall be distributed by the Association on the same basis as indicated in Section 9.6(b). No provision of this Declaration or any other Association Document shall be deemed to give an Owner or any other Person priority over the rights of a First Mortgagee, pursuant to a First Mortgage, with respect to the awarding or distribution of insurance proceeds or condemnation awards for losses to or taking of Association Properties.

Section 9.7 District Maintenance. Each Owner hereby acknowledges that certain Tracts and possibly other areas within the Community Area may be designated on a Plat to be maintained by the District, including without limitation any identified in this Declaration.

Section 9.8 Appropriations. All of the obligations and responsibilities of the Association as provided in this Article 9 (and elsewhere in the Association Documents) shall be expressly subject to the Board's annual appropriation of sufficient funds for such purposes.

ARTICLE 10 **DECLARANT'S RIGHTS**

Section 10.1 Period of Declarant's Rights. Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Association Properties until the expiration of the Declarant Control Period, not including rights that survive the termination of the Declarant Control Period expressly or by operation of Law. The rights, reservations and easements set forth in this Declaration shall be deemed reserved in each conveyance of property by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Community Area is conveyed by Declarant. The rights, reservations and easements set forth in this Declaration shall be prior and superior to any other provisions of the Association Documents and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Association Documents. Declarant's consent to any one such amendment shall not be construed as a consent to any other amendment. Nothing contained in this Article 10 limits in any way Declarant's express rights contained in this Declaration and the other Association Documents, including without limitation the rights set forth in Article 14 and Article 15.

Section 10.2 Declarant's Development Rights.

(a) Description. Until the expiration of the Declarant Control Period, Declarant shall have the following development rights and may, but is not obligated to, exercise any or all of such rights with respect to any portion or all of the Community Area:

(1) create additional Lots within the Community Area subject to the limitations contained in Section 10.8;

(2) create additional Association Properties within the Community Area;

(3) convert any of Declarant-owned Lots within the Community Area to Association Properties;

(4) withdraw real estate from the Community Area in accordance with the CCIOA, at C.R.S. § 38-33.3-210(4); and

(5) annex all or portions of the Expansion Property into the Community Area.

(b) Property Affected. No assurances are made by Declarant concerning which portions of the Community Area may be affected by Declarant's exercise of its development rights or the order in which portions of the Community Area may be affected. If Declarant exercises a development right in any portion of the Community Area, Declarant is not obligated to exercise that development right in all or any other portion of the remainder of real estate affected by the exercise of the development right or in all or any other portion of the remainder of the Community Area.

Section 10.3 Declarant's Special Rights. Until the expiration of the Declarant Control Period, and as more particularly set forth in this Article 10 or elsewhere in this Declaration, Declarant shall have the following special Declarant rights to:

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

Section 10.4 Declarant's Rights to Expand Community Area.

(a) Expansion Property. Until the expiration of the Declarant Control Period, Declarant reserves and shall have the right, in its sole discretion and upon its sole election, to expand the Community Area, without the approval of the Owners or First Mortgagees, to include additional land and one or more additional Improvements located upon all or any part of the Expansion Property. By accepting a deed to a Lot, each Owner hereby grants to Declarant a right to expand the Community Area.

(b) Procedure for Expansion. An expansion of the Community Area may be accomplished by Declarant's filing of record in the County's real property records, no later than the expiration of the Declarant Control Period, an amendment or amendments to this Declaration containing a legal description of the land area to be added to the Community Area, together with any supplemental plats that may be required. Any such amendment or amendments to this Declaration shall also contain a listing of the total number of Lots then contained within the Community Area. Expansion may be accomplished in phases by successive amendments.

(c) Effect of Expansion.

(1) In the event of any expansion of the Community Area, the definitions used in the Declaration shall automatically be expanded to encompass and refer to the Community Area as so expanded. For the avoidance of doubt, “Community Area” shall mean the real property described on Exhibit A, as it may have been amended, and any portion of the Expansion Property added by any annexation amendments to the Declaration. Similarly, “Lots” shall include those areas located within the real property described on Exhibit A as well as those so designated on any annexation amendments or supplemental plats relating to any Expansion Property that is annexed pursuant to this Section 10.4. For the avoidance of doubt, all references to the Declaration herein shall include annexation-related amendments.

(2) Upon recording of the annexation amendment or amendments to the Declaration and any supplemental plat in the County’s real property records, the additional Lots shall be subject to the provisions of the Declaration, as amended, and all other Association Documents.

(3) Until the expansion of the Community Area is accomplished by recording the annexation amendment(s) to the Declaration and supplemental plat(s), the Expansion Property and any improvements constructed thereon shall not be subject to the Declaration or the other Association Documents in any way whatsoever, including without limitation consideration for the purpose of apportioning assessments or determining voting rights or privileges. If such expansion does not occur, nothing contained in the Declaration or the other Association Documents shall restrict, impair, hinder, encumber or burden, in any way whatsoever, Declarant’s or its successors’ or assigns’ sole and complete right, title and interest to the Expansion Property and any Improvements thereon. Declarant alone shall be liable for all expenses of the Expansion Property unless and until annexed hereunder, and shall be entitled to any income and proceeds therefrom. Declarant’s right to annex may be exercised at different times and as to different portions of the Expansion Property. No assurances are made hereby regarding the boundaries of any portion of real property which may be annexed hereunder nor the order in which said portion may be annexed.

Section 10.5 Declarant’s Rights to Remove Property.

(a) Removal of Property from the Community Area. Until the expiration of the Declarant Control Period, Declarant reserves and shall have the right, in its sole discretion and at upon sole election, to remove from the Community Area any property that Declarant or a consenting third party owns, without the approval of the Owners or First Mortgagees. By accepting a deed to a Lot, each Owner hereby grants to Declarant a right to remove property from the Community Area that Declarant owns or with the consent of the third-party owner thereof.

(b) Procedure for Removal. A removal of property from the Community Area, as set forth herein, may be accomplished by the filing of record by Declarant in the County’s real property records, no later than the expiration of the Declarant Control Period, an amendment or amendments to this Declaration containing a legal description of the land area to be removed from the Community Area. Any such amendment or amendments to this Declaration shall also contain

a listing of the total number of Lots then contained within the Community Area. Removal may be accomplished in phases by successive amendments.

(c) Effect of Removal.

(1) In the event of a removal of property from the Community Area, the definitions used in the Declaration shall automatically be modified to refer to the Community Area as so modified. For the avoidance of doubt, "Community Area" shall mean the real property described on Exhibit A, as it may have been amended, less any property removed from the Community Area pursuant to the terms of this Section 10.5. Similarly, "Lots" shall cease to include those areas located within the removed real property. For the avoidance of doubt, references to the Declaration shall include removal-related amendments.

(2) Upon recording of a removal amendment or amendments to the Declaration in the County's real property records, the removed Lots shall no longer be subject to the provisions of the Declaration, as amended, or any other Association Documents, except to the extent of any obligations that expressly survive such removal.

(3) Until the removal of real property from the Community Area is accomplished by recording the removal amendment(s) to the Declaration, the real property described on Exhibit A and any improvements constructed thereon shall be subject to the Declaration in all ways, including without limitation consideration for the purpose of apportioning assessments or determining voting rights or privileges. Declarant's right to remove property from the Community Area may be exercised at different times and as to different portions of the Property. No assurances are made hereby regarding the boundaries of any portion of real property that may be removed hereunder nor the order in which said portion may be removed.

Section 10.6 Declarant's Construction and Installation Rights. Declarant shall have and hereby reserves the right, but shall not be obligated, to construct and install Improvements on Association Properties, at Declarant's cost, at any time and from time to time in accordance with this Declaration for the improvement and enhancement of the Association Properties and for the benefit of the Association and Association Members.

Section 10.7 Declarant's Promotion and Marketing Rights. Declarant shall have and hereby reserves the right to use Association Properties and services offered by the Association in connection with the promotion and marketing of property within the boundaries of the Community Area or nearby areas. Without limiting the generality of the foregoing, Declarant may: erect and maintain on any part of the Association Properties such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development and marketing of real property within the Community Area or nearby areas; use Vehicles and equipment on Association Properties for promotional purposes; and permit prospective purchasers (and their agents and brokers) of property within the boundaries of the Community Area or nearby areas to use Association Properties.

Section 10.8 Declarant's Rights to Complete Development of Community Area. No provision of this Declaration shall be construed to prevent or limit, and Declarant hereby expressly reserves, Declarant's rights to:

(a) complete the development of property within the boundaries of the Community Area or nearby areas and to subdivide, re-subdivide, or rezone any portion of such property;

(b) adopt further Association Documents, including without limitation Community Standards, Rules and Regulations, and supplements or amendments to this Declaration, and further including modifying Article 6 by means of an amendment to this Declaration;

(c) grant licenses, easements, reservations and rights-of-way;

(d) construct, alter, demolish or replace Improvements on any property owned by Declarant within the Community Area;

(e) maintain model homes and offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Community Area;

(f) post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Community Area or nearby areas;

(g) obtain approvals to excavate, cut, fill or grade any property owned by Declarant, and perform such work;

(h) change any Landscaping, grading, drainage, vegetation, or view;

(i) construct, alter, demolish or replace any Improvements on any property owned by Declarant;

(j) use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Community Area or nearby areas; and

(k) exercise any and all other rights granted to or reserved by Declarant in the Association Documents, which rights are hereby incorporated into and made part of this Section 10.8 by reference.

Section 10.9 Declarant's Lot Creation Rights. Notwithstanding any other provision of this Declaration, the maximum number of Lots that Declarant may create within the entire development of Sterling Ranch East is **three hundred thirty-six (336)**. The maximum number of Lots within the Community Area as initially constituted in this Declaration is:

| | |
|---|------------|
| <u>Sterling Ranch East Filing No. 1:</u> | <u>294</u> |
| <u>Sterling Ranch East Filing No. 1A:</u> | <u>42</u> |
| <u>Total Number of Lots:</u> | <u>336</u> |

Section 10.10 Declarant's Approval Rights. Until Declarant no longer has the right to appoint a majority of the Board, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, conditioned, or delayed:

- (1) convey, change or alter the use of Association Properties;
- (2) mortgage Association Properties;
- (3) use Association Properties other than for the benefit of Association Members and the Owners;
- (4) levy any Special Assessment;
- (5) change or repeal any rules of the Architectural Control Committee;
- (6) substantially reduce or change Association services; or
- (7) amend Association Documents.

Section 10.11 Declarant's Rights Incident to Completion of the Development. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across all Association Property and the right to store materials thereon and to make such other uses thereof as may be reasonably necessary or incidental for the purpose of the completion of Improvements for the Community Area, the performance of Declarant's obligations hereunder, the sale of the Lots and/or Units and the exercise of Declarant's rights under this Article 10; provided, however, that no such rights shall be exercised by Declarant in such a way as to interfere unreasonably with Owner's occupancy of such Owner's Lot and Owner's use, enjoyment or access of any public portion of the Community Area.

ARTICLE 11 **ASSESSMENTS**

Section 11.1 Payment of Assessments.

(a) Covenant and Agreement to Pay. Each Owner, for each Lot owned by such Owner within the Community Area, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all applicable Assessments. Each Owner hereby acknowledges that no Special Assessment or Common Assessment will be payable by the Owner of any property that is not part of the Community Area or annexed into this Declaration.

(b) Liability for Payment. The covenant and agreement to pay Assessments shall be a personal obligation of such Owner and a perpetual lien against such Owner's Lot as provided in the Association Documents and applicable Law. Each Owner of a Lot shall be jointly and severally liable to the Association for the payment of all Assessments attributable to such Owners or such Owners' Lot. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them; however, the

perpetual lien shall remain. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for herein by the following: non-use of the Association Properties or the Improvements associated with such Association Properties; non-use of any service provided by the Association for all Owners; abandonment or leasing of such Owner's Lot; or asserting any Claims. In addition to the Assessments, Costs and Expenses, and other sums due and owing by an Owner under the Association Documents, each such Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Governmental Authorities against such Owner's Lot. All property dedicated to and accepted by a Governmental Authority, and all Association Properties, shall be exempt from Assessments hereunder.

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

Section 11.3 Common Assessments. The Common Assessments may include, without limitation, the following common fees, costs, and expenses, which shall be paid as provided in Section 11.5:

- (a) expenses of management of the Association and its activities;
- (b) taxes and special assessments upon the Association Properties, both real and personal property;
- (c) premiums for all insurance which the Association is required or permitted to maintain;
- (d) the establishment of reasonable contingency reserves, surpluses, and sinking funds, including without limitation for any applicable insurance deductibles and emergencies, subject to the provisions of Section 11.20;
- (e) maintenance and repairs that are the responsibility of the Association, including without limitation the obligations described in Section 8.3;
- (f) the establishment of adequate reserve funds for maintenance, repairs and replacement of Association Property, including without limitation maintenance, repairs or replacements that must be done on a periodic basis and are payable in regular installments, rather than by Special Assessments, subject to the provisions of Section 11.20;
- (g) common services to Owners and/or Association Members as authorized in accordance with the terms of this Declaration and the other Association Documents;
- (h) Landscaping and care of the Association Properties;
- (i) wages for Association employees and payments to Association contractors and consultants;

(j) legal, accounting and other professional or advisory fees incurred by and on behalf of the Association;

(k) any deficit remaining from a previous Assessment year; and

(l) all other fees, costs, and expenses that may be incurred, or that may reasonably be expected to be incurred, by the Association, in its sole discretion, for the benefit of Association Members or the Owners under or by reason of this Declaration and/or the other Association Documents.

Section 11.4 Common Assessment Procedure.

(a) Declarant's Obligation to Fund Common Fees. Until Common Assessments are first levied by the Association pursuant to this Article 11, Declarant shall pay all common fees and other common Costs and Expenses of the Association described in Section 11.3.

(b) Purpose and Commencement of Common Assessments. Each Owner acknowledges that benefits accorded to Owners of Lots that contain Completed Dwelling Units are significantly greater than Lots that do not contain Completed Dwelling Units. In recognition of this fact, and to establish a clear, reasonable and cost-effective administrative process for the commencement of Common Assessments in light of this distinction in benefits, Common Assessments will commence as follows:

(1) The recordation of the Plat for the Community Area described on Exhibit A will be the "Start Date" for Common Assessments for the Lots within the Community Area as initially constituted.

(2) As of the Start Date, all Lots and Dwelling Units will be subject to Common Assessments in an amount that is the lesser of (A) ten percent (10%) of the applicable Common Assessment, or (B) \$5.00 for the applicable assessment period (without proration).

(3) Following the Start Date, as of the date a Dwelling Unit is conveyed to a resident so as to constitute a Completed Dwelling Unit (i.e., the sale of the Dwelling Unit to the initial resident), the Completed Dwelling Unit will be assessed at one hundred percent (100%) of Common Assessments, prorated as provided for in Section 11.4(d).

(c) Setting the Annual Common Assessment. After this Declaration is recorded, the Board shall set the total annual Common Assessment for the current year, if applicable, and the following year based upon an estimated budget for the Association. No later than ninety (90) days before the beginning of each subsequent year, the Board shall set the total annual Common Assessment based upon an advanced budget of the Association's requirements for the coming Assessment year. Within thirty (30) days after adoption of the Association's budget for each year, by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the budget summary. Unless a majority of all Owners present and voting in person or by proxy at the meeting called to discuss the budget or voting by the mailed ballot returned to the Board prior to that meeting reject the budget, the budget is ratified, whether or not a quorum

is present at the meeting. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

(d) Payment of Common Assessment. After approval of the budget by the Owners, the Board shall cause to be prepared, delivered or mailed to each applicable Owner as of the billing date, at least thirty (30) days in advance of the date payment is due, a payment statement setting forth the annual Common Assessment for each Lot and Completed Dwelling Unit. The applicable annual Common Assessment, as adjusted when applicable, shall be payable in advance, without any notice or demand, in quarterly installments due on the first (1st) day of each successive quarter or as the Board may otherwise direct. As of the Start Date, Common Assessments shall be applicable to all Lots, including those owned by Declarant, at the applicable levy set forth in this Section 11.4. Each Owner who subsequently acquires a Lot shall become responsible for Common Assessments assessed against that Lot as of the date the Lot is transferred to such Owner as provided for in this Section 11.4. The first annual Common Assessment on a Completed Dwelling Unit shall be adjusted according to the number of months remaining in the fiscal year established pursuant to the Bylaws of the Association. The Association may adopt Community Standards requiring the Owner, at the time when Common Assessments first commence upon that Owner's Lot as provided in this Section 11.4, to prepay the Common Assessments for the balance of the quarterly period and an additional period which shall not exceed an additional twelve (12) months; such prepayment shall not relieve the Owner from any additional requirement to pay working capital pursuant to Section 11.19.

Section 11.5 Assessment Rates. Common Assessments and Special Assessments shall be sufficient to meet the expected needs of the Association on the basis set forth in Section 11.4. Common Assessments and Special Assessments shall be allocated equally and uniformly among every Lot within an applicable category as provided for in Section 11.4. The rate for Common Assessments and Special Assessments shall be determined by dividing the total Common Assessments or Special Assessments, as applicable, payable for any Assessment period as determined by the applicable budget, by the number of Completed Dwelling Units. The resulting quotient shall be the amount of the Common Assessments or Special Assessments, as applicable, payable with respect to each Completed Dwelling Unit, and the remaining Lots (those with no Completed Dwelling Unit) shall pay the amount calculated pursuant to Section 11.4 for both Common Assessments and Special Assessments.

Section 11.6 Failure to Levy Assessment. The failure by the Board to levy an Assessment for any period shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Owner to pay Assessments for that or any subsequent period.

Section 11.7 Special Assessments. The Board may, subject to the provisions of this Section 11.7, levy Special Assessments to do any of the following:

(a) raise funds to construct, reconstruct, repair or replace capital Improvements on Association Properties and personal property relating thereto, including without limitation as a result of insufficient insurance proceeds;

- (b) add to the Association Properties;
- (c) provide for necessary facilities and equipment;
- (d) offer the services authorized in this Declaration and the other Association Documents;
- (e) correct any deficit or cost overrun; and
- (f) repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration.

Section 11.8 Special Assessment Procedure. Special Assessments shall be equally and uniformly imposed upon Lots that contain a Completed Dwelling Unit, in the manner provided by Section 11.4. No Special Assessment shall be assessed until it has been approved in accordance with a procedure substantially identical to the procedure set forth in Section 11.4. Special Assessments shall be equal to the amount by which costs exceed the sum of insurance proceeds received by the Association, and such net amount shall be assessed in the same manner as other Special Assessments. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable, and the Owners shall pay any such Special Assessment in the manner so specified.

Section 11.9 Site Assessments. The Board may, subject to the provisions of this Declaration, levy a Site Assessment against any Association Member, Owner, or Lot if additional services are provided to such Association Member, Owner, or Lot if the willful or negligent act or omission, or violation of Association Documents, by the Association Member or Owner, or the Owner's Related User(s), cause any loss or damage to the Association or Association Properties or any expenditure of funds in connection with the enforcement powers of the Association.

Section 11.10 Site Assessment Procedure. Except for a default consisting solely of a failure to timely pay any Assessment, including without limitation Special Assessments or Common Assessments, which shall not require any notice and hearing, a Site Assessment, other than charges for additional services, shall be levied only after notice and hearing as may be required by the Bylaws. The amount of the Site Assessment shall be payable to the Association upon notice by the Association that the Site Assessment is due and owing. Imposition or non-imposition of Site Assessments shall not preclude the Association from pursuing simultaneously or subsequently all other legal or equitable rights and remedies. In no event will the amount of any Site Assessment levied against any Lot be counted in calculating the amount allowed pursuant to the CCIOA, at C.R.S. §§ 38-33.3-116(2) and (3).

Section 11.11 Costs of Collection and Enforcement. If any Assessment is not paid within ten (10) days after it is due, the Association Member, Owner or other Person subject hereto who is obligated to pay the Assessment may be required to pay, in addition, all of the Association's Costs and Expenses, including without limitation a reasonable late charge as determined by the Board. Any Assessment that is not paid within ten (10) days after the date of any notice of default given under Section 11.13 shall bear interest from the due date at a rate determined by the Board, not to exceed the lower of eighteen percent (18%) per annum or the maximum percentage permitted by applicable Law, from the due date until paid. If any Owner fails to timely pay

Assessments or any money or other sums due to the Association, the Association may require reimbursement for all Costs and Expenses incurred by the Association as a result of such failure without the necessity of commencing a legal proceeding.

Section 11.12 Attribution of Payments. If any Assessment payment is less than the amount assessed, the sums received by the Association from that Owner shall be credited in such order of priority as the Board, in its discretion, determines.

Section 11.13 Notice of Default and Acceleration of Assessments. If any Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the Owner and to each First Mortgagee of the Lot who has requested a copy of such notice. The notice shall substantially set forth: (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than twenty (20) days from the date of mailing of the notice by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in foreclosure of the lien for the Assessment against the Owner's Lot. A default shall not be considered cured unless the past due sums, the Association's Costs and Expenses, and all sums coming due through the date of payment are paid to the Association. If the delinquent Assessment, any Costs and Expenses, and any other sums due as of the date of the payment are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all Costs and Expenses in connection therewith, including without limitation Costs and Expenses of collection and enforcement, in any manner authorized by applicable Law or the Association Documents.

Section 11.14 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed. In the event of a default in payment of any Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by applicable Law, enforce such obligation on behalf of the Association by suit as provided in Section 11.15 or by filing and foreclosure of a lien as provided in Section 11.16. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with Costs and Expenses of collection and enforcement, and this covenant shall be a charge on the land and a continuing lien upon the Lot against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is filed as set forth in Section 11.16(b).

Section 11.15 Lawsuit to Enforce Assessments. The Association may bring a suit at law or in equity to enforce any Assessment obligation, and the Association shall be entitled to recover its Costs and Expenses from the Persons against whom the enforcement action is brought.

Section 11.16 Lien to Enforce Assessments.

(a) Nature of Lien. The Association shall have a lien for Assessments as provided in the CCIOA, at C.R.S. § 38-33.3-316.

(b) Filing and Notice of Lien. The Association may elect (but is not required to) to file a notice of lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (1) the amount of the alleged delinquency, (2) the Costs and

Expenses of collection which have accrued thereon and which shall continue to accrue in accordance with the terms of Section 11.11, (3) the legal description and street address of the Lot against which the lien is asserted, and (4) the name of the record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer or other duly authorized Representative of the Association.

(c) Priority of Lien. A lien shall have priority as provided for in the CCIOA and shall be prior to any declaration of homestead rights recorded after the time that the Lot becomes part of the Community Area. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver by the Owner of the homestead exemption as against said lien.

(d) Release of Lien. The lien shall continue until the amounts secured thereby and all subsequently accruing Costs and Expenses are fully paid or otherwise satisfied. When all amounts sought to be recovered under the lien, including without limitation all Costs and Expenses incurred by the Association in relation thereto, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, if the lien had been recorded, upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of the Notice of Lien.

(e) Lien Foreclosure. In addition to or in lieu of bringing suit to collect Assessments as provided by Section 11.15, the Association may foreclose its lien through a Colorado court of competent jurisdiction in accordance with Colorado Law applicable to foreclosure of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by applicable Law. The Association shall have the right and power, but not the obligation, to bid on the Lot at the sale and to acquire and hold, lease, mortgage, and convey the same.

(f) Lien Restrictions. Each lien under this Section 11.16 shall be subject to the provisions and restrictions of Section 15.6.

Section 11.17 Estoppel Certificates. Upon the payment of such reasonable fee as may be determined from time to time by the Board, and upon the written request of any Association Member or Owner and any Person that has acquired, or intends to acquire, any right, title or interest in the Lot of such Association Member or Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable. Such statement shall, with respect to the Person whom it is issued, if relied thereupon in good faith and without actual knowledge to the contrary, be conclusive against the Association.

Section 11.18 No Offsets. Each Assessment shall be payable in the amounts specified in the levy, and no offset, abatement or reduction thereof shall be permitted for any reason whatsoever, including for example, and not be way of limitation, for any Claim: that the Association is not properly exercising its duties and powers under this Declaration; for inconvenience or discomfort arising from any activity on or relating to Association Properties; resulting from or relating to the non-use by an Owner of Association Properties or services

provided by the Association; or that a particular function funded by the Assessment does not benefit the Owner directly.

Section 11.19 Working Capital Fund. The Board may, at its option, require each Lot Purchaser, expressly excluding Declarant, at the time of the first transfer of the Lot following the Completed Dwelling Unit on the applicable Lot, regardless of whether Assessments have commenced for such Lot or at all, and at the time of each transfer of title to the Lot, to make a non-refundable contribution to the Association of an amount established from time to time by the Board, but in no event will the amount exceed three (3) times the amount of the annual Common Assessment for a Completed Dwelling Unit in effect on the date of the delivery of the deed conveying the Completed Dwelling Unit. All such contributions shall be maintained in a non-segregated account for the use and benefit of the Association for, among other purposes, meeting unforeseen expenditures, funding Association deficits, or purchasing additional equipment, property or services. Working capital contributions shall be in addition to the Assessments, and shall not relieve the Owners from paying all Assessments as they come due. Declarant is excluded from the provisions of this Section 11.19 because the Association and Owners of Lots with Completed Dwelling Units will receive all of the benefits from payments made pursuant to this Section 11.19.

Section 11.20 Reserves. Each Owner hereby acknowledges that such Owner's Lot and Dwelling Unit within the Community Area have been purchased with the knowledge and consent that neither Declarant nor the Association is obligated to collect funds to establish Reserves prior to the time that each Lot within the entire Community Area has a Dwelling Unit constructed thereon. At such time, Declarant or the Association, as applicable, may establish such Reserves as they, in consultation with their property management company, if any, determine to be reasonable in their sole discretion. Each Owner further acknowledges that neither Declarant nor the Association will have any obligation to establish Reserves at a level that will fully fund the replacement of all Association Properties, but merely a commercially reasonable offset of such estimated expenses, and that any such Reserves will not be stagnate, but rather will fluctuate from time to time, including without limitation as Reserved are collected and drawn. Declarant and the Association reserve the right, but shall not have the obligation, to request a Reserve Study from time to time to assist in determining whether to establish Reserves and the amounts thereof.

ARTICLE 12 **INSURANCE**

Section 12.1 Insurance Coverage Generally. The Association shall maintain insurance as required by the CCIOA and other applicable Law, to the extent that such insurance is reasonably available, giving due consideration to the availability, cost and risk coverage provided by such insurance, and the reasonableness of the cost of said coverage to be funded by the Association as part of the Assessments.

Section 12.2 Required Insurance. The Association shall, subject to and in accordance with Section 12.1, obtain the following types of insurance to the extent required by applicable Law or otherwise in the Board's discretion:

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

(b) Commercial General Liability Insurance. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence use, or management of the Association Property, insuring the Association in an amount not less than one million and 00/100 dollars (\$1,000,000.00) per occurrence insuring the Board, the Association, and their respective Representatives, including without limitation any managing agent. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Board Member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with an Owner's membership in the Association. The insurance shall cover claims and liabilities of one or more insured parties against other insured parties.

(c) Fidelity Insurance or Bond. A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association, or an independent contractor or manager employed by the Association for the purpose of managing the Community Area and/or any Owner who disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including reserves, in the custody of the Association at any given time. The Association may carry fidelity insurance in amounts greater than otherwise required by applicable Law and may require any independent contractor employed for the purposes of managing the Community Area to carry additional fidelity insurance coverage. For the avoidance of doubt, in the event the Association has delegated some or all of its responsibility for handling funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this Article 12.

(d) Flood insurance. If any Association Properties are located within an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on such parcels in an amount at least equal to the lesser of: (a) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or (b) one hundred percent (100%) of current replacement costs of all buildings and other insurable property located within a designated flood hazard area.

(e) Other Insurance. Other insurance as may be required by applicable Law. In determining the type and amount of insurance required, the Association may consider the then-existing requirements of applicable Governmental Authorities, and the Board shall otherwise exercise its discretion.

Section 12.3 Optional Insurance. The Association may obtain insurance against such other risks as it shall deem appropriate, to the extent that such coverage is reasonably available, including without limitation personal liability insurance and directors and officers insurance to

protect directors and officers of the Association, the Committee Members, and their other Representatives.

Section 12.4 General Provisions of Insurance Policies. If available at reasonable rates, policies of insurance carried by the Association shall be in blanket policy form naming the Association, or its designee, as trustee and attorney-in-fact for all Owners, as the insured, and each Owner shall be an insured Person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory clause in favor of each First Mortgagee or any other mortgagee (collectively, the "Security Interest Holders"), and, if commercially available, a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days prior written notice thereof is given to the insured and to each Security Interest Holder, insurer or guarantor of a security interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including a Security Interest Holder, upon request and payment of a reasonable fee to the Association. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any act or neglect of an Owner where such Owner is not under the control of the Association. Insurance obtained by the Association, to the extent reasonably feasible, shall name Declarant as an additional insured and shall contain a waiver of subrogation rights against Declarant. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Association Properties and property of Declarant.

Section 12.5 Claims Adjustment.

(a) The Association may, in its sole discretion, adopt and establish written nondiscriminatory policies and procedures as it determines to be reasonable relating to the submission of insurance claims and liabilities, responsibility for deductibles and any other matters of adjustment.

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

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

loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner as an Assessment.

Section 12.6 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in this Article 12 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Article 9, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated.

Section 12.7 Acceptable Insurance Companies. Each insurance policy purchased by the Association must be written by an insurance carrier that is authorized by applicable Law to do business in the State of Colorado. The Association shall not obtain any policy where: (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee; (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's governing body, policyholders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) that would prevent a Security Interest Holder or any Owner from collecting insurance proceeds.

Section 12.8 Insurance to be Maintained by Owners. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Public liability insurance coverage on each Lot and the Improvements thereon, and insurance coverage, including without limitation homeowners' and flood insurance, on each Lot and for a Completed Dwelling Unit and any other Improvement, and the furnishings and other items of personal property belonging to a Lot Owner, shall be the responsibility of such Lot Owner. The Association shall have no responsibility regarding the obtaining or continuation of any such insurance. Each Owner is obligated to provide the Association with written evidence of such Owner's insurance promptly upon the Association's request.

Section 12.9 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board to ascertain that the coverage provided by such policies adequately covers the risks intended to be insured by the Association. In making the aforesaid determination, the Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance.

Section 12.10 Owners' Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any or all of the Association Property is caused by the willful or negligent act or omission of any Owner, or a Related User of such Owner, the cost of such repair, maintenance or reconstruction shall be the personal obligation of such Owner, and any Costs and Expenses incurred by the Association for such maintenance, repair or reconstruction may be collected as a Site Assessment as provided

in this Declaration or by the Association exercising any rights or remedies under the Association Documents or otherwise as permitted by applicable Law. A determination of the willful or negligent act or omission of an Owner shall be determined by the Board at a hearing after any notice required by the Bylaws to be given to the Owner, and any determination by the Board shall be subject to judicial review as appropriate.

ARTICLE 13 **EASEMENTS**

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

Section 13.2 Emergency Easement. A non-exclusive easement is hereby granted to all police, fire protection, ambulance and similar protective services to enter upon the Community Area, including without limitation private rights-of-way within the Community Area, in the performance of their duties.

Section 13.3 Easement for Encroachments. If any portion of an Improvement encroaches upon Association Property, including without limitation any future encroachments arising out of or resulting from erosion or subsidence, or from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, the Board may grant a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, for so long as such encroachment exists, but subject to any conditions or restrictions imposed by the Board.

Section 13.4 Utility Easements.

(a) Declarant hereby creates and reserves to itself until Declarant has sold the last Lot in the Community Area to an Owner other than Declarant, and thereafter to the Association, the following;

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

(2) a blanket easement across, over and under the Association Properties for access, utilities, drainage and the installation, replacement, repair and maintenance

of utilities, including without limitation electric, gas, water, telephone, cable, ethernet, sewer, and all other utilities.

(b) If any utility or quasi-utility company furnishing a service covered by the easements created herein requests a specific easement by separate recordable instrument, Declarant reserves and is hereby given the right and authority to grant, qualify, delay, or deny such easement. The Association shall succeed to such right and authority upon conveyance by Declarant of the last Lot in the Community Area to the initial Owner thereof, other than Declarant. The easement that may be granted in this Section 13.4(b) shall in no way affect, avoid, extinguish or modify any other previously recorded easement within the Community Area.

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

Section 13.6 Easements of Record. In addition to the easements created in this Article 13, on the Plat, in Article 4, and elsewhere in the Association Documents, the Community Area may be subject to easements and other matters currently of record in the County's real property records.

Section 13.7 Community Mailboxes. The U.S. Postal Service will locate one or more multiple delivery pads and mailboxes, also known as community mailbox structures, within the Community Area, in accordance with U.S. Postal Service and applicable Law, including without limitation the County's regulations. All such community mailboxes shall be maintained by the District. Declarant hereby creates and reserves to the District, the Association, and the U.S. Postal Service a perpetual, alienable, divisible and releasable easement over, under, in and across the first five feet (5') of each Lot adjacent to a public street right of way for use of portions of such areas for the community mailbox structure(s). The easement provided for in this Section 13.7 shall in no way affect, void, extinguish or modify any other easement in the Community Area. Each Owner will be issued one or more initial mailbox keys upon the completion of such Owner's Dwelling Unit as evidenced by the issuance of a Certificate of Occupancy, and it will be Owner's responsibility to transfer the mailbox key to each successive purchaser. Failure to do so will require the purchaser to acquire a new mailbox key directly from the U.S. Postal Service and to undertake whatever requirements that may entail. Each Owner acknowledges that Declarant and the Association shall not have any responsibility or obligation regarding the issuance, maintenance, or transfer of mailbox keys after issuing the initial key(s) as provided in this Section 13.7.

ARTICLE 14 **ENFORCEMENT; DISPUTE RESOLUTION**

Section 14.1 Alternative Dispute Resolution. The Association, Architectural Control Committee, Declarant, and all Owners agree to encourage the use of mediation or arbitration in the resolution of disputes pertaining to this Declaration, the other Association Documents, and the Community Area generally, and each covenants and agrees to be bound by the provisions set forth in this Article 14.

Section 14.2 Assessment Collection. Any action or proceeding by the Association to collect any Assessments, together with Costs and Expenses of collection, shall proceed according to Article 11, and shall not be included within or impacted by this Article 14.

Section 14.3 Enforcement of Association Documents.

(a) Authority. The Architectural Control Committee, the Association, Declarant, and their respective duly authorized Representatives each have authority to notify the Owner of a Lot where a violation of an Association Document occurs, or to any other Persons occupying the Lot who may be responsible for the violation.

(b) Notice of Violation. The notice of violation shall be writing and shall state:

(1) the nature of the violation;

(2) the action required to cure the violation;

(3) a date not less than ten (10) days from the date of mailing of the notice by which such violation must be cured (or a shorter period of time in an emergency situation); and

(4) the intent of the Architectural Control Committee, the Association, or Declarant, as applicable, to invoke this Section 14.3.

(c) Cure. Further action shall be stayed if the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence.

(d) Failure to Cure. If the violation is not cured and terminated, or if appropriate measures to cure and terminate are begun and are not thereafter continuously prosecuted with diligence, then at any time following an Owner's failure to cure the violation, the Architectural Control Committee, the Association, or Declarant (whichever gives the notice, and in their reasonable discretion) may, but shall not be obligated to elect to (1) impose fines established by the Architectural Control Committee from time to time and/or elect, for any matter which then presents an emergency situation, to cause the violation to be cured and terminated at the expense of the Owner or other Persons so notified, pursuant to Section 14.4; (2) cause the violation to be cured and terminated at the expense of the Owner or other Persons so notified, pursuant to Section 14.4; (3) proceed with an action to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief), together with such other ancillary relief as a court may deem necessary, in order to enforce any of the provisions of this Declaration or the other Association Documents; (4) impose and foreclose upon an Article 14 lien; (5) bring a legal action against Owner for recovery of all amounts due and owing by Owner pursuant to this Article 14; and/or (6) proceed with the dispute resolution procedure set forth in Section 14.6(e). Any other disputes by or between any of the Architectural Control Committee, the Association, and Declarant, whether in contract, tort or statutory, shall be resolved pursuant to the dispute resolution procedures set forth in Section 14.6(e).

Section 14.4 Entry Upon a Lot to Cure Violation/Liens.

(a) License. Each Owner of a Lot hereby grants a license to Declarant, the Association and the Architectural Control Committee for the purpose of entering onto a Lot to remedy violations or breaches of this Declaration or the other Association Documents pursuant to Section 14.3. For the avoidance of doubt, Declarant, the Association and the Architectural Control Committee may delegate their entry and removal rights hereunder to their respective duly authorized Representatives.

(b) Liability. In the event that Declarant, the Association, or the Architectural Control Committee, whether acting for themselves or through their duly authorized Representatives, elect to exercise the right to enter upon a Lot to remedy a violation of this Declaration, neither they nor their Representatives shall be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless damage is caused (1) to the Lot or Improvements thereon that is unrelated to the remediation of the breach of the Declaration, and (2) by the willful and wanton acts of Declarant, the Association, or the Architectural Control Committee or their respective duly authorized Representatives (whichever entered the Lot). In no event shall there be any liability for damage to an Improvement that is in violation of this Declaration.

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

(d) Collection. Declarant, the Association, or the Architectural Control Committee may bring an action at law against the Owner for recovery of the Costs and Expenses owed by such Owner and may bring an action to foreclose the lien against the Lot and Improvements subject to the lien as set forth more fully in Section 14.4(e). The judgment or foreclosure in any such action shall include interest as provided in Section 14.4(c) and all other Costs and Expenses of enforcement and collection.

(e) Foreclosure of Lien. Declarant, the Association, or the Architectural Control Committee may enforce a lien pursuant to this Article 14 by suit or by filing and foreclosure of the lien as hereinafter provided. Such party may elect (but is not required) to file a notice of lien against the Lot of the defaulting Owner by recording a notice (“Notice of Article 14 Lien”) substantially setting forth: (1) the amount of the alleged delinquency; (2) the Costs and Expenses of collection which have accrued thereon and which shall continue to accrue in accordance with the terms of this Declaration; (3) the legal description and street address of the Lot against which the lien is asserted; and (4) the name of the record Owner thereof. Such Notice of Article 14 Lien shall be signed and acknowledged by an officer of the entity. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to agree to pay all such amounts, and this covenant shall be a charge on the land and a continuing lien upon the Lot. The lien created by this Section 14.4 shall exist from the date of entry upon the Lot until

all sums are paid, whether or not a Notice of Article 14 Lien is filed in accordance herewith. The lien created by this Section 14.4 shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded but shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado Law or federal Law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against the lien established in this Section 14.4. When all amounts sought to be recovered under the lien have been fully paid or satisfied, the filing entity shall execute and record a notice releasing the Notice of Article 14 Lien, if recorded, upon payment by the Owner of a reasonable fee fixed to cover the cost of preparing and recording the release. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with Colorado Laws applicable to foreclosure of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by applicable Law. The lien under this Section 14.4 shall be subject to the provisions and restrictions of Section 15.6.

Section 14.5 Enforcement of Association Documents by an Owner. Any claim or action by a Lot Owner against the Association, Declarant, the Architectural Control Committee, or any of their respective Representatives, or any Owner of another Lot, whether in contract, tort or statutory, shall proceed pursuant to the dispute resolution procedure set forth in Section 14.6(e), except that: (a) all actions against Declarant, or any of its Representatives, by an Owner related to warranty claims or any alleged construction defects of any kind or nature shall be governed solely by the terms of the contract between the Owner (or the Owner's predecessor in interest subsequent to Declarant's ownership) and Declarant or the applicable Dwelling Unit builder, and by the terms of the limited warranty which was provided to each initial Owner following Declarant as part of such initial Owner's purchase of a Dwelling Unit; and (b) any suit between or among Owners that does not include Declarant or the Association as a party, independent of the Association Documents, is not governed by Section 14.6 unless mutually agreed by such Owners.

Section 14.6 Actions by Association on behalf of Owners. Pursuant to the CCIOA, at C.R.S. § 38-33.3-302(1)(d), the Association may institute, defend, or intervene in litigation or administrative proceedings in its own name, on behalf of itself or two or more Owners, on matters affecting the Community Area (expressly including any civil action or arbitration proceeding as described at C.R.S. § 13-20-802.5, which is commonly referred to as a construction defect proceeding), subject in all instances to each of the following provisions and conditions:

(a) Limited Warranty and Contracts Control. By an Owner's purchase of a Dwelling Unit and by the Association's receipt of title to any Association Property, all Owners and the Association acknowledge that all actions related to warranty claims or alleged construction defects of any kind or nature are governed by the terms of the contract between the Owner (or the Owner's predecessor in interest subsequent to Declarant's ownership) and Declarant or the Dwelling Unit builder, and by the terms of the limited warranty which was provided to each initial Owner following Declarant as part of such initial Owner's purchase of a Dwelling Unit, to the fullest extent permitted by applicable Law. All Owners, Declarant (and any of its Representatives), and the Association acknowledge and agree that all matters governed by the terms of such contract(s) and the limited warranty are not matters affecting the common interest community and are not included within the Association's authority pursuant to the CCIOA, at C.R.S. § 38-33.3-302(1)(d).

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

(c) Approvals Required. In the event the Association desires to institute any action on its own behalf and/or on behalf of two (2) or more Owners, whether in contract, tort or statutory, then prior to commencing such action, the Association shall obtain the approval of Owners holding not less than sixty-seven percent (67%) of all votes in the Association (whether in person or by proxy) at a duly called Owner meeting following the Association's delivery of a meeting notice and written ballot (if any), that contains a detailed statement regarding the nature of the claim or liability, an estimate of the Costs and Expenses reasonably anticipated to be incurred by the Association, a statement that such Costs and Expenses may increase the amount of Assessments; and an estimate of the projected time frame for resolution.

(d) Construction Defect Approvals Required. In addition to Section 14.6(c), in the event the Association desires to institute an action asserting defects in the construction of two (2) or more single family residences or any Association Property or Maintenance Areas, the provisions of this Section 14.6(d) shall apply. For purposes of this Section 14.6(d), "construction defect action" shall have the same meaning as set forth in the CCIOA, at C.R.S. § 38-33.3-303.5(1)(b)(I). The Association shall comply with the following, which is in addition to all other notices and requirements imposed by applicable Law, including without limitation the CCIOA, at C.R.S. § 38-33.3-303.5(1)(c): prior to the service of the summons and complaint on any defendant with respect to an action governed by this Section 14.6(d), the Association shall mail or deliver written notice of the commencement or anticipated commencement of such action to each Owner at the last known address described in the Association's records, which notice shall contain the required disclosures set forth in the CCIOA, at C.R.S. § 38-33.3-303.5(1)(c)(II), including without limitation the nature of the action, the relief sought and the Costs and Expenses that the Association anticipates will be incurred in prosecuting the action. Nothing in this Section 14.6(d) shall be construed to: (1) require the disclosure in the notice or the disclosure to an Owner of attorney-client communications or other privileged or confidential communications, including without limitation work product; (2) permit the notice to serve as a basis for any Person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to assert immunity in connection with, the disclosure of information in the notice; or (3) limit or impair the authority of the Board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

(e) Dispute Resolution Procedures.

(1) Notice; Negotiation. For any Claim, the claimant ("Claimant") shall give notice to the other Person against whom the Claim is asserted ("Respondent"), setting forth the following: the nature of the Claim; the basis or reason for the Claim; any other material information regarding the Claim; the specific relief and/or proposed remedy sought; and the intent to invoke this Section 14.6 (a "Notice of Claim"). A Claimant may not deliver such notice during any cure or enforcement period pursuant to Section 14.3. Claimant and Respondent shall use good faith efforts to resolve the Claim through negotiations following delivery of the Notice of Claim, pending mediation pursuant to Section 14.6(e)(2).

(2) Mediation. The Claim shall first be submitted to non-binding mediation before a mediator selected by the parties. The cost of the mediation shall be borne equally by all parties. Mediation shall be a condition precedent to arbitrating any dispute. The mediation shall occur within forty-five (45) days following delivery of the Notice of Claim (“Mediation Period”). In the event that mediation is unsuccessful, either party may demand arbitration pursuant to Section 14.6(e)(3) within thirty (30) calendar days of the date of the mediation.

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

(4) Construction Defect Actions. In the event of any Action asserting construction defects in a Dwelling Unit and/or Association Property, as provided at C.R.S. § 13-20-801 *et seq.* concerning construction defect actions, the provisions of this Section 14.6(e)(4) shall also apply. If any of Claimant’s Claims relate, in any way, to any work completed by any of Respondent’s subcontractors or any materials and/or equipment provided by any of Respondent’s suppliers, Respondent, in its sole discretion, may join such subcontractors and/or suppliers to any arbitration proceeding with Claimant. The sole procedure that may be used to establish a breach of any of Respondent’s obligations under this Declaration, any obligations which may exist by applicable Law or industry standards, and/or Claimant’s damages, including without limitation appropriate repair costs, shall be through the testimony of a homebuilder currently licensed by Pikes Peak Regional Building Department who has built and sold at least fifty (50) homes with a sales price **exceeding \$400,000** in the **two (2) calendar years** immediately preceding the calendar year in which the Claim is brought. The Arbitrator shall completely exclude the testimony of any tendered expert who does not meet the foregoing qualifications.

(f) Amendment. The terms and each and every provision of Article 14 and Article 15 of this Declaration inures to the benefit of Declarant, are enforceable by Declarant and shall not be amended without the written consent of Declarant and without regard to whether Declarant owns any portion of the Community Area, any Lots and/or the status of the Period of Declarant Control. **BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF ARTICLE 14 AND ARTICLE 15 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT’S WILLINGNESS TO DEVELOP AND SELL THE LOTS AND DWELLING UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED ARTICLE 14 AND ARTICLE 15, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE LOTS AND DWELLING UNITS FOR THE PRICE PAID BY THE ORIGINAL PURCHASERS. THIS PROVISION IS IN ADDITION TO AND NOT CONTRARY TO THE TERMS OF ARTICLE 15 CONCERNING ALL OTHER AMENDMENTS TO THIS DECLARATION.**

(g) Accrual of Claims. In the event of any amendment of any provision of this Article 14 in violation of Section 14.6(e), or in the event Section 14.6(e) is deemed unenforceable in whole or in part, then and in such event any amendment or modification of the terms of this Article 14 shall only apply prospectively, to Claims that accrue following the date of such amendment or modification.

Section 14.7 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 14.8 Violations of Law. Any violation of any applicable Law pertaining to the ownership, occupation or use of any property within the Community Area, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 14.9 Remedies Cumulative. Except as expressly stated herein, each remedy provided under the Association Documents is cumulative and not exclusive.

Section 14.10 Costs and Expenses.

(a) In addition to any other rights provided herein and not by way of limitation thereof, any party which seeks to enforce the Association Documents and prevails shall be entitled to recover its Costs and Expenses in connection therewith. For each claim or defense, including without limitation counterclaims, crossclaims and third-party claims, and except as otherwise provided herein, in any legal proceeding to enforce or defend the provisions of the CCIOA or the Association Documents, the prevailing party shall be awarded the prevailing party's Costs and Expenses incurred in asserting the claim or in defense, as applicable. For any failure to comply with the provisions of the CCIOA or any provision of the Association Documents other than the payment of Assessments or any money or other sums due to the Association (which are dealt with separately in this Declaration), the Association, any Owner or any class of Owners adversely affected by the failure to comply may seek reimbursement for its or their Costs and Expenses of enforcement and collection.

(b) In connection with any claim in which an Owner is alleged to have violated a provision of the CCIOA or a provision of the Association Documents and in which the Owner prevails because the Owner did not commit the alleged violation: (a) the Owner shall be awarded the Owner's Costs and Expenses incurred in asserting or defending the claim; (b) the Association shall not be awarded its Costs and Expenses; and (c) the Association shall be precluded from allocating to the Owner's account with the Association any of the Association's Costs and Expenses incurred in asserting or defending the claim. Nothing in the Association Documents shall be construed to mean that an Owner shall be deemed to have confessed judgment to Costs and Expenses.

Section 14.11 Limitations. Notwithstanding any other provision of this Article 14, no proceedings may be initiated after the date when institution of legal or equitable proceedings would be barred by the applicable limitation period, statute of limitation, or statute of repose.

Section 14.12 Liability for Failure of Association to Maintain an Action. No director or officer of the Association shall be liable to any Person for failure to institute, maintain or bring to conclusion a cause of action, mediation or arbitration if the following criteria are satisfied: (a) the director or officer was acting within the scope of their duties; (b) the director or officer was acting in good faith; and (c) the act or omission was not willful, wanton or grossly negligent.

Section 14.13 Amendment and Severability. All provisions of this Article 14 are severable. Invalidation of any of the provisions of this Article 14, by judgment, court order or otherwise, shall in no way affect or limit the effectiveness of any other provisions of this Article 14, all of which shall remain in full force and effect. Any other amendment of this Article 14 requires both the approval of the Association Owners as provided by the voting procedures of the Association Documents and the written consents of Declarant and the Association.

ARTICLE 15 **MISCELLANEOUS**

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

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

(a) Until the first Lot subject to this Declaration has been conveyed by Declarant to an Owner other than a successor Declarant, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.

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

Section 15.3 Amendment of Declaration. Expressly subject to the additional specific requirements contained in Section 14.6(e) or Section 15.4, each setting forth specific additional requirements and circumstances for Declarant consent, this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Association Members with at least sixty-seven percent (67%) of the voting power of the Association in accordance with the requirements of the CCIOA, at C.R.S. § 38-33.3-217. Every amendment to the Declaration must be filed of record in the County's real property records, and is effective only upon recordation.

Section 15.4 Required Consent of Declarant to Amendment. Any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall not terminate when Declarant conveys the last Lot in the Community Area. Each Owner and the Association expressly acknowledge Declarant's consent right provided for in this Section 15.4 and, for the avoidance of doubt, that Declarant's consent right includes without limitation each provision contained in Article 14 and Article 15.

Section 15.5 Special Rights of First Mortgagees. Any First Mortgagee, upon filing a written request therefore with the Association, shall be entitled to:

- (a) receive written notice from the Association of any default by the Owner indebted to such First Mortgagee in the performance of the Owner's obligations under the Association Documents, which default is not cured within sixty (60) days after the Association learns of such default;
- (b) examine the books and records of the Association during normal business hours;
- (c) upon request, receive a copy of the Association's most recent year-end financial statements after ninety (90) days following the end of any fiscal year of the Association;
- (d) receive written notice of all meeting of Association Members;
- (e) designate a Representative to attend, on its behalf, any meeting of Association Members;
- (f) receive written notice of abandonment or termination of the Association or of this Declaration;
- (g) receive notice of any amendment to this Declaration, the Articles of Incorporation or the Bylaws;
- (h) receive written notice of termination of any agreement for professional management of the Association Properties if the Association decides to assume self-management of the Association Properties; and
- (i) receive written notice of any damage to Association Properties if the cost of reconstruction exceeds ten thousand and 00/100 dollars (\$10,000.00), and of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

Section 15.6 Priority of First Mortgage Over Assessments. Each First Mortgagee who recorded its First Mortgage before Assessments have become delinquent and who obtains title to the Lot encumbered by the First Mortgage, whether pursuant to the remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot other

than as provided for in the CCIOA. A First Mortgagee shall be deemed to have acquired title to a Lot on the date of receipt of a deed in lieu of foreclosure, on the date of receipt of a certificate of purchase from the Public Trustee, or on the date of sale pursuant to a judicial foreclosure and receipt of the Sheriff's certificate of purchase, as the case may be.

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

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

Section 15.9 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. MT on the second (2nd) business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association in accordance with this Section 15.9.

Section 15.10 Those Entitled to Enforce Declaration. The Association or any Association Member (acting on such Association Member's own behalf) shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration and the other Association Documents, unless otherwise expressly stated herein. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of the Association Documents, and all other rights and remedies provided in the Association Documents and at law or in equity.

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

Section 15.12 Remedies Cumulative. Each remedy provided under the Association Documents is cumulative and not exclusive.

Section 15.13 Costs and Expenses. In addition to any other rights provided herein and not by way of limitation thereof, a Person that seeks to enforce the Association Documents and prevails shall be awarded such Person's Costs and Expenses in connection therewith.

Section 15.14 Limitation on Liability. The Association, the Architectural Control Committee, Declarant, and their respective Representatives shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and shall be indemnified by the Association to the fullest extent permitted by Colorado Law, including without limitation circumstances in which indemnification is otherwise discretionary under Colorado Law, in accordance with and subject to the terms and limitations contained in the Bylaws.

Section 15.15 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its Representatives in connection with any portion of the Community Area, or any Improvements thereon, as to its or their physical condition, zoning, compliance with applicable Laws, water availability, access, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a writing signed by Declarant.

Section 15.16 Liberal Interpretation. The provisions of the Association Documents shall be liberally construed as a whole to effectuate the purposes of the Association Documents. The use of the word "including" and derivations thereof, when following any general statement, term or matter, shall mean "including without limitation" and shall not be construed to limit such statement, term or matter to the specific items or matters immediately following such word or words whether alone or in a series and whether non-limiting language (such as "without limitation" or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

Section 15.17 Governing Law. The Association Documents shall be construed in accordance with and governed by the Laws of the State of Colorado, without regard to any conflict of law or choice of law principles that might otherwise require application of the Laws of another jurisdiction.

Section 15.18 Severability. Each of the provisions of the Association Documents shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 15.19 Number and Gender. Unless the context requires a contrary construction, as used in the Association Documents, the singular shall include the plural and the plural shall include the singular, and the use of any gender or pronoun shall be interpreted as gender inclusive.

Section 15.20 Captions for Convenience. The titles, headings and captions used in the Association Documents are intended solely for convenience of reference and are not intended to affect the meaning of any provision of this Declaration.

Section 15.21 Mergers and Consolidation. The Association may merge or consolidate with another incorporated association to the extent permitted by applicable Law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of Law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of Law, be added to the properties, rights and obligations of the Association as a surviving corporation. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration and the other Association Documents as one plan together with the covenants, conditions and restrictions established upon any other property. Notwithstanding the foregoing, the Association shall have the right to merge into or consolidate with one or more other associations (or other Persons as allowed by applicable Law) upon a vote of the respective governing boards of such associations or Persons.

Section 15.22 Conflicts in Documents. In the event of any conflict between this Declaration and the Articles of Incorporation or the Bylaws of the Association, this Declaration shall govern and control. In the event of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall govern and control.

Section 15.23 Interpretive Authority Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intent or meaning of any provision of this Declaration, Declarant, during the Period of Declarant Control, and thereafter the Association (each, the “Interpretive Authority”), shall determine the proper construction of the provisions in question and shall set forth in a written instrument duly acknowledged by the Interpretive Authority and filed of record in the County’s real property records, the meaning, effect, and application of the provision. This determination will thereafter be binding on all parties so long as it is not arbitrary or capricious. Nothing contained herein will permit the Association to interpret the provisions of Article 14 in any manner that limits Declarant’s authority and/or rights thereunder.

ARTICLE 16 **DISCLOSURES**

Section 16.1 Statutory Disclosure. Each Lot in the Community Area is within the Sterling Ranch Metropolitan Districts, and is subject to a mill levy to pay indebtedness of such Districts. C.R.S. § 38-35.7-101 requires that the following disclosure be made to you:

SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT

SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

Section 16.2 Inclusion in Districts. Each Lot within the Community Area is included in the District as referenced in the Consolidated Service Plan for Sterling Ranch Metropolitan District No. 1, No. 2, and No. 3 dated June 9, 2010, and recorded on May 21, 2014, at Reception No. 214042782 recorded in the County's real property records. The Lots within the Community Area will be subject to any tax, assessment, fee, charge or increase in mill levy resulting from inclusion of the Community Area in these Districts.

Section 16.3 Plat and Development Plan Restrictions. Each Owner is obligated to become familiar with the Development Plan and Plats, which may contain general notes and restrictions affecting such Owner, including such Owner's Lot, which shall be enforceable as against such Owner.

ARTICLE 17 **LANDSCAPE ASSURANCE**

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

Section 17.2 Use of Landscape Assurance. The Association shall have the right, but not the obligation, without further notice or rights by the Owner, to utilize the Landscape Assurance in the manner provided for in this Article 17. Any use of the Landscape Assurance will require an Owner to immediately provide the Association with additional funds to replenish the portion of the Landscape Assurance that is utilized.

Section 17.3 Ongoing Maintenance. In addition to, and not in limitation of, the potential violations that can be cured by the use of the Landscape Assurance, if, at the time the Landscape Assurance is being held by the Association and has not be repaid to the Owner or forfeited to the Association, the Association reasonably determines that a Lot has not been properly maintained, the Association may, on behalf of the Owner: (a) cause the vegetation on the Lot to be cut, noxious weeds to be removed or sprayed with weed control, and/or dead vegetation to be removed; (b)

remove trash and other debris from the Lot; and/or (c) install or repair any fences, silt screens or drainage control items.

Section 17.4 Remediation. Prior to the release of the entire Landscape Assurance, the Association may, on behalf of an Owner, undertake a cure that the Association determines to be reasonable of violations of this Declaration, the Community Standards and/or any other Association Document. Upon such Association undertaking, the Association will deduct the Costs and Expenses of that action from the Landscape Assurance, which shall be replenished by the Owner in accordance with Section 17.2.

Section 17.5 Revegetation and Landscape Installation. In the event Landscaping is not timely, properly or fully installed on the Lot as provided for in this Declaration and the Community Standards, the Association may install, complete or repair the Landscaping on behalf of the applicable Owner, with the right to utilize the applicable Landscape Assurance for that action, subject to replenishment as provided in Section 17.2.

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

Section 17.7 Fees and Charges. Each Owner acknowledges that the Association will impose, directly or on behalf of third party contractors, various inspection and review fees and charges. These charges will be deducted from the Landscape Assurance, subject to replenishment as provided in Section 17.2.

Section 17.8 Balance. Following completion of construction of a Dwelling Unit and proper Landscaping as provided for in this Declaration, the Community Standards, and other Association Documents, the Owner shall be responsible for scheduling a final inspection (the "Final Inspection"). In the event an Owner fails to request and pass a Final Inspection prior to the conveyance of the Lot, the remaining Landscape Assurance then held by the Association shall be deemed automatically transferred with title to the Lot unless the Association, prior to or contemporaneously with the Lot transfer, receives instructions otherwise from the Owner and receives a replacement Landscape Assurance from the new Owner in the same amount then being held by the Association. In the event an Owner fails to request and pass a Final Inspection prior to one (1) year following the issuance of a Certificate of Occupancy for the Dwelling Unit (the "Termination Date"), the portion of the Landscape Assurance then being held by the Association shall become the Association's sole and exclusive property. Neither the transfer of the Lot nor replacement of the Landscape Assurance by a purchaser will extend the Termination Date.

[Remainder of page intentionally left blank. Signature pages follow.]

*[Signature Page –Declaration of Covenants, Conditions, Restrictions and Easements
for Sterling Ranch East]*

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective on the day and year first above written.

DECLARANT:

CLASSIC SRJ LAND, LLC,
a Colorado limited liability company

ATTEST:

By: _____
Its: _____

By: _____
Name: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, as Manager of **CLASSIC SRJ LAND, LLC**, a Colorado limited liability company.

Witness my hand and official seal.
My Commission Expires: _____.

[SEAL]

Notary Public

CONSENT

This Declaration is hereby consented to by **Sterling Ranch East Homeowners Association, Inc.**, a Colorado nonprofit corporation.

**STERLING RANCH EAST
HOMEOWNERS ASSOCIATION, INC.**
a Colorado corporation

By: _____
Name: Jerald Richardson
Title: President

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Jerald Richardson, as President of **Sterling Ranch East Homeowners Association, Inc.**, a Colorado nonprofit corporation.

Witness my hand and official seal.
My Commission Expires: _____.

[SEAL]

Notary Public

EXHIBIT A
TO
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR STERLING RANCH EAST

LEGAL DESCRIPTION OF THE COMMUNITY AREA

EXHIBIT B
TO
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR STERLING RANCH EAST

EXPANSION PROPERTY