

Chuck Broerman  
12/10/2020 03:09:42 PM  
Doc \$0.00 55  
Rec \$283.00 Pages

El Paso County, CO



220202071

**DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**TOWNES AT LORSON RANCH**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TOWNES AT LORSON RANCH CONTAINS MANDATORY ALTERNATIVE DISPUTE RESOLUTION PROVISIONS, IN LIEU OF LITIGATION, THAT CANNOT BE AMENDED OR DELETED WITHOUT DECLARANT CONSENT**

## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TOWNES AT LORSON RANCH**

This Declaration of covenants, conditions, and restrictions of Townes at Lorson Ranch ("Declaration") is made as of November 20, 2020, by CH Lorson, LLC, a Colorado limited liability company ("Declarant").

### **BACKGROUND AND PURPOSE**

This Declaration is executed and recorded (a) in furtherance of a common and general plan for those parcels of land described in Exhibit A attached hereto (the "Community Area") and all other real property subsequently included within the Community Area; (b) to protect and enhance the quality, value, desirability and attractiveness of all property within the Community Area; (c) to provide for a homeowners' association (the "Association") to hold, manage and/or maintain common properties and amenities within the Community Area and to perform certain functions for the benefit of owners of land within the Community Area; and (d) to define duties, powers and rights of the Association, the Declarant, and Owners of property within the Community Area.

The Community Area is known as Townes at Lorson Ranch, a residential development within the Lorson Ranch Community in the City of Colorado Springs, El Paso County, Colorado.

### **DECLARATION**

NOW, THEREFORE, Declarant, for itself, its successors and assigns, hereby declares that the Community Area is and shall henceforth be owned, held, encumbered, leased, improved, used, occupied, enjoyed and conveyed subject to the following uniform covenants, conditions and restrictions in furtherance of a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Community Area, and to enhance the value, desirability and attractiveness of this development. This Declaration is intended to and shall run with the land and shall be binding on all persons having or acquiring any interest in the Community Area or any part thereof; shall inure to the benefit of and be binding upon every part of the Community Area and every interest therein; and shall inure to the benefit of, be binding upon and be enforceable by Declarant, its successors in interest, each Owner and such Owner's successors in interest, and the Association and its successors in interest.

THE TERMS AND PROVISIONS OF THIS DECLARATION REQUIRING ALTERNATIVE DISPUTE RESOLUTION FOR CONSTRUCTION DEFECT CLAIMS INURE TO THE BENEFIT OF DECLARANT AND THE DEVELOPMENT PARTIES (AS DEFINED IN SECTION 13.01 BELOW), ARE ENFORCEABLE BY DECLARANT AND SHALL NOT BE AMENDED FOR A PERIOD OF 25 YEARS FROM THE DATE THIS DECLARATION IS RECORDED WITH THE CLERK AND RECORDER WITHOUT THE WRITTEN CONSENT OF DECLARANT, WITHOUT REGARD TO WHETHER DECLARANT OWNS ANY PORTION OF THE COMMUNITY AREA AT THE TIME OF SUCH AMENDMENT. BY TAKING TITLE TO A LOT, ALL OWNERS AND THE ASSOCIATION ACKNOWLEDGE AND AGREE THAT DECLARATION PROVISIONS REQUIRING ALTERNATIVE DISPUTE RESOLUTION OF CONSTRUCTION DEFECT CLAIMS ARE A SIGNIFICANT INDUCEMENT TO THE DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE LOTS AND THAT IN THE ABSENCE OF THE ALTERNATIVE DISPUTE RESOLUTION PROVISIONS CONTAINED IN THIS DECLARATION, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE LOTS FOR THE

**PRICES PAID BY THE ORIGINAL PURCHASERS.**

**Article I. DEFINITIONS**

Section 1.01 The following words and phrases when used herein shall have the meanings hereinafter specified.

Section 1.02 "Act" shall mean the Colorado Common Interest Ownership Act, C.R.S. Sec. 38-33.3-101 et. seq., as it may be amended.

Section 1.03 "Architectural Committee" shall mean the committee created pursuant to Article 5.

Section 1.04 "Articles" shall mean the Articles of Incorporation of Ponderosa Filing No. 3 Homeowner's Association, Inc., which have been filed with the Colorado Secretary of State, as the same may from time to time be amended.

Section 1.05 "Assessment" shall mean all Community Area assessments and any other expense levied to Lots pursuant to this Declaration or the Colorado Common Interest Ownership Act, as it may be amended, including any late fees, attorney fees, fines and costs and as further set forth in Article 9.

Section 1.06 "Association" shall mean Ponderosa Filing No. 3 Homeowners Association, Inc., a Colorado nonprofit corporation, its successors, and assigns.

Section 1.07 "Association Documents" shall mean the various operating documents of the Association, as they may be amended from time to time, to include, without limitation, the Articles; Bylaws; this Declaration and any amendments thereto; Plats; Design Guidelines; and Rules and Regulations.

Section 1.08 "Association Properties" shall mean all real and personal property, together with any Improvements and appurtenances and rights thereto, now or hereafter owned or leased by the Association.

Section 1.09 "Board" shall mean the board of directors of the Association.

Section 1.10 "Builder" shall mean any Person purchasing a Lot for the purpose of constructing a Home to be sold to an Owner, or any Person hired by an Owner to construct a Home on the Owner's Lot.

Section 1.11 Bylaws shall mean the Bylaws of the Association, as adopted by the Board and as amended from time to time.

Section 1.12 "Community Area" shall initially mean the real property described Exhibit A attached hereto and all real property that becomes subject to this Declaration in the future pursuant to annexation or other document recorded in the records of El Paso County, Colorado.

Section 1.13 "Declarant" shall mean CH Lorson, LLC, a Colorado limited liability company, and any person or entity to which CH Lorson, LLC, specifically assigns all or a portion of its rights or obligations as Declarant under this Declaration by written document recorded in the records of El Paso County,

Colorado, and its successors and assigns. A successor to CH Lorson, LLC, by consolidation or merger shall automatically be deemed a successor or assign of CH Lorson, LLC, as Declarant under this Declaration.

Section 1.14 "Design Guidelines" shall mean the architectural, construction, landscape, structural and/or aesthetic criteria, rules or standards, if any, established by the Architectural Committee from time to time that will apply to Improvements within all or specified portions of the Community Area.

Section 1.15 Expansion Area – there will be no expansion area for this community.

Section 1.16 "First Mortgage" shall mean any unpaid and outstanding deed of trust, mortgage, or other security interest upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute.

Section 1.17 "First Mortgagee" shall mean the beneficiary named in such a deed of trust, mortgage or security interest and any successor in interest to such person.

Section 1.18 "Home" shall mean an Improvement on a lot that is intended to be used for residential occupancy.

Section 1.19 "Improvement" shall mean anything which alters the previously existing exterior appearance of any land, all structures and appurtenances thereto including, but not limited to, Homes, buildings, patios, garages, doghouses, pet enclosures, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, and poles, tanks, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, radio, television (including cable or satellite systems), or other utilities.

Section 1.20 "Landscape" shall mean the treatment of ground surface with live plant materials or decorative surfacing materials approved by the Architectural Committee and shall include related irrigation or watering systems.

Section 1.21 "Lot" shall mean a parcel of land designated as a lot, a separate parcel of land, improved or unimproved, in a recorded Plat within the Community Area, together with all appurtenances and Improvements associated therewith, now existing or subsequently created.

Section 1.22 "Member" shall mean a member of the Association, who must also be an Owner. Membership in the Association shall be appurtenant to, and may not be severed from, Ownership of a Lot.

Section 1.23 "Mortgage" shall mean any mortgage or deed of trust given to secure the payment of a debt and encumbering any Lot or any Improvements thereon.

Section 1.24 "Multiplex" means each of the residential buildings constructed on the Property comprised of more than one attached Unit, which may be referred to collectively as the "Multiplexes".

Section 1.25 "Notice" shall have the meaning set forth in Section 6.08 of this Declaration.

Section 1.26 "Owner" shall mean the record title holder, including Declarant, whether one or more Persons, of fee simple title to a Lot.

Section 1.27 "Party Wall" means the foundation wall, the footing under such foundation wall, the shaft liner fire wall supported by the foundation and a roof sheathing or parapet, if existing, capping such fire wall which are part of the original construction of the Units located on the Lots and are located and constructed on or adjacent to the common Lot boundary line which separates two adjoining Lots, and which constitutes a common wall between adjoining Units, as such Party Wall may be repaired or reconstructed. A Party Wall is a structural part of and physically joins the adjoining Units on each side of the Party Wall. Without limiting the foregoing, the term "Party Wall", as used herein, shall also include any two (2) walls that generally meet the foregoing definition, and that together constitute the wall between two adjoining Units, even if such walls are separated by a de-minimus amount of air space.

Section 1.28 "Period of Declarant Control" shall mean the first to occur of: i) a period of fifteen (15) years commencing on the date of recordation of this Declaration; ii) the date when Declarant no longer owns any real property within the Community Area; or iii) the date when Declarant records a document terminating the Period of Declarant Control in the records of El Paso County, Colorado.

Section 1.29 "Person" shall mean a natural individual, trust or legal entity with the legal right to hold title to real property.

Section 1.30 "Pet" shall mean and include any dogs, cats, birds, reptiles, or other household animals as may be further defined in or supplemented by the Rules and Regulations.

Section 1.31 "Plans" shall mean any and all documents designed to guide or control an Improvement or other proposals in question, including but not limited to those indicating size, shape, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utilities services and all other documentation or information relevant to the Improvement or proposal in question.

Section 1.32 "Plat" shall mean a governmentally approved and recorded map of land that is part of the Community Area. All such Plats are incorporated herein by reference and include a part hereof as though attached as an Exhibit.

Section 1.33 "Rebuilding" or "Restoration" means restoring an Improvement to substantially the same condition it was prior to damage, and with the same boundaries as before.

Section 1.34 "Rules and Regulations" shall mean those written instruments, however identified, if any, adopted by the Board as provided in Section 6.07(d) of this Declaration, for the regulation and management of the community, and as the same may be amended from time to time.

Section 1.35 "Unit" means any one of the individual residential dwelling units comprising the Multiplexes and "Units" means all of the residential dwelling units comprising the Multiplexes.

## **Article II. DEVELOPMENT AND EXPANSION**

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

**Section 2.01** All lands and Improvements contained within the Community Area shall be subject to this Declaration. Declarant shall, however, have absolute and complete discretion with respect to the designation of Lots and the manner in which the planning and build-out of the Community Area development is to progress. All covenants, conditions and restrictions which are granted or created by this Declaration shall be deemed to be covenants appurtenant to and running with the land and shall at all times inure to the benefit of and be binding on any Person having any interest in the Community Area, their respective heirs, successors, personal representatives or assigns, except as otherwise provided herein.

**Section 2.02** Expansion. During the Period of Declarant Control, Declarant may, at any time and from time to time, add to the real property which is the subject of this Declaration and which becomes a part of the Community Area. Additional real property described in a recorded document that incorporates this Declaration, including any amendments to this Declaration specific to the additional real property, will become part of the Community Area, and subject to this Declaration.

**Section 2.03** Withdrawal. Declarant reserves the right to withdraw any real property within the Community Area, from the jurisdiction of this Declaration, so long as consent is obtained from the owner of the real property to be withdrawn.

### **Article III. COVENANTS TO PRESERVE THE CHARACTER OF THE COMMUNITY**

**Section 3.01** All real property within the Community Area shall be owned, held, conveyed, encumbered, leased, used, occupied and enjoyed subject to the limitations contained in this Article. These covenants are adopted to preserve the desirability, attractiveness and value of property in the Community Area, and to assure the continuing quality and maintenance of Association Properties and facilities that benefit the residents of the Community Area. The following restrictions and conditions shall apply to all land that is now or may hereafter be subject to this Declaration.

**Section 3.02** General. All Homes, buildings and structures of any kind shall be constructed, installed and maintained in compliance with City of Colorado Springs, Colorado and El Paso County Regional Building Department standards, ordinances, rules and regulations after obtaining all required permits and licenses, and in accordance with Design Guidelines, as those may be amended from time to time. Except as otherwise provided for herein and except for Association Properties, all Lots shall be used only for residential purposes and ancillary uses thereto.

**Section 3.03** Improvements. All Improvements placed on a Lot shall be subject to prior approval in writing by the Architectural Committee, as further defined in Article 5 of this Declaration.

**Section 3.04** Construction.

- (a) **Construction Type.** All construction shall be new. Any building previously used at another location or any building or Improvement originally constructed as a mobile dwelling may not be moved onto a Lot except as expressly provided in Section 3.07 for temporary construction, sales or administration buildings or as approved by the Architectural Committee.

- (b) **Minimum Home Size.** In the event of the destruction of any Home, unit or dwelling unit, any rebuilding shall be to the same approximate size and specifications as previously existed.
- (c) **Storage.** Building materials may not be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement, unless such building materials are stored in an enclosed area and fully screened; except that Declarant and Builders, with the prior written approval of Declarant, may store building materials, supplies and equipment on their own land in the Community Area.
- (d) **Construction Rules and Regulations.** During the period of construction of a Home, building or other Improvement on a Lot, the Owner of the Lot or the Builder shall comply with all construction rules and regulations which Declarant or the Architectural Committee may establish from time to time.
- (e) **Construction Completion.** All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed. The exterior of all Homes, buildings or Improvements must be completed within ten (10) months after the commencement of construction, or such other time as the Architectural Committee deems reasonable under the circumstances due to the nature of the Community Area or other factors. "Commencement of Construction" for a Home or building is defined as the obtaining of necessary building permits and the excavation of earth for a foundation and shall be defined as the undertaking of any visible exterior work, for all other Improvements. If construction is not completed within the above time periods or such later time as approved by the Architectural Committee, the Architectural Committee may take further action as provided for in this Declaration.
- (f) **Occupancy.** Any Home or building constructed on a Lot shall not be occupied in the course of original construction until the applicable building authority authorizes such occupancy.
- (g) **Landscaping.** Within six (6) months after occupancy of a Home on a Lot, all Landscaping shown on a landscaping plan approved by the Architectural Committee must be properly installed. The Board may, however, grant extensions to this deadline based on weather conditions. All initial front and rear yard landscaping shall be provided by the Builder or developer. Any changes or alternations to landscaping must be approved by the Architectural Committee and if changes affect drainage they must be reviewed and stamped by a civil engineer.
- (h) **Fences or Walls.** Fences or Walls, if allowed and approved by the HOA must be constructed in compliance with the Design Guidelines. Initial fences, if any, will be installed by the Builder per the Plans.
- (i) **Construction of Sales Offices.** Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained by a Builder with the permission of the Architectural Committee. Model homes may be used and exhibited by a Builder with the permission of the Architectural Committee. Temporary buildings shall be promptly removed when they cease to be used for construction or sales purposes.
- (j) **Utilities.** All utilities serving a Lot will be placed underground. Declarant reserves the right to locate main transmission lines above ground if determined to be advisable. The Architectural

Committee may grant approval for temporary above ground utility service during construction.

**Section 3.05 Mining and Drilling.** No portion of the Community Area may be used for the purpose of mining, quarrying, drilling, boring or exploring or for removing oil, gas or other hydrocarbons, water, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth. Excavations and earthwork related to the drilling of wells and the construction of Improvements within the Community Area will not be deemed a violation of this Section.

**Section 3.06 Rebuilding or Restoration.** If any Improvement is destroyed in whole or in part, it must be rebuilt or all debris must be removed and the Home, Improvements and/or Lot restored to a safe and attractive condition. Such rebuilding or restoration must be commenced within thirty (30) days after the damage or destruction occurs and thereafter diligently pursued to completion within a reasonable time, not to exceed ten (10) months after the date the damage occurred or such longer period of time as may be approved by the Architectural Committee. If restoration or rebuilding is not completed within the above time periods or such later time approved by the Architectural Committee, or if the restoration or rebuilding shall cease for a period of twenty (20) consecutive days without permission of the Architectural Committee, the Architectural Committee may give written notice to the Owner that unless the restoration is diligently pursued within the ten (10) days following notice, the Improvement will be declared a nuisance and the Association shall have the right to enter on the Lot and remove, rebuild or restore the Improvements at the Owner's expense, or take such other action pursuant to this Declaration or the Association Documents. The Association's entry on the property for such purpose shall not be deemed a trespass.

**Section 3.07 Declarant Exemption.** During the Period of Declarant Control, this Declaration will not prevent or limit the right of Declarant to construct any and all types of Improvements or to construct and maintain model homes, sales offices, management offices and similar facilities; to post signs incidental to construction, sales and leasing within the Community Area; and to store construction materials, supplies and equipment on land controlled by Declarant, or to grant similar rights described in this Section 3.07 to a Builder.

#### **Article IV. LIVING ENVIRONMENT STANDARDS**

**Section 4.01 Grounds Maintenance.** The exterior of all Improvements and grounds of a Lot will be maintained by the HOA. Such obligation includes, but is not limited to, maintaining the exterior materials and finishes of the Improvements, initial installed fencing, Landscaping, drainage areas, driveways and sidewalks. Irrigation of Landscaping will in compliance with any applicable City of Colorado Springs watering ordinance. If an Owner damages the Improvements or interferes with the maintenance by the HOA, the Association may give written notice to the Owner that, unless the required maintenance is diligently pursued or repaired within the ten (10) days following such notice, the property will be declared a nuisance and the Association shall have the right to enter on the Lot and repair, rebuild or maintain the Improvement at the Owner's expense. The Association's entry for such purpose shall not be deemed a trespass. All public area landscaping, (including front yards on individual homeowners' lots) is the maintenance responsibility of the HOA and is not to be changed or modified by any Owner or other person without prior consent of the HOA.

**Section 4.02 Garage Doors.** Owners must keep their garage doors closed except when being used for ingress and egress to or from the garage or when the garage is being actively attended for cleaning, etc.



**Section 4.03 Outside Storage.** Equipment, tools and other items must be stored in an enclosed building or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets. If storage of materials is to exceed 15 days, the Architectural Committee must approve the duration and enclosure or screened area to ensure the community appearance is upheld and maintained.

**Section 4.04 Carports, Patio Covers, Pergolas, Outdoor Clotheslines, Swing sets and Other Similar Structures.** These structures or other similar facilities may only be installed on a Lot in accordance with the Design Guidelines or as approved by the Architectural Committee. No structures may be attached to the exterior of a home without express written approval of the Architectural Committee.

**Section 4.05 Refuse.** Unsightly objects or materials, including but not limited to ashes, trash, garbage, grass or shrub clippings, scrap material or other refuse, or containers for such items, must not be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during hours of refuse collection.

**Section 4.06 Nuisances.** Noxious, hazardous or offensive activity must not be carried in or upon any Lot, Home or Improvement, nor may anything be done on a Lot tending to cause unreasonable embarrassment, discomfort, annoyance, nuisance or disturbance to any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot, Home or Improvement or any portion of the Community Area.

**Section 4.07 Lights, Sounds, and Odors.** Lights that are unreasonably bright or cause unreasonable glare, and sounds or odors that are noxious or offensive to others are not permitted to emanate from any Lot.

**Section 4.08 Weeds.** The entire area of every Lot on which no Improvement has been constructed must be kept free from plants and weeds infected with noxious insects or plant diseases and from weeds which, in the reasonable opinion of the Board or the Architectural Committee, constitute a nuisance or are likely to cause the spread of infection or weeds to neighboring property, and free from brush or other growth which creates an undue danger of fire.

**Section 4.09 Grading Patterns.** Material changes shall not be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original finish grading without the prior approval of the Architectural Committee. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and to protect foundations and footings from excess moisture. In the event it is necessary or desirable to change the established drainage over any Lot then the party responsible for the maintenance of such real property shall submit a plan to the Architectural Review Committee for its review and recommendation to the Board, by which such plan is to be approved in accordance with Article 5 herein.

**Section 4.10 Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot. Pets may be kept in reasonable number as determined by the Board, provided that the number of Pets kept on a Lot shall not exceed four (4) animals. No animal of any kind shall be permitted which, in the opinion of the Board, makes an unreasonable amount of noise or odor or is otherwise a nuisance. All animals must be physically leashed with the leash in the hands of a responsible individual when animals are not on the Owner's Lot. No animals may be kept, bred or maintained on a Lot for any commercial purpose. The Owner of a Lot upon which an animal is kept is responsible for payment of

any and all damage caused to the property of others, including Association Properties. Owners are responsible for cleaning up after their pets.

#### Section 4.11 Vehicles.

- (a) **Parking.** A boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle (including those with any signage and/or ladder racks), mobile home, motor homes, any towed trailer unit, motorcycle, all-terrain vehicle, recreational vehicle or truck shall not be parked on any street or within any Lot except in a completely enclosed building such as a garage, or unless screened in a manner approved by the Architectural Committee. Passenger vehicles owned, leased, rented or used by Owners or any other Person privately used as primary transportation on a day-to-day basis shall not be parked on any street within the Community Area between the hours of midnight and 5am. In the event an Owner needs to perform loading or unloading, then the vehicle may remain parked on the street or Lot for a period of up to 24 hours.
- (b) **Vehicle Repairs.** The maintenance, servicing, repair, dismantling, sanding or repairing of any type of vehicle, boat, machine, apparatus, trailer, equipment or device may not be carried on except within a completely enclosed Improvement which screens the sight and sound of the activity from adjoining streets; and from neighboring property.
- (c) **Abandoned or Inoperable Vehicles and Equipment.** Any type of stripped down, partially wrecked, abandoned, unlicensed, inoperable or other similar vehicle boat, machine, apparatus, trailer, equipment or device, or any sizeable part thereof which has not been driven under its own propulsion for a period of 72 hours or longer, shall not be permitted to be placed anywhere within the Community Area except within a completely enclosed Improvement. Upon prior notice to the Owner or a good faith attempt to notify the Owner, the Association has the right to remove the vehicle or equipment at the Owner's expense.
- (d) If any vehicle, boat, machine or similar equipment described in this Section is in violation of this Section or of any of the Associations Rules and Regulations, the Association shall place a notice on the vehicle or other such similar equipment specifying: i) the nature of the violation; ii) providing a name and number of a person to contact regarding the violation; and iii) stating that the vehicle or similar equipment shall be towed within a reasonable amount of time from the notice if the violation is not cured. If the violation continues beyond the time to cure then the vehicle or similar equipment may be towed in accordance with the notice, without further notice and the owner shall be solely responsible for all costs associated therewith.
- (e) **Public parking spaces** are not to be used for storage of homeowner vehicles but are intended to be guest parking within the development. Long-term use of public parking within the development by homeowners is strictly prohibited.

**Section 4.12 Flags and Signs.** Any sign, poster, billboard, advertising device or display of any kind shall be erected or maintained on a Lot unless approved in writing by the Association or is in compliance with the Design Guidelines. Political signs intended to impact the outcome of an election or ballot issue may be displayed in accordance with the Association Rules and Regulations. One professionally lettered "For Sale" or "For Rent" sign not more than five (5) square feet and one professionally lettered security or alarm sign not exceeding one (1) square foot shall be displayed on a Lot. The installation of any flagpole must be approved by the Architectural Committee.

**Section 4.13 Outdoor Burning.** Outside burning of leaves, trash, garbage or household refuse is not permitted. Fires in barbecues and outside fireplaces contained within facilities or receptacles intended for such purpose will be allowed, and any outside facilities intended for use as a fireplace or to contain fires will be in compliance with Design Guidelines or otherwise approved by the Architectural Committee.

**Section 4.14 Temporary Buildings.** A temporary house, trailer, tent, garage or other outbuilding will not be placed or erected on a Lot or used as a residence.

**Section 4.15 Solar Energy Devices.** All solar energy devices must be aesthetically integrated into the Home or building they serve or adequately screened from the view of neighbors and adjacent streets, and must be approved in advance by the Architectural Committee.

**Section 4.16 Manufacturing or Commercial Enterprise.** No manufacturing or commercial enterprise or other activity conducted for gain may be conducted or maintained upon, in front of, or in connection with any Lot. A home office may be maintained on a Lot as long as it is in compliance with all applicable City of Colorado Springs Laws and ordinances and does not create a change in regular residential traffic and parking practices.

**Section 4.17 Subdivision of Lots.** No Lot may be subdivided or further divided by an Owner other than Declarant.

**Section 4.18 Antennas, Roof Community Aerations, Satellite Dishes.** Except as provided below in this Section, no aerial, antenna or other device for reception of radio, HAM radio, television, or other electronic signals may be maintained on the exterior or roof of any building, nor will such structure be mounted at any location so as to be visible from neighboring properties or adjacent streets. Plans for structures, other than FCC Structures (as defined below) must be approved by the Architectural Committee prior to installation. An "FCC Structure" is defined as an antenna that is (i) designed to receive direct broadcast satellite service that is one meter or less in diameter, (ii) designed to receive video programming services via multiple distribution services that is one meter or less in diameter or diagonal measurement, or (iii) that is designed to receive television broadcast signals, as defined by the Federal Communications Commission or the Telecommunications Act of 1996, as amended. An FCC Structure will be permitted so long as the means, method and location of such structure comply with the Design Guidelines or as approved by the Architectural Committee.

**Section 4.19 Use/Occupancy.** All Lots shall only be used for those uses and/or purposes as allowed by the local zoning control and regulation and permitted by this Declaration, subject to any Rules and Regulations adopted by the Association. Lots shall not be used for any purpose other than a residential dwelling except as set forth in this Section.

**Section 4.20 No Hazardous Activities.** No activity shall be conducted on and no Improvement shall be constructed on any lot or Community Area which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot. No open fires shall be permitted on any Lot except in a contained unit while attended and in use for cooking purposes.

**Section 4.21 Compliance with Governing Documents and Other Laws.** Each Owner shall strictly

comply with the provisions of this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations, as may be amended, and all valid laws and regulations of all governmental bodies having jurisdiction over the lot or Community Area or any portion thereof.

## **Article V. ARCHITECTURAL REVIEW**

**Section 5.01 Architectural Committee.** During the Period of Declarant's Control, or until such earlier time as Declarant elects to assign to the Board the right to appoint the Architectural Committee, the Declarant shall appoint the Architectural Committee. The Architectural Committee will initially consist of two members. After the right to appoint the Architectural Committee has been transferred to the Board, the Architectural Committee shall consist of at least three and not more than five individuals, all of whom shall be appointed by the Board. In lieu of appointing an Architectural Committee, the Board may act as the Architectural Committee. The Architectural Committee shall exercise the functions assigned to it by the Board, this Declaration and any Design Guidelines.

**Section 5.02 Composition of the Architectural Committee.** Individuals appointed to serve on the Architectural Committee shall serve for a three-year term and may be removed by a majority vote of the Board. After the right to appoint the Architectural Committee has been transferred to the Board, if a vacancy on the Architectural Committee occurs for any reason, a majority of the Board may appoint a replacement to complete the unexpired term. Architectural Committee members need not be Owners.

**Section 5.03 Design Guidelines.** The Architectural Committee may from time to time adopt Design Guidelines applicable to Improvements within the Community Area. Such Design Guidelines may regulate, without limitation, the following matters: a) site location; b) architectural design; c) site accessories; (e.g., lights, signs); d) landscape design; e) building size and height; and f) approval processes. The Architectural Committee shall have the right to modify or supplement the Design Guidelines from time to time in its sole discretion; provided, however, that no modification to the Design Guidelines may result in a provision that conflicts with this Declaration.

**Section 5.04 Approval Required.** Except for Declarant's exemption as provided for in Section 3.07, an Improvement shall not be placed, erected, installed or permitted to exist on any Lot, the exterior of any existing Improvements shall not be painted, changed or altered, and construction shall not be commenced on any Improvements, unless and until the Plans for such Improvement have been submitted to and approved in writing by the Architectural Committee. Improvements installed or constructed prior to Architectural Committee written approval, or not installed or constructed in compliance with the approved Plans, shall be deemed to be in non-compliance and may be subject to enforcement action in accordance with Section 6.07(g).

**Section 5.05 Submittal of Plans.** The requirements for submittal of Plans to the Architectural Committee shall be set forth in the Design Guidelines. The Owners shall immediately comply with any request by the Association for additional information relating to an Improvement prior to the Architectural Committee's approval of a request. Failure to comply with requests for additional information will result in the denial of an application.

**Section 5.06 Approval Process.** All action required or permitted to be taken by the Architectural Committee must be stated in writing, and any such written statement must establish the action of the Architectural Committee. The Architectural Committee will approve or disapprove Plans within thirty (30) days following submission of a complete set of Plans. If the Architectural Committee does not act

within thirty (30) days following submission, the Plans shall be deemed disapproved. The Architectural committee may charge reasonable fees to cover expenses incurred in the professional review of Plans. The Architectural Committee will retain one copy of all approved Plans as part of its records and written records of all actions taken by it that will be available to Owners for inspection at reasonable business hours. Approval of any Plans will automatically expire one year after approval if construction is not commenced within such one year period, and if approval so expires, the applicant must submit a new request for approval. Once construction is commenced, the Owner shall have one year from the date of issuance of a building permit to complete construction.

**Section 5.07 Approval Standards.** In granting or withholding approval of matters submitted to it, the Architectural Committee shall consider the specific standards and specifications set forth in any Design Guidelines then in effect and any other matter whether objective or subjective, that the Architectural Committee feels is relevant to the issue presented. the Architectural Committee shall have the right to disapprove any Plans or details submitted to it if it determines, in its sole discretion, that the proposed Improvement is not consistent with the Design Guidelines or any provision of this Declaration; if the Plans submitted are incomplete; or if the Architectural Committee deems the Plans or details, or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the Community Area, the Association or the Owners. The decisions of the Architectural Committee shall be final and binding unless they are clearly arbitrary and there is no competent evidence to support the Architectural Committee's decision.

**Section 5.08 Variances by Architectural Committee.** The Architectural Committee shall have the authority to grant a Lot a variance from any provision of this Declaration (including any provision of the Design Guidelines) that is within the authority of the Architectural Committee. Such variance will only be made upon the Architectural Committee's finding of exceptional and extraordinary circumstances where literal enforcement of the covenant will create a material hardship to the applicant, and that such a variance is not contrary to the interests of the Community Area, the Association and Owners.

**Section 5.09 No Liability.** The Declarant, the Board and the Architectural Committee, and any member, agent or representative thereof, shall not be liable in damages or otherwise to anyone submitting Plans for approval or requesting a variance, or to any Owner or other Person, by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve the Plans or variance. Approval by the Architectural Committee shall not mean that Plans are in compliance with the requirements of any local building codes, zoning ordinances, or other governmental regulations, and it shall be the responsibility of the Owner or applicant to comply with all codes, ordinances and regulations. It is the intent of this Declaration that the Architectural Committee shall be recognized as a nonprofit organization for purposes of Sections 13-21-115.5, 13-21-115.7 and 13-21-116, Colorado Revised Statutes (and any successor statutes), and that individuals serving on the Architectural Committee shall, to the fullest extent permitted by such statutes, be protected from personal liability.

**Section 5.10 Commencement and Completion of Construction.** All Improvements approved by the Architectural Committee must be commenced within six (6) months from the date of approval unless otherwise stated on the approval form. If not commenced within that time, then the approval shall be deemed revoked, unless the Architectural Committee grants an extension in writing. All approved work must be completed within ninety (90) days unless the Architectural Committee grants an extension in writing.

- (a) Owners shall notify the Architectural Committee five (5) days of such completion.
- (b) Upon completion the Owner authorizes the Architectural Committee or its representative to enter the Lot for exterior inspection.
- (c) Failure to notify the Architectural Committee of the completion or failure to grant the exterior inspection shall result in withdrawal of the Architectural Committee's approval.
- (d) In the event of a withdrawal of Architectural Committee approval for any reason stated in this Section, and upon written request by the Architectural Committee, the Owner, at his sole cost and expense and cost shall promptly restore the Lot to substantially the same condition that existed prior to the commencement of the Improvement's installation or construction, and such withdrawal will be deemed to toll the statute of limitations as it pertains to the Improvement until such time as the Improvement is brought into compliance.

**Section 5.11 Right to Appeal.** An Owner whose Plans have been rejected may appeal such decision to the Board, so long as the Board is not acting as the Architectural Committee. The Board shall review the decision pursuant to the Design Guidelines and this Declaration. The decision may be overruled and reversed on appeal by a majority of the Board in a written decision setting forth the reason(s) for the reversal when the Board concluded the Architectural Committee's decision was inconsistent with the Design Guidelines and this Declaration.

**Section 5.12 Enforcement.** Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right, but not the obligation, to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association may be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter. In addition, or in the alternative, the Association shall have all other enforcement rights as set forth in this Declaration.

**DECLARANT SHALL BE EXEMPT FROM THE PROVISIONS OF THIS DESIGN REVIEW PROCESS UNTIL THE DECLARANT RIGHTS EXPIRE. DECLARANT MAY IN WRITING EXEMPT ANY APPROVED BUILDER FROM THE PROVISIONS OF THIS DESIGN REVIEW PROCESS UNTIL THE DECLARANT RIGHTS EXPIRE**

## **Article VI. Ponderosa Filing No. 3 Homeowners Association, Inc.**

**Section 6.01 Ponderosa Filing No. 3 Homeowners Association, Inc.,** is a Colorado nonprofit corporation organized to promote the common interests of the members. The Association shall have the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve and enhance Association Properties, and to improve and enhance the attractiveness, desirability, and value of the Community Area.

**Section 6.02 Association Structure.** The Association will have the duties, powers and rights set forth in this Declaration and in the Articles and Bylaws. In case of conflict between this Declaration and the Articles and Bylaws, the Declaration shall control, and in case of conflict between the Articles and Bylaws, the Articles shall control. The Association will have a Board of Directors to manage its affairs.

**Section 6.03 Board of Directors.** The Association will be managed by its Board of Directors, which will consist of not less than three members or as set forth in the Bylaws, though two members may be

allowed during Declarant control. All members of the Board shall be either representatives of Declarant or Members of the Association. The terms and qualifications of the members of the Board will be fixed in the Bylaws. The Board may, by resolution, delegate portions of its authority to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for the management of the Association. Action by or on behalf of the Association may be taken by the Board or any duly authorized committee, officer, agent, or employee without a vote of Members, except as otherwise specifically provided in this Declaration or required by Colorado law. All lawful decisions, agreements and undertakings by the Board, or its authorized representatives, shall be binding upon the Association and all Members, Owners, and other Persons.

- (a) **Conflicts of Interest.** Any conflicting interest transaction (as defined in C.R.S. §7-128-501) on the part of any Director shall be disclosed to the other Directors at the first meeting of the Board of Directors at which there is scheduled any discussion or vote on the matter. The interested Director may participate in the discussion or vote on the matter only in accordance with C.R.S. §7-128-501. The minutes of the meeting shall reflect the disclosure made, the abstention from voting, the composition of the quorum and record who voted for and against.
- (b) **Failure to Disclose Conflict.** A conflicting interest transaction will not be void or voidable and may not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a member of the Association or by or in the right of the Association, solely because the conflicting interest transaction involves a Director or a party related to a Director or an entity in which a Director is a director or officer or has a financial interest or solely because the Director is present at or participates in the meeting of the Board or of the committee of the Board that authorizes, approves, or ratifies the conflicting interest transaction or solely because the Director's vote is counted for such purpose if: (i) the material facts as to the Director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested directors are less than a quorum; (ii) the material facts as to the Director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the members entitled to vote thereon, and the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon; or (iii) the conflicting interest transaction is fair as to the Association. For purposes of the foregoing, common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Directors or of a committee which authorizes, approves, or ratifies the conflicting interest transaction. If a contract or decision made in violation of this Resolution is deemed void and unenforceable, the Board, at the next meeting of the Board, shall vote again on such contract, decision or other action taken in violation of this Resolution.

**Section 6.04 Appointment of the Board.** Declarant reserves the right to appoint and remove Officers and members of the Board in its sole discretion during the Period of Declarant Control.

**Section 6.05 Membership in the Association.** Each Owner shall be a Member of the Association. Membership shall automatically pass with fee simple title to the Lot and is not severable from the Lot. Declarant shall hold one membership interest in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a

Lot, except that an Owner may assign some or all of the Owner's rights as an Owner and as a 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 as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of the Owner under the Association Documents. The rights acquired by any such contract purchaser, tenant or First Mortgagee shall be extinguished automatically upon termination of the sales contract, tenancy or First Mortgage. All rights and privileges of Association membership shall be subject to the Association Documents.

#### **Section 6.06 Voting Rights of Members**

- (a) **Entitlement.** There shall be one vote for each Lot then existing within the Community Area. Each Owner of a Lot shall have one vote for each such Lot. Declarant shall be entitled to a number of votes equal to the number of Lots owned by Declarant.
- (b) **Joint or Common Ownership.** If any Lot is owned by more than one Person, the vote to which such Lot is entitled shall also be held jointly or in common in the same manner as title to the Lot. However, the vote for such Lot shall be cast, if at all, as an undivided unit, and neither fractional votes nor split votes shall be allowed. If the common or joint Owners are unable to agree among themselves as to how their vote shall be cast as an undivided unit, they shall lose their right to cast their vote on the matter in question. If only one of the joint or common Owners is present at an Association meeting, that Owner shall be entitled to cast the vote belonging to the joint or common Owners, unless another joint or common Owner shall have delivered to the secretary of the Association prior to the meeting a written statement to the effect that the Owner wishing to cast the vote has not been authorized to do so by the other joint or common Owner or Owners.
- (c) **Proxies.** Any Member, including Declarant, may give a dated, revocable written proxy to any Person authorizing the latter to cast the Member's votes on any matter or a particular matter. Such written proxy shall be executed by the Member or a duly authorized attorney-in-fact. A proxy may be revoked by giving notice to the Board or by the Member's physical presence at the meeting. Proxies shall expire no later than eleven (11) months after the date of the proxy.

#### **Section 6.07 General Duties and Powers of the Association**

- (a) **Acceptance of Property and Facilities Transferred by Declarant.** The Association shall accept title to any real or personal property transferred to the Association by Declarant or by any Person with Declarant's permission, together with the responsibility to perform any and all Association functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and contractual rights or licenses to use property. No representation, express or implied, is made that the Declarant will transfer property to the Association, except as may be specifically provided in this Declaration.
- (b) **Acquisition, Encumbrance, and Conveyance of Property and Improvements.** The Association may acquire real or personal property or interests in such property for the common benefit of Members. Except as provided herein, the Association may encumber or convey Association Properties, provided Members (other than Declarant) holding sixty-seven percent (67%) of the



votes in the Association, agree to such conveyance or encumbrance.

- (c) **Management and Care of Association Properties and other Property.** The Association will maintain, operate and repair all Association Properties and keep the same in an attractive and desirable condition for the use and enjoyment of the Members; provided, however, maintenance responsibilities for any Association Properties will not commence until Assessments commence. The Association may construct or reconstruct improvements on property and may demolish existing improvements. The Association has 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, provided at least some of the Members will benefit thereby or in a circumstance where such maintenance is required pursuant to a Plat, ordinance or other governmental obligation affecting some or all of the Community Area. Without limitation, the Association will maintain the perimeter fencing, entry features and Landscaping located on or within the Association Properties and/or on any tract shown on the Plat. The Association will coordinate its maintenance responsibilities with any applicable Metro District or the City of Colorado Springs where applicable and as set forth on the most recently recorded plat and development plan and will not maintain or improve any portion of the Community Area maintained or improved by the City or District, if applicable.
- (d) **Adoption of Rules and Regulations.** The Association may adopt, amend, repeal, and enforce such Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and matters related thereto, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community Area, including Lots. Any such Rules and Regulations will be reasonable and uniformly applied as determined by the Board in its sole discretion. Written notice of the adoption, amendment or repeal of any Rule or Regulation will be provided to all Members by the Association, and copies of the currently effective Rules and Regulations will be made available to each Member upon request. Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, this Declaration shall prevail.
- (e) **Grant of Easements.** The Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under the Association Properties for any lawful purpose, including, without limitation, the provision of emergency services, utilities, telephone, television, data transmission or other uses or service to some or all of the Members or to facilitate the development of the Community Area.
- (f) **Power to Employ Managers, Consultants, and Employees or to Contract for Management Services.** The Association shall have the power to employ employees or contract with a manager and delegate to them the performance of any functions for which the Association has responsibility under this Declaration, or to contract with an owners association to perform any of the Association's functions including, without limitation, the administration and enforcement of: i) the covenants contained in this Declaration; ii) the Rules and Regulations adopted by the Board; and iii) the Design Guidelines. Notwithstanding such delegation, the Association and the Board shall remain ultimately responsible for the performance and exercise of such duties, powers and functions. The Association may also employ or contract with one or more consultants to assist in operating and managing the Association.

- 1) Pursuant to applicable law, any community manager that is hired or employed by the Association shall be licensed under the Colorado Division of Real Estate.
- (g) **Enforcement of Declaration, Rules and Regulations, or Remedies at Law or in Equity.** The Association shall have the power to enforce the provisions of the Association Documents and shall take such action as the Board deems necessary to cause compliance by each Member, Owner and other Persons, as follows. The Association shall have the power to enforce the provisions of the Association Documents by the following means; (i) by entry upon any property within the Community Area after Notice (unless a bona fide emergency exists), without liability to the Owner or occupants thereof, for the purpose of enforcement of or causing compliance with the Association Documents; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of the Association Documents, by mandatory injunction or otherwise; (iii) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of the Association Documents; (iv) by suspension, after Notice, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or Owner of the Association Documents, unless the breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues; or (v) by levying and collecting, after Notice and opportunity for hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member, Owner or other Person for a violation by such Member, Owner or other Person of the Association Documents. The Association shall have the power to enforce any other remedies at law or in equity as follows: (vi) any suit or action against the Builder, Declarant or other Person alleging a construction defect, no matter how described, pleaded or styled, shall proceed first in mediation as outlined in Article 13 of this Declaration, and if not resolved in mediation, then such action shall be resolved by binding arbitration under the substantive and procedural provisions of the Federal Arbitration Act in harmony with the procedure outlined in Article 13 of this Declaration; and (vii) the Association may exercise any right or remedy consistent with this Declaration and as may be permitted by law or in equity.
- (h) **Provision of Special Services.** The Association will have the power to provide special services to a Member or group of Members. Without limiting the foregoing, the Association shall have the power to select and enter into a contract with one service provider to provide trash removal services for the Community Area. Any services provided under this Section shall be provided pursuant to a written agreement, which will provide for payment to the Association by such Member or group of Members of the expenses which the Association estimates it will incur in providing such services. Such payment may be collected in any manner permitted by law or the Association Documents.
- (i) **Borrowing and Pledge of Future Assessments.** Upon a vote of a majority of the directors in office, the Association may borrow funds for capital or other expenses and grant a security interest in the Association's right to levy and collect assessments as collateral for such borrowing.
- (j) **Grant of Variance.** The Association, through the Board, may grant for an Owner a variance from any provision of this Declaration upon a finding of exceptional and extraordinary circumstances where literal enforcement of the covenant will create a material hardship to the Owner, and upon a finding that the variance is not contrary to the interests of the Community Area, the

Association and other Owners. A variance may be made subject to terms and conditions approved by the Board. If a variance is denied, the Owner may not bring another application for a similar variance for a period of one year after submittal of the original request. The grant of a variance in any instance shall not be deemed to constitute a waiver of any right to hold or deny approval or consent to any application or other matters subsequently or additionally submitted for approval or consent.

- (k) **Maintain Records.** The Association shall retain the following records as required by Colorado law:
  - (i) Minutes of all Board of Directors and Owner meeting.
  - (ii) All actions taken by the Board of Directors or Owners by written ballot or email in lieu of meeting.
  - (iii) All actions taken by a committee on behalf of the Board of Directors instead of the Board of Directors acting on behalf of the Association.
  - (iv) All waivers of the notice requirement for Owner meetings, Board of Directors, Member meetings, or committee meetings.

**Section 6.08 Notice.** Under certain circumstances and prior to fines being assessed, if an Owner or other Person alleged to be in violation of the Association Documents shall be given written notice of the violation said Owner or other Person shall have 14 days from the date of Notice to request a hearing by the Board or its designated representative to hear evidence concerning the violation and render a decision. Upon receipt of request for a hearing, the Board will promptly schedule one. The notice shall be hand-delivered, delivered by e-mail, or sent by U.S. Mail, postage prepaid, to the Owner or Person alleged to be in violation. The Association may audiotape any scheduled hearing. The Association and the Owner or other Person will have the opportunity to present evidence in support of their respective positions. Within ten (10) days of the hearing, the Board or designated representative will issue its decision. The hearing will occur whether or not the Owner or other Person attends the hearing, absent extraordinary circumstances as determined by the Board or designated representative. The decision shall be final and binding unless clearly arbitrary and there is no competent evidence to support the decision.

**Section 6.09 Inspection and Copying Association Records.**

- (a) An Owner or its authorized agent is entitled to inspect and copy any of the books and records of the Association, subject to the exclusions, conditions and requirements set forth below:
  - (i) The inspection and/or copying of the records of the Association shall be at the Owner's expense;
  - (ii) The inspection and/or copying of the records of the Association shall be conducted during the managing agent's regular business hours at the managing agent's office.
  - (iii) The Owner shall provide managing agent with a written request, stating the purpose for which the inspection and/or copying is sought, at least five (5) business days before the date on which the Owner wishes to inspect and/or copy such records; and
  - (iv) The Owner shall complete and sign an agreement regarding inspection of Association records prior to the inspection and copying of any Association record. A copy of such Agreement is attached to this Resolution. Failure to properly complete or sign such Agreement shall be valid grounds for denying an Owner the right to inspect and/or copy any record of the Association.

- (b) **PROPER PURPOSE/LIMITATION.** Association records shall not be used by any Owner for:
  - (i) Any purpose unrelated to an Owner's interest as an Owner;
  - (ii) The purpose of soliciting money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association;
  - (iii) Any commercial purpose;
  - (iv) For the purpose of giving, selling, or distributing such Association records to any person; or
  - (v) Any improper purpose as determined in the sole discretion of the Board of Directors.
  
- (c) **EXCLUSIONS.** The following records shall NOT be available for inspection and/or copying as they are deemed confidential:
  - (i) Attorney-client privileged documents and records, unless the Board of Directors decides to disclose such communications at an open meeting;
  - (ii) Any documents that are confidential under constitutional, statutory, or judicially imposed requirements; and
  - (iii) Any documents, or information contained in such documents, disclosure of which would constitute an unwarranted invasion of individual privacy, including but not limited to, social security numbers, dates of birth, personal bank account information, and driver's license numbers.
  
- (d) **FEES/COSTS.** Any Owner requesting copies of Association records shall be responsible for all actual costs incurred by the Association, which may be determined by the Board or Manager from time to time. The Association may require a deposit equal to the anticipated actual cost of the requested records. Failure to pay such deposit shall be valid grounds for denying an Owner copies of such records. If after payment of the deposit it is determined that the actual cost was more than the deposit, Owner shall pay such amount prior to delivery of the copies. If after payment of the deposit it is determined that the actual cost was less than the deposit, the difference shall be returned to the Owner with the copies.
  
- (e) **INSPECTION.** The Association reserves the right to have a third person present to observe during any inspection of record by an Owner or the Owner's representative.
  
- (f) **ORIGINAL.** No Owner shall remove any original book or record of the Association from the place of inspection nor shall any Owner alter, destroy or mark in any manner, any original book or record of the Association.
  
- (g) **CREATION OF RECORDS.** Nothing contained in this Resolution shall be construed to require the Association to create records that do not exist or compile records in a particular format or order.

**Article VII. ASSOCIATION PROPERTIES**

**Section 7.01** Declarant shall convey to the Association and the Association will in turn accept, any land or other property right identified on a Plat or other recorded instrument as an Association, Property or identified as property intended to serve the needs of the Community Area. This may include, but is not necessarily limited to, perimeter walls, drainage facilities, entry signage and features, parks, open space and public walkways or trails. Declarant may, but is not obligated to, convey any other land or property right within the Community Area, and any personal property associated therewith, to the Association for its future use and benefit.

**Section 7.02 Association Maintenance.** The Association shall keep and maintain the Association Properties in an attractive, clean and functional condition and in good repair and may make necessary or desirable alterations or Improvements thereon, subject to Section 7.04 below. Such maintenance includes, but is not limited to (a) all private drive lanes located within the Association Properties, (b) all storm sewer lines and detention ponds located within the Association Properties, (c) all sanitary sewer lines located within the Association Properties, (d) site lighting, (e) snow removal and trash within the Association Properties, and (f) landscape maintenance of the Association Properties. All maintenance of the Association Properties shall be undertaken in conformance with the maintenance manual provided to the Association by Declarant, if any.

**Section 7.03** In the event the Association does not maintain or repair those areas for which it is responsible in accordance with the maintenance manual provided to Association by Declarant (if any) within 30 days after a written demand by Declarant, Declarant shall have the right, but not the obligation, to do so at the expense of the Association. If Declarant elects to conduct any maintenance or repair work on behalf of the Association pursuant to this paragraph, the Declarant shall bill the Association for the costs of the work conducted, providing documentation of the charges incurred. The Association shall reimburse Declarant for the maintenance or repair within 15 days of the Association's receipt of Declarant's invoice.

**Section 7.04 Maintenance of Drainage Pattern.** There shall be no interference with the established drainage pattern, which shall include the subsurface storm drain system, initially established over any portion of the Community Area except as approved in writing by the Board. Approval shall not be granted unless provision is made for adequate alternate drainage. The established drainage pattern may include the drainage pattern from the Association Properties over any Units within the Community Area and from any Lot within the Community Area over the Association Properties or from any Lot over another Lot. Declarant and Builders shall be exempt from this paragraph.

**Section 7.05 Owner Caused Damages.** If, due to the act or neglect of an Owner or such Owner's guests or Owner's agents, loss or damage shall be caused to any person or property within the Association Properties or another Unit, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board, from such Owner as an Assessment against such Owner in accordance with the terms herein. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Section 7.05 shall be made by the Board and shall be final.

## **Article VIII. OWNER MAINTENANCE AND PARTY WALL AGREEMENTS**

**Section 8.01 Homes.** All interior Home maintenance, repair and reconstruction shall be the sole responsibility and at the sole expense of the Owner of the Home. The Board may from time to time change the foregoing maintenance obligations or add additional maintenance obligations in the Rules.

**Section 8.02 Easement and General Rules of Law to Apply.** The Owners of the Lots on each side of a Party Wall own an undivided one-half interest in the Party Wall. To the extent not inconsistent with the provisions of this Agreement, the general rules of law regarding party walls, and liability for property damage due to gross negligence or willful acts or omissions, apply thereto. The Owners of the adjoining

Lots which are separated by a Party Wall each have a perpetual and reciprocal easement in and to that part of the adjoining Lot for mutual support, maintenance, repair and inspection, and for the installation, repair and maintenance of utility lines and other facilities, and to permit the Owner of the adjoining Lot to do the work reasonably necessary in the exercise of their rights provided in this Agreement. In addition, the Owners of the Lots upon which Units within one Multiplex are located each have a perpetual and reciprocal easement in and to those portions of all other Units in the Multiplex required for mutual support of a common roof on the Multiplex, including maintenance, repair and inspection, and to permit the Owner of any other Unit within the Multiplex to do the work reasonably necessary in the exercise of such other Owner's rights provided in this Agreement. Maintenance, repair and/or reconstruction of a Party Wall may be performed during reasonable hours only, and no entry may be made onto any other Owner's Lot except as reasonably necessary after reasonable notice to the Owner or occupants of such affected Lot.

**Section 8.03 Support.** The Owners of adjoining Lots on each side of a Party Wall shall have the full right to use the Party Wall in aid of the support of water, sewer, electric and other utility lines, and in support of joists, crossbeams, studs and other structural members as may be required for support of the Unit located upon such Owner's Lot, and for the reconstruction or remodeling of such improvements. Notwithstanding the foregoing sentence, however, no such use shall impair the fire rating of the Party Wall or the structural support to which any such Unit is entitled under this Agreement, including, without limitation, the support of a common roof over the Units in a Multiplex.

**Section 8.04 Alteration of Party Wall and/or Common Roof.** Party Walls and the common roof of a Multiplex shall not be materially altered or changed, except by mutual-written agreement of the Owners of the adjoining Units and in accordance with plans prepared by a licensed engineer or architect. No Owner of a Lot shall have the right to destroy, remove, or make any structural changes, extensions or modifications of a Party Wall which would jeopardize the fire rating of the Party Wall or the structural integrity of the Units constructed on the adjoining Lots without the prior written consent of the Owner(s) of such adjoining Lots. In addition, no Owner of a Lot shall have the right to destroy, remove, extend or modify the common roof of a Multiplex without the prior written consent of the Owners of all Units within the Multiplex, provided, however, that such prohibition does not restrict or hinder an Owner from having that portion of the common roof above its Unit repaired, replaced or re-shingled without the consent of any other Owner. In the event an Owner must obtain the prior written consent of any other Owner under this Section, such Owner seeking consent must also obtain the prior written consent of the holders of first lien mortgages or first lien deeds of trust on all such Units within the Multiplex. Any such agreement for change, extension or modification of the Party Wall or common roof shall be recorded in the office of the Clerk and Recorder of the County, and shall expressly refer to this Agreement. No Owner shall subject a Party Wall to any use which unreasonably interferes with the equal use and enjoyment of the Party Wall by the adjoining Owner.

**Section 8.05 Shared Repairs and Maintenance.** Subject to the terms of Section 8.08 of this Article below, the cost of reasonable repair and maintenance of a Party Wall between two (2) adjoining Units shall be shared equally by the Owners of the adjoining Units. If an Owner fails to repair or maintain the Party Wall, the other Owner, contiguous to the Party Wall, his agents, servants and employees may, upon five (5) days written notice and without cure, enter upon the Lot and into the Unit of the defaulting Owner and make the necessary repairs or perform the necessary maintenance of the Party Wall and shall be entitled to bring suit for contribution from the other Owner or pursue any other rights or remedies at law or in equity.

**Section 8.06 Right to Contribution Runs with The Land.** The right of any Owner to contribution from any other Owner under this Agreement is appurtenant to the land and is binding on such Owner's successors in title.

**Section 8.07** The Owners of the Units within a Multiplex shall endeavor to reasonably cooperate with each other with respect to the decisions and the costs and expenses of the periodic reasonable repair, maintenance, reconstruction and replacement of exterior improvements to the Multiplex, to the extent such activities affect more than one Unit, including, without limitation, repair or replacement of the common roof. The Owners of adjacent Units on each side of a Party Wall within a Multiplex shall endeavor to reasonably cooperate with each other with respect to the decisions and the costs and expenses of the periodic reasonable repair, maintenance, reconstruction and replacement of the Party Wall.

**Section 8.08 Damage and Destruction.**

- (a) Should a Party Wall be damaged or destroyed by either the intentional or grossly negligent act of a Unit Owner (or its agent, contractor, employee, tenant, family member, licensee, guest or invitee), such Owner shall promptly and with due diligence repair or rebuild the Party Wall at such Owner's sole cost and expense, and shall compensate the Owner of the other Unit adjoining the Party Wall for any damages sustained to person or property as a result of such intentional or grossly negligent act. If the responsible Owner neglects or refuses either to make all such repairs or rebuild the Party Wall as required herein, or to pay all of such costs thereof in a timely and prompt manner, then the Owner of the adjoining Lot sharing the Party Wall may have the Party Wall repaired or rebuilt and shall be entitled, in addition to any other rights or remedies at law or in equity, to bring suit to recover the amount of such defaulting Owner's share of the repair and damage costs and the defaulting Owner shall also pay the other Owner's reasonable costs of collection including, without limitation, reasonable attorney's fees.
- (b) Should a Party Wall be damaged or destroyed by causes other than the intentional act or gross negligence of a Unit Owner (or its agent, contractor, employee, tenant, family member, licensee, guest or invitee), the damage or destroyed Party Wall shall be promptly and with due diligence repaired or rebuilt and the costs of reasonable repair and maintenance of the Party Wall shall be paid equally by the Owners of the Units adjoining the Party Wall; provided that the cost of repairs and maintenance of the stud wall that is adjacent to the two (2) inch fire wall which comprises a part of the Party Wall located on a Lot and of the interior finished surface of a Party Wall located in a Unit shall be the sole expense of the Owner of the Lot on which such stud wall and finished surface is located.
- (c) If a Party Wall is damaged or destroyed, such damage or destruction shall be promptly and with due diligence repaired and reconstructed by the Owner of the Units adjoining the Party Wall. Repair and reconstruction shall mean restoration of the Party Wall to substantially the same condition in which it existed immediately prior to such damage or destruction. To the extent that such damage or destruction is covered by insurance, then the full insurance proceeds available to the Owner or Owners responsible for making the necessary repairs shall be used and applied to repair and reconstruction of the Party Wall.
- (d) All repairs must be completed as soon as practicable but not later than sixty (60) days after the event of damage or destruction or if longer than sixty (60) days is reasonably required to complete the repairs, then such longer time as is reasonably necessary as long as the Owner making the repairs has promptly commenced the repairs after the event of damage or destruction and diligently pursues the repairs to completion.

**Article IX. DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS, AND RESERVATIONS**

**Section 9.01 Period of Declarant's Rights and Reservations.** In addition to other rights of Declarant described elsewhere in this Declaration, Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association, Community Area and the Association Properties during the Period of Declarant Control. These rights and reservations shall be deemed excepted and reserved in each conveyance by Declarant. The rights, reservations and easements set forth shall be prior and superior to any other provisions of the Association Documents and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Association Documents.

**Section 9.02 Declarant's Development Rights.** For the Period of Declarant Control, Declarant shall have the following development rights:

- (a) Subject to the specific limitations contained herein, Declarant may add land to and create additional Lots within the Community Area, but only with the consent of the Owner of such land to be added; and
- (b) Declarant may create additional Association Properties within the Community Area.

No assurances are made by Declarant concerning which portions of the Community Area may be affected by Declarant's exercise of its development rights or the order in which portions of the Community Area may be affected. Declarant is not obligated to exercise any of its development rights and may elect not to exercise any or all of them.

**Section 9.03 Declarant has the right, but not the obligation, to perform any of the following "Declarant Rights":**

- (a) to complete any improvements shown on a Plat;
- (b) to exercise any development rights set forth in Section 9.02 and elsewhere in this Declaration;
- (c) to maintain anywhere within the Community Area sales offices, management offices, signs advertising the Community Area and model homes;
- (d) to store building materials, supplies and equipment on land owned by Declarant within the Community Area;
- (e) to merge the Community Area with a common interest community of the same form of ownership and/or create sub-associations to govern certain Lots within the Community Area;
- (f) to modify, amend, or revise plans for constructions, location and design of any Improvements within the Community Area;
- (g) to enlarge the Community Area by submitting to the Community Area any Expansion Property



and in the event of any properly recorded expansion this Declaration shall also govern such Expansion Property;

- (h) to amend the Declaration and/or the Plat in connection with the exercise of Declarant Rights; and
- (i) to use easements benefiting or burdening Association Properties for the purpose of making, maintaining, reconstructing or repairing improvements within the Community Area or for discharging Declarant's obligations under the Act and this Declaration.

Declarant may transfer or assign its Declarant Rights, or any other rights or obligations of Declarant in this Declaration, to another Person or entity upon the recording of a document evidencing the transfer, except that Declarant may authorize a Builder to perform any of the rights set forth in Section 9.03(a), (c), and (d) without recording a document.

**Section 9.04 Right to Complete Development.** After the Period of Declarant Control has ended, Declarant shall retain the right to complete development of the Community Area as Declarant may elect. The Association and its Board shall not take any action impairing this continuing right of Declarant.

**Section 9.05** Neither the Association, the Board, nor any Owner may take any action or adopt any rule or regulation that will interfere with or diminish Declarant Rights without the prior written consent of the Declarant.

## **Article X. ASSESSMENTS**

**Section 10.01 Purpose of Assessments.** The Assessments levied by the Association shall be used to pay expenses incurred in connection with the management, ownership, maintenance, repair, replacement, and insurance of the Association Properties and other properties for which the Association has maintenance responsibility. Assessments may be common Assessments, Special Assessments or Site Assessments as determined by the Board or as provided in the Association Documents.

**Section 10.02 Declarant's Obligation.** Until Assessments are first levied by the Association, Declarant shall pay the expenses of the Association.

**Section 10.03 Obligation for Assessments.** Each Owner, for each Lot owned within the Community Area, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association, in the manner and amounts, and at the times prescribed herein, Assessments as described in this Declaration including fees, charges, late fees, attorney fees, fines and interest charged by the Association, and additional fees charged by the managing agent, including but not limited to, administration and witness fees, and/or any other charges that may be assessed and/or levied or may be agreed to in the process of collecting past due Assessments, including but not limited to, credit card convenience fees from whatever source, which all shall be both a personal obligation of the Owner and a lien against the Owner's Lot until such charge is paid. Joint or common Owners shall be jointly and severally liable to the Association for the payment of all Assessments attributable to them and/or their Lot. If any Assessment is payable in installments the full amount of the Assessment is a lien from the time the first installment is due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or

otherwise avoid personal liability for the payment of the Assessments by non-use of the Association Properties, by non-use of any service provided by the Association for Owner, by abandonment or leasing of his or her Lot, or by asserting any claims against the Association, the Declarant or any other Person. Owners of Lots having the exclusive use and benefit of particular Association Properties or having services performed by the Association that are not performed for all Owners will be obligated to pay additional Assessments. In addition to the foregoing Assessments, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental entities against a Lot. All property dedicated to and accepted by a governmental entity and the Association Properties shall be exempt from Assessments.

**Section 10.04 Common Assessments.** By way of example but not by way of limitation, Common Assessments may be intended to cover the following Association expenses:

- (a) expenses of management of the Association and its activities;
- (b) taxes and special assessments levied upon the Association Properties;
- (c) premiums for Association insurance;
- (d) common services to Owners as approved by the Board, which may include trash and/or snow removal services;
- (e) water, sewer, gas, electric, storm drain, landscaping and maintenance of and for Association Properties and any recreational or other Association facilities or improvements located thereon;
- (f) other repairs and maintenance that are the responsibility of the Association;
- (g) wages for Association employees and payments to Association contractors;
- (h) legal, accounting and other professional fees of the Association;
- (i) any deficit remaining from a previous Assessment year;
- (j) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of the Association Properties;
- (k) the creation of reasonable contingency reserves for any applicable insurance deductibles and emergencies; and
- (l) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration.

**Section 10.05 Common Assessment Procedure.**

- (a) Common Assessments will begin from the date when the ownership of the Lot upon which the completed Home or building is located is transferred to a purchaser other than a Builder, or upon occupancy, whichever is earlier. Common assessments shall be allocated among all Owners
- (b) Promptly after this Declaration is recorded, the Board shall set the total annual Common Assessment for the year, based upon an estimated budget for the Association for that year. No later than sixty (60) days before the beginning of each year thereafter, the Board shall set the total annual Common Assessment based upon an advanced budget of the Association's requirements for the following Assessment year. The Board shall 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 approval of the budget. Unless eighty percent (80%) of Owners present and voting in person, by proxy or by a mailed ballot returned to the Board prior to the meeting, reject the budget, the budget is approved, whether or not a quorum is present at the meeting. If the

proposed budget is rejected, the budget last approved by the Owners must be continued until such time as the Owners approve a subsequent budget.

- (c) After the Owners approve the budget, the Board shall mail or deliver to each Owner, at least thirty (30) days in advance of the date payment is due, a payment statement setting forth such Owner's Common Assessment. The Common Assessment shall be payable in quarterly installments on or before January 1, April 1, July 1, and October 1 of each calendar year. After the first calendar year, if a homeowner would like to pay monthly on or before the first day of each month via autopay/EFT, that is acceptable as well. Each Owner shall then elect monthly, quarterly or full payment by its January 1 payment each calendar year starting the calendar year after they purchase the Home. Such payment schedule will remain in effect for the full calendar year and may not be changed until the following year. The Board may adopt Rules and Regulations requiring the payment of Common Assessments for a period not to exceed an additional twelve months. Any prepayment will not relieve the Owner from any additional requirement to pay working capital pursuant to Section 10.17.
- (d) The omission or failure of the Board to levy the Assessment for any period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay.

**Section 10.06 Special Assessments.** The Board may levy "Special Assessments" to raise funds to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, to construct or reconstruct, repair or replace improvements upon Association Properties; to add Association Properties; to provide for necessary facilities and equipment; to offer the services authorized in this Declaration; to correct any deficit or cost overrun; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. No Special Assessment may be assessed until it has been approved by two-thirds (2/3rds) of the Owners or Members' votes in person or by proxy where a quorum is present at a meeting duly called for this purpose. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which any Special Assessment is payable. If, in the sole opinion and discretion of the Board, a Special Assessment will benefit less than all of the Lots, the Special Assessment may be limited to the benefited Lots only.

**Section 10.07 Rate of Assessments.** Assessments shall be set to meet the expected needs of the Association. The rate for Common Assessments and Special Assessments shall generally be determined by dividing the total Common Assessments or Special Assessment, as applicable, payable for any Assessment period as determined by the budget, by the number of Lots then subject to this Declaration. The resulting quotient shall be the amount of the Common Assessments or Special Assessments, as applicable, payable with respect to each Lot. If, however, in the sole opinion and discretion of the Board, certain Lots impose greater costs on the Association than do other Lots, or receive greater benefit from Association activities, Lots may be placed into different classes and Assessments, both Common and Special, and different amounts may be established for each such class, with the intent that each class will pay its reasonable and fair share of the Association's overall expenses.

**Section 10.08 Failure to Fix Assessment.** The failure of 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 10.09 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 determines in its discretion.

**Section 10.10 Costs of Enforcement, Late Charges and Interest.**

- (a) If any Assessment, charge or fee, is not paid within ten (10) days after it is due, the Owner or other Person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorney's fees, court costs, witness expenses, and all related expenses ("collection expenses"), and to pay a late charge of \$25 per month, which amount is deemed to be reasonable and fair.
- (b) Any Assessment, charge or fee not paid within ten (10) days after the date of receipt of any notice of default shall bear interest from the due date at a rate determined by the Board, not to exceed twenty-one percent (21 %) per annum.
- (c) In addition to charging and collecting any late fees the Board may also:
  - (i) accelerate and declare immediately due and payable all unpaid installments of any Assessment payable for the balance of the fiscal year during which such default occurred;
  - (ii) Bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due; and/or
  - (iii) Proceed to foreclose its lien against the Lot pursuant to the power of sale granted to the Association by this Declaration and the Colorado Act.

**Section 10.11 Notice of Default and Acceleration of Payments.** If any Assessment, charge or fee is not paid within ten (10) days after its due date, the Board may mail a notice of default to the Owner and to the 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 amounts, collection expenses and all sums coming due through the date of payment are paid in full to the Association. If the Owner responds to the notice in a timely fashion and the Owner requests a payment plan in writing, then the Association will attempt to work out a payment plan with Owner for the monies due and owing. If the Owner and the Association cannot agree to payment plan terms within ten (10) days after the Association received the request from the Owner or if the Owner defaults on the terms of agreed upon payment plan, then the Association may to pursue legal action against the Owner. If the delinquent Assessment and any collection expenses, late charges or interest thereon, plus any other sums due as of the date of the payment, are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all collection expenses, charges and interest thereon in any manner authorized by law or in the Association Documents.

**Section 10.12 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 an Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with interest, late charges, and expenses of

collection, and this covenant shall be a charge on the land and a continuing lien upon the Lot against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is filed in accordance as stated herein.

**Section 10.13 Lien to Enforce Assessments.** The Association shall have a lien for Assessments (the "Lien") as provided in Section 38-33.3-316, Colorado Revised Statutes, and any successor statute. In addition to or in lieu of bringing suit to collect Assessments, the Association may foreclose its lien as provided by law and in this Section. The Board may elect (but is not required) to file a claim of Lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the interest and expenses of collection which have accrued, (c) the legal description and street address of the Lot against which the Lien is claimed, and (d) the name of the record Owner. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. Except as modified by Section 10.20 of this Declaration with regard to the lien of First Mortgagees, the Lien for the benefit of the Association shall have priority over any homestead rights of an Owner, which rights are, with respect to a Lien, waived by the acceptance of a deed to the Lot upon which the Lien is asserted. The Assessment Lien shall be superior to all other liens and encumbrances on any Lot except as set forth in Section 316 of the Colorado Revised Statutes. The Lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all collection expenses, court costs, recording costs and filings fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosures of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage and convey the same. The Lien under this Article shall be subject to the provisions and restrictions of Section 10.20 concerning the priority of liens of First Mortgagees.

**Section 10.14 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 Owner and any Person having, or intending to acquire, any right, title or interest in the Lot of such 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.

**Section 10.15 No Offsets.** All Assessments 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, without limitation, any claim that the Association or Board is not properly exercising its duties and powers under this Declaration, or for inconvenience or discomfort arising from any activity of the Association, or the non-use by an Owner of Association Properties or services provided by the Association or because an Owner claims that a particular function funded by the Assessment does not benefit that Owner directly, or for any other reason.

**Section 10.16 Working Capital Fund.** The first Owner of a Lot at the time Common Assessments commence will be required to make a nonrefundable contribution to the Association of an amount equal to three months of the Common Assessment, which contribution shall be held by the Association

as and for working capital. Such contribution will be nonrefundable, but if the Association determines that such sums are not required for working capital, they shall be placed in the general revenues of the Association. The working capital contribution shall be in addition to the Assessments, and shall not relieve an Owner from paying all Assessments as they come due, in addition, the working capital charge equal to three months worth of the Common Assessment shall be charged to each subsequent Buyer of a Lot (whether Improvements are built upon the Lot or not). Working Capital does not apply to Declarant.

**Section 10.17 Site Assessments.** In addition to levying other Assessments authorized herein, the Board may levy a "Site Assessment" against any Owner and that Owner's Lot if the willful or negligent acts or omissions of the Owner his or her guest, employee, licensee, lessee or invitee, cause any violation of the Association Documents or cause any loss or damage to the Association or Association Properties or cause any expenditure of funds in connection with the enforcement powers of the Association. By way of example, but not by way of limitation, if the Association must perform an act of maintenance or repair which is the obligation of an Owner to perform, the Board may levy a Site Assessment against the Owner and the Owner's Lot in the amount of the reasonable cost incurred by the Association in remedying the Owner's default, except for a default consisting solely of a failure to timely pay any Assessment, a Site Assessment under this Section 10.17 shall be levied only after Notice. The amount of the Site Assessment shall be due and payable to the Association upon notice by the Board that the Site Assessment is due and owing. The Site Assessment imposed on an Owner under this Section 9.18 shall include the cost of such maintenance, repair or replacement performed by the Association, together with any administrative, legal, financing and collection expenses, and the Association shall have a lien to secure payment of such Specific Assessment as provided in this Article 10. Imposition or non-imposition of Site Assessments under this Section 10.17 shall not preclude the Association from pursuing all other legal or equitable rights and remedies against an Owner or other Person responsible for the loss or damage, or otherwise defaulting on an obligation imposed on such Owner by this Declaration.

**Section 10.18 Assignment of Rent.** If a Lot is rented by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments due by that Owner to the Association. If the Assessments owed by the Owner of a rented Lot are more than twenty (20) days delinquent, the Association may collect, and the occupant or lessee shall pay to the Association, the rent for any Lot owned by the delinquent Owner, or that portion of the rent equal to the amount due to the Association; provided, however, the lessee need not make such payments to the Association in excess of or prior to the due date for monthly rental payments unpaid at the time of the Association's request. The Association shall send notice to the Owner by any reasonable means at least ten (10) days prior to initiating the collection of rent from the Owner's occupant or lessee. The occupant and/or lessee shall not have the right to question the Association's demand for payment. Payment by the occupant or lessee to the Association will satisfy and discharge the occupant or lessee's duty of payment to the Owner for rent, to the extent of the amount paid to the Association. No demand or acceptance of rent under this Section shall be deemed to be a consent or approval of the Lot rental or a waiver of the Owner's obligations as provided in the Declaration. The Association shall not exercise this power where a receiver has been appointed with respect to a Lot or Owner, nor in derogation of the exercise of any rights to rents by the holder of a first lien security interest of a Lot. If an occupant or lessee fails or refuses to pay rent to the Association as provided for in this Section, the Association shall have the right to bring an action for unlawful detainer for non-payment of rent under Colorado statutes, and the costs and attorney fees incurred by the Association in connection with that action shall be collectable from the occupant or lessee in that action, and from the Owner of the Lot in the same manner as any other Assessment under this Declaration.

**Section 10.19 Lien Priority.** The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

**Section 10.20 Priority of First Mortgage over Assessments.** Each First Mortgagee which recorded its First Mortgage before Assessments have become delinquent and which obtains title to the Lot encumbered by the First Mortgage shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such First Mortgagee acquires title, other than allocation of any deficiency prorated among all Members. 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 maybe. Assessments accruing subsequent to the time the First Mortgagee acquired title to the Lot, as herein established, including Assessment accruing during any applicable period of redemption, shall be an obligation of the First Mortgagee and its successors, and a lien upon the Lot.

**Section 10.21 Limits on Foreclosure.** Notwithstanding anything to the contrary contained herein, the Association or the assignee of any Association's assessment lien may only foreclose if: (a) the total amount of the past-due amount is equal to or greater than six (6) months of common expenses Assessments and (b) the Board of Directors affirmatively votes in favor of a foreclosure on a given delinquent account. The Board authority to initiate a foreclosure cannot be delegated to the managing agent, an attorney or any other Person, nor can the Association have a policy of automatically requiring foreclosure when an Owner becomes 6-months delinquent.

**Section 10.22 Investment of Reserve Policy.**

- (a) **Scope.** In order to maintain areas in the Community that are the responsibility of the Association, to comply with state statutes and to manage Reserve Funds, the Board of Directors determines that it is necessary to have policies and procedures for the investment of Reserve Funds.
- (b) **Purpose of Reserve Fund.** The purpose of the reserve fund established under the Budget (the "**Reserve Fund**") shall be to fund and finance the Community Area repair and replacement of those portions of the Community that the Association is responsible for and for such other funding as the Board of Directors may determine, in its reasonable discretion.
- (c) **Investment Strategy.** The investment strategy of the Association should emphasize a long-term outlook by diversifying the maturity dates of fixed-income instruments within the portfolio utilizing a laddered investment approach, at the discretion of the Board of Directors. The Board bound by the standards of conduct in the Colorado Revised Nonprofit Corporation Act (C.R.S. §7-121-401) with respect to investment of reserves.

- (d) **Investment of Reserves.** The Board of Directors shall invest funds held in the Reserve Fund accounts to generate revenue that will accrue to the Reserve Fund account balances pursuant to the foregoing investment strategy and the following goals, criteria and Policies:
  - (i) **Safety of Principal.** Promote and ensure the preservation of the Reserve Fund’s principal.
  - (ii) **Liquidity and Accessibility.** Structure maturities to ensure availability of assets for Community Area or unexpected expenditures.
  - (iii) **Minimal Costs.** Minimize investment costs (redemption fees, commissions, and other transactional costs).
  - (iv) **Diversify.** Mitigate the effects of interest rate volatility upon reserve assets.
  - (v) **Return.** Invest funds to seek the highest level of return.
  
- (e) **LIMITATION ON INVESTMENTS.** Unless otherwise approved by the Board of Directors, all investments will be FDIC (Federal Deposit Insurance Corporation) insured and/or guaranteed by the United States Government.
  
- (f) **INDEPENDENT PROFESSIONAL INVESTMENT ASSISTANCE.** The Board of Directors, in its sole discretion, may hire a qualified investment counselor to assist in formulating a specific investment strategy.
  
- (g) **REVIEW AND CONTROL.** At least annually, the Board of Directors shall review Reserve Fund investments to ensure that the funds are receiving competitive yields and shall make adjustments as may be necessary, in the Board’s discretion.
  
- (h) **RESERVE STUDY.** In order to determine funding of the Reserve Fund, the Board of Directors may determine, in its sole discretion, with the assistance and advice of professionals, the life expectancy of those portions of the Community to be maintained by the Association and the anticipated costs of maintaining, replacing and improving those identified areas (hereinafter referred to as a “*Reserve Study*”). The Board of Directors may cause the Reserve Study, if any, to be reviewed and updated periodically in such periods of time deemed reasonable by the Board, to adjust and make changes in costs, inflation, interest yield on invested funds plus modification, addition or deletion of components.

**Article XI. INSURANCE AND CASUALTY**

**Section 11.01** The Association shall maintain insurance of types, in amounts, upon terms and with companies as the Board shall determine is prudent or as is required by applicable law. The Board will review annually the Association's insurance coverage, and ensure that all agents and duly appointed committee members are additional insureds on all Association policies. Any deductible shall be payable by the Person responsible for the repair and maintenance of the damaged or destroyed property which is the subject of an insurance claim. In the event a joint duty of repair and maintenance of the damaged or destroyed property exists, then the deductible may be apportioned among the parties sharing in such joint duty, or may be partly or wholly borne by the Association, at the election of the Board.

**Section 11.02** Insurance premiums. Insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association. The Association shall obtain directors' and officers' personal liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting as officers and directors on



behalf of the Association. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

**Section 11.03 Annual Insurance Review.** The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

**Section 11.04 Adjustments by the Association.** Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property and the Association is not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

**Section 11.05 Duty to Repair.** Any portion of the Community for which the Association is required to insure under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

**Section 11.06 Notwithstanding anything to the contrary contained in this Declaration,** if the need for maintenance, repair or reconstruction of all or a portion of the Association Properties or other property maintained by the Association is caused by the willful or negligent act or omission of any Owner, the cost of such repair, maintenance or reconstruction shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction maybe collected as an Assessment as provided in this Declaration or by the Association exercising any rights or remedies under the Association Documents or otherwise as permitted by law. A determination of the negligence or willful act or omission of any Owner shall be determined by the Board after Notice and shall not be subject to judicial review unless the decision is arbitrary and is not based on any competent evidence.

**Section 11.07** In addition to any other coverage or additional the Owners of Lots may desire, the Owners of each Lot independently shall obtain and maintain at all times a policy of property insurance issued by responsible insurance companies authorized to do business in the State of Colorado in an amount equal to the full replacement value (i.e., 100% of current "replacement of cost" exclusive of the land, and other items normally excluded from coverage) of the Unit and other insurable improvements located on such Owner's Lot, including, without limitation, that portion of any common roof that constitutes part of the Owner's Unit, which policy shall include (i) a standard, non-contributory mortgagee clause in favor of the holder of the first mortgage or first deed of trust on such Lot, (ii) an "Agreed Amount Endorsement" or its equivalent, (iii) a "Demolition Endorsement" or its equivalent, and (iv) if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operations of Buildings Laws Endorsement" or the equivalent. Each Owner must fully insure such Owner's Unit as provided above, including, without limitation, any portion of a common roof constituting such Owner's Unit, as the Units are NOT insured under any other common insurance policy issued for the benefit of all of the Units. Any such Owner's policy of property insurance shall afford protection against at the least the following:

- (a) Loss or damage by fire and other hazards covered by the standard, extended coverage endorsement and for debris removal, cost of demolition, vandalism, malicious mischief,

- windstorm, and water damage, and
- (b) Such other risks as shall customarily be covered with respect to Units similar in construction, location and use.

**Section 11.08** The Owner of each Lot shall obtain and keep in full force and effect public liability insurance coverage upon its Lot in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence. Each Owner shall, at least once every three (3) years, obtain an appraisal of its Lot for insurance purposes, which shall be maintained as a permanent record reasonably available for inspection by other Owners after written request, showing that the insurance in effect for such Lot in any period represents one hundred percent (100%) of the full replacement values of the Unit and other insurable improvements on each Lot. Said appraisal shall be conducted by each Owner's insurance agent.

**Section 11.09** Certificates of Insurance. Upon reasonable written request, the Owner of each Lot shall deliver to the Owner of the any other Lot a certificate evidencing all insurance required to be carried under this Article. Further, each Owner has the right to require evidence of the payment of the required premiums thereon. If available, each insurance policy obtained by the Owner of a Lot providing coverage for such Lot must contain an endorsement to the effect that such policy will not be terminated for nonpayment of premiums without at least thirty (30) days' prior written notice delivered to the other Owners of Units.

**Section 11.10** Nothing contained in this Article shall prevent two or more Owners from jointly acquiring one or more policies to cover two or more adjoining Lots owned by such Owners as to any one or more of the hazards required to be covered in this Article, or prevent Owners from cooperating with the other Owners in an attempt to acquire such policies, acquire coverage from the same carriers, or otherwise coordinating their efforts to minimize costs of coverage, deductibles, administrative difficulties, or other matters

**Section 11.11** Each Owner shall be solely responsible, at his expense, for all insurance covering loss or damage to the individual Unit, fixtures, appliances, furniture or other personal property owned supplied maintained or installed by the Owner and also covering liability for injury, death or damage within his Lot. The Association shall have no responsibility for such insurance.

**Section 11.12** Casualty. In the event of damage or destruction to a Unit or any other improvements on a Lot due to fire or other insured disaster or casualty, the Owner of such Lot, to the extent insurance proceeds are or will be available, shall promptly authorize the necessary repair and reconstruction work, and the insurance proceeds will be applied by that Owner to defray the cost thereof. "Repair and reconstruction" of a Unit, as used herein, means restoring the Unit and other improvements to substantially the same condition in which they existed prior to the damage, with the Unit having the same boundaries as before. Notwithstanding the foregoing, in the event that insurance proceeds maintained by the Owner of a Lot are not sufficient to repair or reconstruct such Owner's Unit, or in the event that the holder of any first mortgage encumbering such Owner's Lot determines not to make insurance proceeds available to such Owner for repair and reconstruction of his Unit, then the Owner of such damaged or destroyed Unit shall use other funds to repair and reconstruct his Unit or cause the same to be demolished, to enclose and weatherproof the Party Wall, to cause all debris and rubble caused by such demolition to be removed and to landscape the Owner's Lot. The cost of such demolition and landscaping work shall be paid for by any and all insurance proceeds available, and to the extent insurance proceeds are unavailable, by the Owner.

## **Article XII. EASEMENTS**

**Section 12.01 Easement for Encroachment.** If any portion of an Improvement not owned by the Association encroaches upon an Association Property, including any future encroachments arising encroachments arising or resulting from erosion or subsidence, or from the repair or reconstruction of an Improvement, the Board may grant an easement or license for the maintenance of same, for so long as such encroachment exists, but subject to any conditions or restriction imposed by the Board.

**Section 12.02 Association Easement.** An easement to perform its maintenance or other rights or obligations pursuant to this Declaration is hereby granted to the Association, its officers, agents, employees and assigns, upon, across, over, in and under all property within the Community Area, together with the right to make such use of the Community Area as may be necessary or appropriate in carrying out such maintenance or other rights or obligations.

**Section 12.03** There is created, and each Lot is subject to an easement in favor of the Owners, including their agents, employees, and contractors for providing any maintenance and repairs for the Party Wall, common roof, utility lines, exterior structure, or any items required to be maintained by an Owner.

**Section 12.04 Declarant Easements.** Declarant hereby reserves, for itself, its successors and assigns, perpetual and non-exclusive easements for ingress and egress, on, over and across Association Properties within the Community Area. Declarant further reserves, for itself, its successors and assigns, a perpetual and non-exclusive easement on, over and across all Lots within the Community Area for the purpose of erecting and maintaining perimeter fencing and any Landscaping or other amenities within any tract or public right of way as shown on a Plat or other recorded instrument, or as required by any governmental agency having jurisdiction over the Community Area. Such easement shall be appurtenant to and shall run with all real property within the Community Area now or hereafter owned by Declarant, its successors or assigns, and such easements shall automatically be conveyed to any successor of Declarant as the developer of the Community Area whether or not the easement is expressly conveyed in any deed or conveyance transferring real property within the Community Area to such successor. If the easements created by this Section 12.04 may be assigned in whole or in part to the Association in order to allow the Association to carry out maintenance and repair responsibilities assigned to it by this Declaration or otherwise assumed by the Association.

**Section 12.05 Easements for Utilities.** Declarant hereby creates and reserves to itself until Declarant has sold the last Lot in the Community Area to an Owner other than Declarant, and thereafter to the Association, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the utility easements of each Lot as shown on a Plat for the placement of utilities, drainage structures or other similar purposes, together with a blanket easement across, over and under the Association Properties for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities and drainage facilities.

**Section 12.06 Easement for Emergency Vehicle.** An easement is granted for emergency vehicles, including fire, police and ambulance, to enter upon any portion of the Community Area for emergency and other official purposes.

**Section 12.07 Matters of Record.** In addition to the easements created in this Article 12 and on any

Plat, the Community Area is subject to all other easements, reservations and restrictions of record in El Paso County, Colorado.

**Article XIII. Releases, Disclaimers and Indemnities.**

The Association and all Owners acknowledge and agree that:

**Section 13.01** The provisions of this Article 13 shall apply to any "Protected Party" which is defined as any person or party, including without limitation, the Declarant, its agents, employees, shareholders, contractors, brokers, successors, assigns or any person or party related to them, and including any Builder affiliated with Declarant, or any prior owner of the property, against whom is asserted any claim, demand, liability, obligation or matter whatsoever regarding the construction, physical condition, value, assessments, reserves, association, and any other matters related thereto in connection with the Community Area.

**Section 13.02** No Representation or Warranties of any kind, express or implied, shall be deemed to have been given or made by any Protected Party in connection with any portion of the Community Area, as to its or their physical condition, soils condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall have been specifically set forth in a writing signed by Declarant.

**Section 13.03** Each Owner acknowledges and agrees that certain environmental conditions, including but not limited to mold, lead, or any other hazardous or toxic substances or conditions may affect the Community Area and that the Protected Parties expressly disclaim any liability for any existing or future conditions and any other soil or environmental conditions affecting the Community Area. Each Owner acknowledges that they have been given a full opportunity to inspect any and all reports and documents with the City of Colorado Springs and any governmental entity, as well as their Lot, Homes and Improvements and obtain any professional inspection relating to the environmental condition of their Lot and the Community Area if desired. By acceptance of a deed to a Home, each Owner accepts the physical and environmental condition of their Lot and the Community Area and acknowledges a full opportunity to conduct their own inspections. Except as may be acknowledged by Declarant or any other Protected Party in writing, Declarant and Protected Parties have not assumed or undertaken any obligation to inspect or remedy any physical or environmental condition of the Community Area, regardless of any report, recommendation or other information. Each Owner, for themselves, their heirs, successors and assigns and the Association, waive and release the Declarant and the other Protected Parties, their agents, successors and assigns, from all claims, liabilities, lawsuits and other matters arising from or related to any physical and/or environmental condition of the Community Area.

**Section 13.04** Despite any maintenance requirements by the HOA the Owners shall maintain the landscaping, drainage, and sprinkler systems upon the property and their Lot, in such a fashion that the soil surrounding the foundations of the buildings and other improvements shall not become so impregnated with water that they cause expansion of or shifting of the soils supporting the Improvements or other damage to the Improvements and do not impede the proper functioning of the drainage, landscaping, or sprinkler systems as originally installed. For such items required to be maintained by the HOA, then the Owner shall not interfere with HOA maintenance and ensure that its actions do not cause the problems listed herein. Such maintenance shall include, where necessary, the removal or replacement of improperly functioning landscaping, drainage, or sprinkler system elements

or notifying the HOA immediately of any problems if such area is part of HOA maintenance and shall also include regrading and resurfacing where necessary to provide for adequate drainage and to prevent any ponding; no changes in landscaping shall be made in such a way as to endanger the structural integrity or the stability of any of the buildings, units, common elements, or the other Improvements upon the property. In addition, each Owner understands that the soil in the Colorado area contains clay and other substances which may cause it to swell when wet and so can cause earth movement and/or shifting around a building's foundation. Each Owner shall be responsible for any settlement on such Owner's property, including areas such as porches, sidewalks, decks, patios, and driveways. Owners, for themselves, their successors and assigns and the Association, waive and release the Protected Parties from all claims, actions, liabilities, lawsuits, and other matters arising from or related to any physical and/or environmental condition at the Community Area and Community Area, whether past, present, or future.

**Section 13.05** The Colorado Department of Public Health and Environment and the United States Environmental Protection Agency ("EPA") have detected elevated levels of naturally occurring radon in structures in the Colorado Springs area. EPA has raised concerns with respect to adverse effects on human health of long-term exposure to high levels of radon. Each Owner is responsible for conducting such investigations and consulting with such experts as an Owner deems appropriate to determine the possible presence of radon in or on the Owner's Lot and to evaluate radon mitigation measures that can be employed in the design and construction of Improvements. Each Owner acknowledges that the Protected Parties have made absolutely no representations whatsoever, express or implied, concerning the presence or absence of radon occurring on the Lots or the Community Area, the suitability of the Lots for development, or the design or construction techniques, if any, that can be employed to reduce any radon level in Improvements built on the Lots. Each Owner, for themselves, their heirs, successors, assigns and the Association, waive and release the Protected Parties, their agents, successors and assigns, from all claims, actions, liabilities, lawsuits and other matters arising from or related to the presence of radon in the Community Area or the Lots.

**Section 13.06** Fiberglass insulation (also known as glass wool) is commonly used for insulation of homes. Fiberglass in various thicknesses and values is used in the areas of walls, floor to ceiling assemblies and ceiling to roof assemblies of homes to prevent movement of heat and to reduce noise. The U.S. Department of Health and Human Services produced a report that lists glass wool as a substance "which may be reasonably anticipated to be a carcinogen", but that report merely identifies substances selected for further study because of potential risk. The listing of a substance in the report is not an assessment that there is causal connection between glass wool and illness. The Owners and the Association acknowledge that fiberglass is used in the wall and floor to ceiling assemblies, and waive any claims against any Protected Party, arising as a result of the use of fiberglass insulation. The Association and the Owners shall hold all Protected Parties harmless from any claim or liability resulting from the existence of fiberglass insulation in the Community Area, Community Area, buildings, structures or Improvements.

**Section 13.07 Security.** Neither the Association, Declarant, Builders nor any of their owners, officers or affiliates will in any way be considered insurers or guarantors of security within the Community Area and neither the Association, Declarant, Builders nor any of their owners, officers or affiliates, will be held liable for any loss or damage by reason of failure to provide adequate security, ineffectiveness of security measures undertaken, or acts of third parties. All Owners, customers, tenants, guests, and invitees of any Owner, as applicable, acknowledge that the Association, its Board, Declarant, Builders, their owners, officers, affiliates and committees established by any of the foregoing entities, are not

insurers of security at the Community Area and that each Owner, customer, tenant, guest, and invitee assumes all risk or loss or damage to persons, to house, units or Lots and to the contents of any house, unit or Lot, and further acknowledge that the Association, its Board, Declarant, Builders, their owners, officers, affiliates and committees established by any of the foregoing entities, have made no representations or warranties, nor has any Owner, customer, tenant, guest or invitee relied upon any representations or warranties expressed or implied, including any warranty of merchantability or fitness for any purpose, relative to any security measures recommended or undertaken.

**Section 13.08 Other Properties.** Each Owner, by acquiring a Unit, acknowledges that other properties are located adjacent to and in the general vicinity of the Community Area ("Other Properties") and that the Other Properties may be developed pursuant to the land uses permitted by the City's or County's zoning ordinances, as well as any other governmental rules, regulations, or policies in effect now or in the future which are applicable to the Other Properties (collectively, "Ordinances"). Neither Declarant, Builders nor either of their employees, agents, officers, directors and affiliates, make any representations concerning the planned uses of the Other Properties. Each Owner, by acquiring a Lot, further acknowledges that the zoning for the Community Area and the Other Properties is established and governed by the Ordinances. Any amendment to those Ordinances requires approval by the City or County. By acquiring a Lot, each Owner acknowledges that they have not relied upon any statements or representations regarding the Community Area or the Other Properties, including, without limitation, any representations made by Declarant, Builders or any agents or employees of Declarant, Builders or any real estate agency or any agent, except for those statements and representations expressly set forth in this Declaration.

**Section 13.09** Each Owner further covenants and agrees that no representation, promise, or warranty has been made by any of the Protected Parties regarding the development of adjacent properties, the investment potential of the unit or the Lot, any economic benefits to the Owners, their heirs, successors and assigns, to be derived from the managerial or other efforts of the Protected Parties, or any other third party designated or arranged by any Protected Party, related to the ownership or rental of the unit, the Lot, or regarding the continued existence of any view from the unit, the Lot or any Improvements thereon. The Owners, their heirs, successors and assigns, understand that the Protected Parties are under no obligation with respect to future plans, zoning or development of additional property in the area. The Owners, their heirs, successors and assigns, understand that the square footages, sizes, and type of units have been set forth at the sole discretion of the Declarant, and that the sales prices may decrease or increase at the sole discretion of the Declarant.

**Section 13.10** The Owners, their heirs, successors and assigns covenant and agree that the Protected Parties make no representations or warranties, express or implied, of any nature regarding the Community Area or Community Area (all of which are hereby disclaimed by the Protected Parties), including without limitation, any as to the fitness, workmanlike construction, safety, merchantability, design, condition, quality, or habitability of the unit, the Community Area, Community Area, or the Association Properties or improvements related thereto or any electrical, plumbing, heating, gas, water, sewer, structural components or other mechanical or utility systems or components or appliances or fixtures related thereto. The Owners and the Association accept the foregoing disclaimer of warranties and waive, release, and indemnify the Protected Parties from all claims related thereto, and any expenses and attorney fees incurred by any Protected Party, together with any claims for bodily injury, property damage and incidental or consequential damages made by any person or party.

**Section 13.11** No Protected Party shall be liable for claims or consequential, exemplary, and/or punitive damages or for claims relating to the unit, the Lot, or to the Community Area or any Improvements arising or relating to any defect in workmanship or in any material used in construction, and the Owners, their heirs, successors and assigns, and the Association, expressly waive and release all rights to sue for an defect in construction of the Home, the Lot, the Association Properties or Improvements and shall rely solely on the Owner's own inspection and examination of the Community Area and Lot and not on any representations or warranties of any Protected Party. The Owners, their heirs, successors and assigns covenant and agree that this Declaration creates an alternative dispute resolution process and imposes waivers and/or limitations on the parties' respective rights and remedies, and that the sales prices of the units and Lots are based in part upon the dispute resolution process, releases, waivers, and indemnities contained in this Section and the other provisions of the Declaration.

**Section 13.12** No View or Light Easement. Notwithstanding anything contained in this Declaration to the contrary, each Owner, by acquiring a Lot, acknowledges and agrees that there is no easement or other right, express or implied, for the benefit of any Owner or Lot for light, view or air included in or created by this Declaration or as a result of purchase and ownership of the Lot. Likewise, each Owner, by acquiring a Lot, acknowledges and agrees that any view, sight lines, or openings for light or air available from the Unit, or anywhere else on the Community Area, may be blocked or altered in whole or in part in the future by virtue of natural or unnatural causes, including, but not limited to, future construction or expansion of commercial or residential buildings or facilities. EACH OWNER, BY ACQUIRING A LOT, HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING EASEMENTS OR OTHER RIGHTS, WHETHER EXPRESS OR IMPLIED, FOR LIGHT, AIR, OR VIEW IN SUCH OWNER'S LOT AND/OR THE COMMUNITY AREA. EACH OWNER, BY ACQUIRING A LOT, HEREBY ACCEPTS SUCH DISCLAIMER AND RELEASES AND AGREES THAT DECLARANT AND BUILDERS AND THEIR RESPECTIVE OWNERS, OFFICERS, AFFILIATES, AGENTS AND CONTRACTORS WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT AND BUILDER AND THEIR RESPECTIVE OWNERS, OFFICERS, AFFILIATES, CONTRACTORS AND AGENTS, RELATED TO ANY LOSS OF LIGHT, AIR, OR VIEW THAT MAY AFFECT THE LOT OR THE COMMUNITY AREA.

**Section 13.13** Inspection by Others; Waiver of Post Inspection Liability. It is hereby expressly understood and agreed by all Owners upon acquiring a Lot that Declarant and Builders rely upon governmental inspectors and other qualified subcontractors and tradesmen to inspect the construction of the Lots and the Association Properties in order to confirm substantial compliance with construction plans with building code requirements applicable to residential construction. Declarant, Builders and each Owner further expressly understand and agree that, with respect to the Lots and the Association Properties, upon compliance with the inspections required by the local building department and the issuance of a certificate of occupancy by the responsible governmental agency, Declarant and Builders will be deemed to have used their best efforts to construct the Units and Association Properties in substantial compliance with the construction plans and all applicable building code requirements. EXCEPT AS OTHERWISE MAY BE PROVIDED IN A PURCHASE AND SALE CONTRACT OR OTHER WRITTEN AGREEMENT BETWEEN DECLARANT OR BUILDER AND AN OWNER, EACH OWNER, BY ACQUIRING A LOT, HEREBY KNOWINGLY AND WILLINGLY WAIVES AS AGAINST DECLARANT, BUILDERS AND THEIR RESPECTIVE OWNERS, AGENTS AND CONTRACTORS ANY AND ALL DEMANDS, CLAIMS, ACTIONS AND CAUSES OF ACTION AND ALL LIABILITY, LOSSES, DAMAGE, COSTS OR EXPENSES THAT HAVE BEEN OR MAY BE INCURRED IN ASSOCIATION THEREWITH, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXEMPLARY DAMAGES, WHICH ARISE FROM OR ARE RELATED TO ANY NONCOMPLIANCE OF THE LOTS OR THE ASSOCIATION PROPERTIES WITH CONSTRUCTION PLANS OR BUILDING CODE

REQUIREMENTS, WHICH NONCOMPLIANCE IS NEITHER SUBSTANTIAL NOR MATERIAL IN NATURE AND WHICH NONCOMPLIANCE IS DISCOVERED AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR, RESPECTIVELY, SUCH UNITS OR ASSOCIATION PROPERTIES; AND ANY SUCH NONCOMPLIANCE WILL BE DEEMED UNINTENTIONAL WITH RESPECT TO DECLARANT AND ITS OWNERS, AGENTS AND CONTRACTORS. TO THE EXTENT THAT ANY NONCOMPLIANCE WITH CODES OR WITH THE CONSTRUCTION PLANS IS DISCOVERED WITH REGARD TO ANY LOT OR THE ASSOCIATION PROPERTIES, THE PROVISIONS OF ARTICLE THIRTEEN BELOW WILL GOVERN SUCH MATTER.

Section 13.14 IN THE EVENT THAT ANY PROVISIONS IN THIS ARTICLE TWELVE CONFLICT WITH ANY APPLICABLE FEDERAL OR COLORADO STATUTES WHICH PROVIDE NON-WAIVABLE LEGAL RIGHTS, INCLUDING, WITHOUT LIMITATION, THE COLORADO CONSTRUCTION DEFECT ACTION REFORM ACT OR THE COLORADO CONSUMER PROTECTION ACT, THEN THE NON-WAIVABLE TERMS OF SUCH STATUTE SHALL CONTROL.

#### **Article XIV. DISPUTE RESOLUTION**

Section 14.01 Definitions Applicable to this Article Thirteen. For purposes of this Article Thirteen only, the following terms have the following meanings:

- (a) "AAA" means the American Arbitration Association.
- (b) "Claimant" means any Party having a Claim.
- (c) "Claim" means, except as excluded or exempted by the terms of this Article Fourteen (including Section 14.03 below), any claim, counterclaim, cross-claim, third-party claim, grievance or dispute between one Party and another, regardless of how it may have arisen or on what it might be based (including, but not limited to, damages, indemnity, subrogation or contribution), including, without limitation, disputes arising out of or related to, regardless of the theory of liability: (i) the interpretation, application or enforcement of any Association Governing Document or Limited Warranty; (ii) the location, size, planning, sale, marketing, development, design, construction, maintenance, repair and/or condition of the Lots, Association Properties and Community Area, including, without limitation, the soils of the Community Area; (iii) any statements, representations, promises, warranties, or other communications allegedly made by or on behalf of any Party relating to the foregoing; (iv) the Colorado Consumer Protection Act; and (v) damages or loss to, or the loss of, real or personal property or personal injury caused by a defect in the design or construction of the Lots, Association Properties and/or Community Area.
- (d) "Inspecting Party" means a Party causing an inspection of the Subject Property to be made.
- (e) "Limited Warranty" means a written limited warranty given to a Party related to a Lot.
- (f) "Party" means each of the following: (i) architects, engineers, contractors, subcontractors, developers, Declarant and affiliates of Declarant, Builders and affiliates of Builders, builders, builder vendors, engineers and inspectors performing or furnishing the design, supervision, inspection, construction or observation of construction of any improvement to real property that is a part of the Community Area or any other party responsible for any part of the design or construction of any portion



of the Community Area, and any of such parties' affiliates, and the officers, directors, partners, shareholders, members, managers, employees and servants of any of them (each a "Development Party" and collectively, the "Development Parties"); (ii) all Owners, Owner's Agents, the Association (including its directors and committee members) and all other Persons subject to this Declaration, their officers, owners, employees and agents; and (iii) any Person not otherwise subject to this Declaration who agrees to submit to this Article Fifteen.

(g) "Respondent" means any Party against whom a Claimant asserts a Claim.

(h) "Subject Property" means the property and all improvements thereon regarding which a Party contends that a Claim pertains, and/or property and all improvements thereon being inspected and/or repaired under the inspection and correction right in Section 13.04 below.

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

#### **Section 14.02 Intent of Parties; Applicability of Article; and Applicability of Statutes of Limitations.**

(a) Each Party agrees to work towards amicably resolving disputes, without the emotional and financial costs of litigation. Accordingly, each Party agrees to resolve all Claims only by using the procedures in this Article Fifteen (in the order set forth in Sections 14.4 and 14.5 below), and not by litigation. Further, each Party agrees that the procedures in this Article Fourteen shall be the sole and exclusive remedial process that each Party shall have for any Claim. Should any Party commence litigation or any other action against any other Party in violation of this Article Fourteen, such action shall be dismissed and such Party shall reimburse all costs and expenses, including attorneys' fees and court costs, incurred by the other Party in such litigation or action within 10 days after written demand.

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

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

**Section 14.03 Exclusions from "Claim."** Unless specifically exempted by this Article Fifteen, all Claims between any of the Parties shall be subject to the provisions of this Article Fourteen. Unless all Parties thereto otherwise agree in writing, "Claim" does not include the following, which shall not be subject to the provisions of this Article Fifteen:

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

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

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

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

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

**Section 14.04 Notice; Right to Inspect and Correct; Mediation.** Before the earlier of, as applicable (a) the service of a Notice of Claim as described in Colorado's Construction Defect Action Reform Act ("CDARA"), or (b) initiating arbitration under Section 14.05 below (each referred to herein as "Commencing a Formal Claim"), the Claimant shall first comply with the procedures set forth in this Section 13.04 in the order noted below.

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

Be sent via certified mail return receipt requested or personal delivery and set forth the nature of the Claim and each Respondent's role in the Claim;

Provide the Claimant's name address and preferred method of contact;

If applicable, state that the Claimant alleges a construction defect pursuant to the Colorado Springs Ordinance (described below) against the Respondent and describe the Claim in reasonable detail sufficient to determine the nature and location of the alleged construction defect;

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

(ii) **Right to Inspect and Correct.** Second, if the Claim involves an alleged defect to or duty to repair or replace any improvement or real property, then so long as Respondent complies with the requirements in Section 14.04(ii)(1) below, Claimant shall permit Respondent the right to access, inspect the condition of, or redesign any portion of the improvement or real property allegedly containing a defect or damage or otherwise correct the alleged defect or damage as described in Section 14.04(ii)(2) below.

(1) **Respondent Obligations.** Respondent must mail acknowledge of receipt in writing of the Claim within 15 days after receipt ("Respondent Notice"). The Respondent Notice must be sent to Claimant and to any attorney noted on the notice of the Claim. If Respondent has retained an attorney, Respondent's attorney shall communicate with the Claimant's attorney (if any).

Unless Respondent is a sole proprietor, Respondent must maintain a registered agent with the Colorado Secretary of State to whom notice of the Claim may be sent.

If requested to do so by Claimant and within 45 days of the request, provide Claimant (or its attorney) with: copies of all relevant plans, specifications, grading plans, soils reports and available engineering calculations pertaining to alleged defects; all maintenance and preventative

maintenance recommendations pertaining to alleged defects; and information concerning any applicable warranty provided by Respondent, or otherwise. Respondent may charge reasonable copying costs which shall be paid by Claimant upon delivery of the requested documents.

(2) **Respondent Right to Inspect and Repair/Settle.** Respondent shall have the right to conduct an initial inspection and testing of the alleged defect within 45 days after Respondent's receipt of the notice of Claim at a mutually agreeable date and time. Respondent shall bear all costs of inspection and testing, including any damage caused by the inspection and testing. Before entering onto the premises for the inspection, Respondent shall supply Claimant with proof of liability insurance coverage. Respondent shall, upon request, allow the inspection to be observed and recorded or photographed. Nothing that occurs during Respondent's inspection may be used or introduced as evidence to support a defense of spoliation of evidence by any potential party in subsequent litigation. Within 3 days after completion of both the foregoing inspection and the delivery of the documents requested pursuant to Section 14.04(ii)(1) above, Respondent shall provide Claimant (or its attorney) written notice that the inspection and testing is complete and the requested documents have been provided (if applicable).

Within 30 days after the initial inspection or testing is complete, Respondent may elect, in writing, to settle the Claim by payment of a sum and/or provide a notice that Respondent will repair the alleged defects. If Respondent elects to repair the alleged defects, it has the right to do so and Claimant may not, directly or indirectly, impair, impede or prohibit Respondent from making repairs. Any notice to repair shall include all information required by the Colorado Springs Ordinance, including the method by which Respondent will repair the alleged defect and a reasonable completion date for the completion of the work.

Within 15 days after receipt of Respondent's notice to repair, Claimant may deliver to Respondent a written objection to the proposed repairs if it believes in good faith the proposed repairs will not remedy the alleged defects. Respondent may elect to modify its proposal, in whole or in part, in accordance with the objection, and proceed with the modified scope of work, or may proceed with the scope of work set forth in the original notice to repair. Provided Respondent notifies Claimant in writing at least 5 days before the required completion date that the repair work will not be completed on time, Respondent shall be entitled to one extension of the completion date, not to exceed 45 days.

Within 3 days after substantial completion of the repairs, Respondent shall notify Claimant of such substantial completion. Claimant shall have 45 days following the substantial completion date to have the premises inspected to verify that the repairs are complete and satisfactorily resolve the alleged defects.

Within 15 days after receipt of Respondent's offer to settle the Claim by payment of a sum certain, or such longer period, if any, stated in the offer, Claimant may accept such offer by delivering to Respondent written acceptance thereof. Moreover, Claimant may make a written offer to Respondent to settle the Claim by payment of a sum certain at any time prior to Respondent's commencement of repair, with acceptance to be made by Respondent in writing within 15 days after the offer, or such longer period, if any, stated in the offer. The monetary settlement shall be paid in accordance with the terms of the accepted offer. Neither Respondent nor Claimant shall be obligated to make or accept a settlement by payment of a sum certain. Any offer to settle for payment of a sum certain shall be made and accepted in full settlement and release of all claims with respect to, or arising out of, the alleged defects. An offer to settle for payment of a sum certain may, to the extent permitted by law, apply to

defects that are discovered after settlement; moreover, such offer may require execution of a settlement agreement, in recordable form, to be recorded with the Clerk and Recorder.

(iii) **Discussion of Claim.** Third, in the event that (1) by the end of the timeframes permitted above, Respondent has elected not to access, inspect, correct the condition of, or redesign any portion of any improvement or real property allegedly containing a defect or damage or otherwise correct the alleged defect or damage or offer to settle same with the payment of a sum certain, (2) by the end of the timeframes described above, Claimant is unsatisfied with such actions undertaken by Respondent under Section 14.04(ii) above, or (3) the Claim does not involve an alleged defect or damage to any improvement or real property, then before Commencing a Formal Claim against any Respondent, the Parties shall first make every reasonable effort to meet in person and confer to resolve the Claim by good faith negotiation. The Parties shall seek to understand clearly the Claim and resolve as many aspects or issues as possible. Any Party may be represented by attorneys and independent consultants to assist such Party, including by attending all negotiations.

(iv) **Mediation.** Fourth, if the Parties cannot resolve the Claim through negotiations under Section 14.04(iii) above after attempting to do so for 15 days, Claimant shall have an additional 10 days to submit the Claim to mediation under the auspices of the AAA under the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

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

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

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

(4) If the Parties resolve any Claim through negotiation or mediation under Section 14.04(iii) above or this Section 14.04(iv), and any Party later fails to comply with a written settlement agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such written agreement without the need to again comply with such procedures. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and costs.

#### **Section 14.05 Commencing a Formal Claim.**

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

(b) At least 60 days before the Association Commences a Formal Claim, the Board must first also comply with the following:

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

(1) The Approval Deadline (defined below);

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

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

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

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

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

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

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

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

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

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

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

(iii) The Association meeting must be held no earlier than 10 days and no later than 15 days after the date of the Homeowner Notice. At the meeting the Respondent(s) must have an opportunity to address the Owners and the Board. Following the meeting and prior to the Association Commencing a Formal Claim, the Association must obtain the approval to pursue the Claim from Owners of Lots to which a majority of the total votes in the Community Area (excluding votes allocated to Lots owned by Declarant if Declarant is a Respondent) are allocated. Owners may vote either directly or through a written ballot signed by the Owner, which ballot must specifically recite the contents set forth in Section 14.05(b)(i) above. The Association must obtain such Owner approval within 90 days after delivery of the Homeowner Notice or the Claim is deemed fully and finally released and may not be brought in any manner by the Association or the Owners ("Approval Deadline"). The votes of the Owners must be certified by an Association officer or agent, and written evidence of the certification shall be provided to the Respondent(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) The arbitrator determines all issues about whether a Claim is covered by this Article Thirteen. Notwithstanding anything herein to the contrary (including, but not limited to, Section 14.05(d)(ix) and Section 14.05(d)(x) below), if a Party contests the validity or scope of arbitration in court, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party.

(ix) The arbitrator shall apply the substantive law of Colorado with regard to any remedy granted. The arbitrator may award injunctive relief or any other remedy available in Colorado but shall not have the power to award punitive damages, attorneys' fees and/or costs to the prevailing Party. Except as set forth in Section 14.05(d)(viii) above, each Party is responsible for any fees and costs incurred by that Party. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court of competent jurisdiction. Notwithstanding the foregoing, if the remedy awarded by the arbitrator is substantially affected by the arbitrator's failure to follow the substantive law of Colorado, a court may vacate or refuse to confirm the arbitrator's award on that basis.

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

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

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

**Section 14.06 Notice of Certain Claims.** If a Claim includes a construction and/or design defect allegation, the Owner shall disclose the Claim and its details to his/her prospective purchasers and

prospective Mortgagees.

Section 14.07 Colorado Springs Ordinance. In the event that any provisions of this Article Thirteen conflict with or do not contain the requirements of the Chapter 6, Article 14 of the Colorado Springs Municipal Code ("Colorado Springs Ordinance") as applicable, then the provisions of this Article Thirteen shall be deemed reformed to the minimal extent necessary to be consistent and compliant with the Colorado Springs Ordinance.

**Section 14.08 Amendment. THE PROVISIONS OF THIS ARTICLE FOURTEEN INURE TO THE BENEFIT OF DECLARANT, THE DEVELOPMENT PARTIES AND ALL OTHER PARTIES DESCRIBED IN THIS ARTICLE FOURTEEN, AND, NOTWITHSTANDING ANY OTHER PROVISION OF THIS DECLARATION, , SHALL NOT BE AMENDED OR TERMINATED FOR A PERIOD OF 25 YEARS FROM THE DATE THIS DECLARATION IS RECORDED WITH THE CLERK AND RECORDER WITHOUT THE WRITTEN AND RECORDED CONSENT OF DECLARANT, WITHOUT REGARD TO WHETHER DECLARANT OWNS ANY LOT AT THE TIME OF SUCH AMENDMENT. BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE FOURTEEN ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S AND THE DEVELOPMENT PARTIES' WILLINGNESS TO DEVELOP AND SELL THE LOTS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE FOURTEEN, DECLARANT AND THE DEVELOPMENT PARTIES WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE LOTS AND/OR HOMES FOR THE PRICES PAID BY THE ORIGINAL BUYERS.**

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

**THE TERMS OF THIS SECTION 14.08 SHALL NOT BE LIMITED BY ANY OTHER PROVISION OF THIS DECLARATION.**

Section 14.09 Waiver of Jury Trial. **IN THE EVENT THAT A COURT FINDS THAT THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THIS ARTICLE FOURTEEN ARE UNENFORCEABLE AND AS A RESULT A PARTY IS ALLOWED TO BRING A CLAIM IN COURT, ALL PARTIES AGREE THAT ANY LAWSUIT, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT IN COURT SHALL BE TRIED ONLY BY A JUDGE AND NOT BY A JURY; AND EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND INTELLIGENTLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT.**

Section 14.10 Conflict with Laws. **IN THE EVENT THAT THE PROVISIONS OF THIS ARTICLE FOURTEEN CONFLICT WITH ANY MANDATORY PROVISIONS OF APPLICABLE LAW, THE PROVISIONS OF THIS ARTICLE FOURTEEN SHALL BE REVISED TO THE MINIMUM EXTENT NECESSARY TO COMPLY WITH THE MANDATORY PROVISIONS OF SUCH LAWS.**

## **Article XV. TERM AND AMENDMENT OF DECLARATION**

Section 15.01 Term of Declaration. The covenants, restrictions and obligations of this Declaration shall run with the and bind the Community Area in perpetuity until this Declaration is terminated in accordance with this Article. Unless amended as herein provided, all provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration shall be effective for twenty-five (25) years following the date this Declaration was originally recorded, and thereafter shall be automatically



extended for two (2) successive periods of ten (10) years each unless terminated by agreement of the Owners with at least seventy-five percent (75%) of the voting power of the Association.

**Section 15.02 Amendment of Declaration by Declarant.** Declarant may amend or repeal any provisions, covenants, conditions, restrictions and equitable servitudes of this Declaration by the recordation of a document setting forth such amendment or repeal and upon the satisfaction of one or more of the following conditions:

- (a) To make corrections of a technical, clerical, grammatical or typographical error or clarification of a statement;
- (b) A government agency requires an amendment or repeal as a condition to making, purchasing, insuring or guaranteeing mortgages, or an amendment or repeal is required in order to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, HUD, FHA or other government mortgage agency;
- (c) An amendment or repeal is necessary or useful for the exercise of Declarant's development rights as set forth in this Declaration, including but not limited to the inclusion of additional land within the scope of this Declaration and the creation of additional Lots.

**Section 15.03 Amendment of Declaration by Members.** Except in cases of amendments that may be executed by Declarant, Builders or the Board hereunder or pursuant to the Act, and except as otherwise provided for in Section 15.05 below and otherwise herein or pursuant to the Act, this Declaration may be amended by the written agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Any amendment to Article Fifteen below shall also require the written consent of Declarant for a period of 25 years from the date this Declaration is recorded with the Clerk and Recorder. Any such amendment shall be effective upon the recording of the amendment with the Clerk and Recorder together with a notarized certificate certifying that the requisite number of Owners have given their written consent to the amendment.

**Section 15.04 Termination.** Notwithstanding Section 15.02 above, the Community Area may only be terminated upon the written agreement of: (a) Owners of Lots to which at least 75% of the votes in the Association are allocated; plus (b) Declarant for so long as it has Declarant Rights; plus (c) Builders for so long as they have Builder Rights; plus (d) 51% of Eligible Mortgagees (which percentage is measured by the votes allocated to the Lots encumbered by such Mortgages). Notwithstanding the foregoing, no termination of the Community Area shall affect the provisions of Article Thirteen which shall survive any termination of the Community Area for a period of 25 years from the date this Declaration is recorded with the Clerk and Recorder.

**Section 15.05 Consent of Declarant and Builders Required.** So long as Declarant or a Builder has any benefits, rights or obligations under or pursuant to the Association Governing Documents, any proposed amendment/termination of any provisions of the Association Governing Documents that in any way affects such benefits, rights or obligations (including without limitation Article Fourteen) shall require Declarant's and a Builder's prior written consent to such amendment. Any amendment made without such prior written consent as required herein shall be null and void and shall have no effect.

## **ARTICLE XV MISCELLANEOUS**

**Section 15.01 Notices.** Any notice permitted or required to be given under this Declaration shall be in writing and may be served 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 received, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

**Section 15.02 Persons Entitled to Enforce Declaration.** The Association (acting by authority of the Board) or any Member (acting on such Member's own behalf), shall have the right but not the obligation to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration or other Association Documents, in accordance with the provisions and dispute resolution procedures contained in this Declaration.

**Section 15.03 Violations of Law.** Any violation of any federal, state, county or municipal law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Area is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

**Section 15.04 Special Rights of First Mortgagees.** Any First Mortgagee, upon filing a written request therefor with the Association, shall be entitled to:

- (a) Receive written notice from the Association of any default by the Owner indebted to such First Mortgagee in the performance of the Owner's obligations under the Association Documents, which default is not cured within sixty (60) days after the Association learns of such default;
- (b) Examine the books and records of the Association during normal business hours and upon reasonable prior notice;
- (c) Upon request, receive a copy of the Association's financial statement within ninety (90) days following the end of any fiscal year;
- (d) Receive written notice of all meetings of Members;
- (e) Designate a representative to attend any meeting of Members;
- (f) Receive written notice of the termination of this Declaration or the Association;
- (g) Receive written 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 Association Properties;
- (i) Receive written notice of any damage to the Association Properties if the cost of reconstruction exceeds \$10,000, and of any condemnation or eminent domain proceeding or other proposed acquisition with respect to any portion of the Association Properties; and
- (j) Receive written notice of any lapse, termination or material modification of an Association insurance policy.

**Section 15.05 Remedies Cumulative.** Each remedy provided under the Association Documents is cumulative and not exclusive.

**Section 15.06 Limitation on Liability.** The Association, the Board, the Architectural Committee and Declarant, and any agent or employee of any of the same, shall not be liable to any Person for any action

or for any failure to act if the action or failure to act was in good faith and without malice.

**Section 15.07 Governing Law.** The Association Documents shall be construed and governed in accordance with the laws of the State of Colorado.

**Section 15.08 Severability.** Each of the provisions of the Association Documents shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

**Section 15.09 Number.** Unless the context requires a contrary construction, as used in the Association Documents, the singular shall include the plural and the plural, the singular.

**Section 15.10 Cautions 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 15.11 Merger and Consolidation.** The Association may merge with another association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, right and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Community Area, together with the covenants, conditions and restrictions established upon any other property, as one plan. The Association shall have the right to merge into and with another association upon a vote of the respective boards of directors of such associations.

**Section 15.12 Interpretive Authority Resolves Questions of Construction.** If any doubt or question should arise concerning the true intent or meaning of any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration, the Declarant, during the Period of Declarant Control, and thereafter, the Board (the "Interpretive Authority"), shall determine the proper construction of the provisions in question and shall set forth the meaning, effect, and application of the provision in a written document duly acknowledged by the Interpretive Authority. This determination will thereafter be binding on all parties so long as it is not arbitrary, or capricious.

**Section 15.13 Limitations.** Notwithstanding any other provision of this Declaration, no Claim or proceedings may be initiated after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitation or statute of repose.

**Section 15.14 Amendment.** Notwithstanding anything to the contrary contained in this Declaration, no provision of Sections 14.01, 14.02, 14.03, or 14.04 may be amended, modified, or repealed unless such amendment, modification, or repeal is approved by Owners in accordance with this Declaration and is consented to in writing by the Declarant and the Association.

**Section 15.15 Accrual of Claims.** In the event of any purported amendment, modification, or repeal of any provision of Sections 14.01, 14.02, 14.03, or 14.04 not in accordance with Article 14 above, or in the event Article 14 above is deemed unenforceable, then and in such event any amendment,

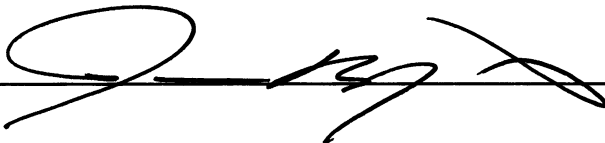
modification, repeal , or severance of the affected provisions of Sections 14.01, 14.02, 14.03, or 14.04 shall only apply prospectively, to claims that accrue following the date of such amendment, modification, repeal, or severance.

IN WITNESS WHEREOF, Declarant, CH Lorson, LLC, a Colorado limited liability company, has executed this Declaration to be effective as of the day and year first written above.

**CH LORSON, LLC**

a Colorado limited liability company

By: Challenger Building, LLC, its Manager

By: 

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

The foregoing Declaration was acknowledged before me by Jim Byers  
the VPO of Community Dev of Challenger Building, LLC signing as the Manager of CH Lorson,  
LLC, a Colorado limited liability company, on this 20th day of November 2020.

  
Notary Public

My commission expires: 11/9/2024

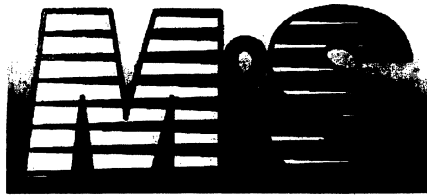
MICHELLE L COOPER Notary Public State of Colorado Notary ID # 20124032797 My Commission Expires 11-09-2024
--

**EXHIBIT A**

**COMMUNITY AREA**

**The initial Community Area is described on the following legal description:**

EXHIBIT A



CIVIL CONSULTANTS, INC.

102 E. Pikes Peak Ave., 5<sup>th</sup> Floor  
Colorado Springs, CO 80903  
Mail to: PO Box 1360  
Colorado Springs, CO 80901  
719.955.5485

**PONDEROSA AT LORSON RANCH FILING NO. 3  
SUBDIVISION BOUNDARY LEGAL DESCRIPTION**


TRACT "L" OF "PONDEROSA AT LORSON RANCH FILING NO. 1" AS RECORDED UNDER RECEPTION NO. 207712672 OF THE RECORDS OF EL PASO COUNTY, COLORADO, BEING A PORTION OF THE N 1/2 SECTION 14, T15S, R65W OF THE SIXTH P.M., EL PASO COUNTY, COLORADO.

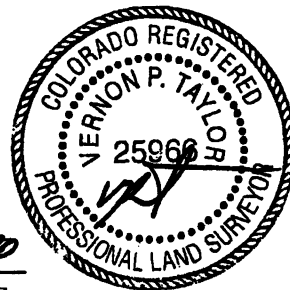
SAID PARCEL OF LAND CONTAINS A CALCULATED AREA OF 452,029 SQUARE FEET (10.377 ACRES) MORE OR LESS.

NOTES

BASIS OF BEARING: THE EAST LINE OF TRACT "L" OF "PONDEROSA AT LORSON RANCH FILING NO. 1" AS RECORDED UNDER RECEPTION NO. 207712672, MONUMENTED AT EACH END BY A No 5 REBAR AND 1.25" ORANGE CAP STAMPED "M&S CIVIL PLS 25966" FLUSH WITH EXISTING GRADE. SAID EAST LINE IS ASSUMED TO BEAR S00°00'00"E A DISTANCE OF 337.70 FEET. THE UNIT OF MEASUREMENTS IS THE U.S. SURVEY FOOT.,

PREPARED BY:

  
\_\_\_\_\_  
VERNON P. TAYLOR, COLORADO P.L.S. NO. 25966      DATE 11/20/2020  
FOR AND ON BEHALF OF M&S CIVIL CONSULTANTS, INC  
102 E. PIKES PEAK AVE., 5<sup>TH</sup> FLOOR  
COLORADO SPRINGS, CO 80903



# Exhibit A

PLAT NO. 210713046  
REC. NO. 210713046

LORSON RANCH FILING NO. 1\*  
REC. NO. 210713013

TRACT C

\*OLD GLORY DRIVE\*  
REC. NO. 207107319

LITTLE DOG DRIVE

60' ROW  
30'  
30'

\*BUFFALO CROSSING  
FILING NO. 1\*  
REC. NO. 212713273

\*BUFFALO CROSSING  
FILING NO. 2\*  
REC. NO. 214713493

FOUND ORANGE  
PLASTIC CAP  
"LS 38141"

TRACT C

SIGHT LINE  
EASEMENT

\*THE MEADOWS AT  
LORSON RANCH  
FILING NO. 2\*  
REC. NO. 211713116

60' ROW  
30'  
30'

BEARCAT LOOP

\*OLD GLORY DRIVE\*  
REC. NO. 207107319

SIGHT LINE  
EASEMENT

TRACT "P"  
TELECOMMUNICATIONS  
AND UTILITY EASEMENT  
DEDICATED BY PLAT  
REC. NO. 207712672

\*PONDEROSA AT  
LORSON RANCH  
FILING NO. 1\*  
REC. NO. 207712672

## PONDEROSA AT LORSON RANCH FILING NO. 3

### LOTS 1 - 90

