



**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS OF PAUTLER FARMS ESTATES
WELD COUNTY, COLORADO
(A PLANNED COMMUNITY)**

This Declaration of Protective Covenants, Conditions, Restrictions and Easements of Pautler Farms Estates, Weld County, Colorado, is made the date hereinafter set forth by PFI Properties I LLC, a Colorado limited liability company, hereinafter referred to as the "Declarant."

WITNESSETH:

WHEREAS, the Declarant is the owner of real property situate in the County of Weld, State of Colorado, more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, the Declarant desires to provide for the preservation of the values in the Property for the community that is to reside therein and, to such end, desires to subject the Property to the covenants, conditions, restrictions, easements, reservations, rights-of-way, charges, liens, equitable servitudes and other provisions hereinafter set forth, each and all of which is and are for the benefit of the Property and each owner of all or any portion thereof, their heirs, successors administrators, grantees and assigns;

WHEREAS, a common interest community may be created pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et seq., as amended (the "Act"), only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded;

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values in said community, to create an entity which shall have the obligation and powers of administering the community and enforcing the covenants and restrictions; and

WHEREAS, Declarant has incorporated or will incorporate under the laws of the State of Colorado, as a nonprofit corporation, the Pautler Farms Estates, for the purposes of exercising the functions aforesaid.

NOW, THEREFORE, the Declarant declares that all of the Property is and shall be held, transferred, sold, conveyed and occupied subject to the following terms, restrictions, limitations, uses, liens, charges, covenants, conditions, obligations and easements, which are for the purpose of protecting the value and desirability of, and which shall run with the Property, and shall inure



to the benefit of and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, grantees, personal representatives, executors, administrators, devisees, successors and assigns, and shall inure to the benefit of each owner of all or any portion thereof. Declarant intends that the common interest community created by this Declaration will initially be a planned community with residential uses, but may also include condominiums in the future.

ARTICLE I DEFINITIONS

Section 1.1. "Allocated Interests" shall mean the Common Expense Liability and votes in the Association allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Project from time to time. The Allocated Interest for each Lot is subject to decrease with the annexation of additional property, if any, to this Project, as provided herein.

Section 1.2. "Architectural Guidelines" shall mean and refer to the Pautler Farms Estates Architectural and Design Guidelines and Requirements, as may be amended from time to time.

Section 1.3. "Articles" shall mean the Articles of Incorporation of the Association, as the same may be amended or supplemented from time to time.

Section 1.4. "Assessments" shall mean all of the following: Common Expense Assessments, Individual Assessments, Special Assessments and Penalty Assessments, as described in Article V hereof.

Section 1.5. "Assessment Year" shall mean the calendar year or such other period of twelve consecutive months selected by the Board for the levying, determining and assessing of the annual Assessments under this Declaration.

Section 1.6. "Association" shall mean and refer to the Pautler Farms Estates, a nonprofit corporation, which corporation shall be a unit owners' association organized under Section 38-33.3-301 of the Act, its successors and assigns.

Section 1.7. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 1.8. "Bylaws" shall mean the Bylaws of the Association, as the same may be amended or supplemented from time to time.

Section 1.9 "Chicken(s)" shall mean the domestic fowl that is raised and kept for its eggs or meat and described as gallus gallus domesticus. For clarity, Chicken shall not include ducks, geese, or other fowl.



Section 1.10. "Clerk and Recorder" means the Clerk and Recorder of Weld County, Colorado.

Section 1.11. "Committee" shall mean and refer to the Pautler Farms Estates Design Review Committee, and its successors and assigns that are designated in writing.

Section 1.12. "Common Area" shall mean all real property (including the improvements thereto) owned or leased by the Association for the common use and enjoyment of the Owners (subject to Section 2.1 of this Declaration).

Section 1.13. "Common Expenses" shall mean (i) expenses of administration, operation, management, maintenance, repair, and replacement of the Common Area; (ii) expenses declared "Common Expenses" by the Association; (iii) all sums lawfully assessed against the Lots by the Board of Directors; and (iv) expenses agreed upon as Common Expenses by the Members of the Association.

Section 1.14. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot. The Common Expense Liability for each Lot shall be equal to the Allocated Interests of such Lot multiplied by the total Common Expenses.

Section 1.15. "County" shall mean the County of Weld, State of Colorado.

Section 1.16. "Declarant" shall mean and refer to PFI Properties I LLC, a Colorado limited liability company, its successors and assigns. A person or entity shall be deemed a "successor and assign" of PFI Properties I LLC as the "Declarant" only if specifically designated in writing by PFI Properties I LLC as a successor Declarant or assignee of PFI Properties I LLC's rights as the Declarant in whole or to any part of the Property and if such written instrument is duly recorded in the real estate records of the County.

Section 1.17. "Declaration" shall mean this document, together with all exhibits attached hereto, and all amendments and supplements hereto, and also including but not limited to plats and maps.

Section 1.18. "Development Property" means the real property described on **Exhibit D**, attached and incorporated by reference.

Section 1.19 "Domesticated Rabbit(s)" shall mean a rabbit that is of a breed, variety or strain derived from the European rabbit (*Oryctolagus cuniculus*) but not including the European rabbit (*Ferae naturae*).

Section 1.20 "First Mortgage" shall mean a Mortgage which has a first and paramount priority to or upon a Lot or Property under applicable law and which appears in the County's real estate records.



Section 1.21 "First Mortgagee" shall mean a Mortgagee identified in the County's real estate records and which takes, owns, or holds a First Mortgage.

Section 1.22 "Greenhouse" shall mean an enclosed structure that is not directly attached to the Living Unit which it serves and is used primarily for the cultivation or protection of plants. A Greenhouse may be either an Outbuilding (if greater than one hundred twenty (120) square feet), or a Small Enclosed Structure (if the ground floor area does not exceed one hundred twenty (120) square feet).

Section 1.23 "Household Pets" shall mean and refer to any species of animal normally kept as pets, as a custom in the community, within households, not of a type commonly raised as livestock on a farm, and the keeping of which is not prohibited by ordinances of the governmental entity having jurisdiction. Subject to all applicable zoning codes and ordinances, Household Pets shall include, but not be limited to, tropical fish, small pet rodents (e.g., gerbils, hamsters, and Domesticated Rabbits), dogs, cats, small birds, and potbellied pigs.

Section 1.24 "Improvements" means all of the following located or occurring on any Lot: Living Units, buildings, structures, fences, walls, hedges, plantings, landscaping, gardens, lighting, poles, driveways, sidewalks, walkways, patios, signs, changes in any exterior color or shape, screen door changes, excavation and site work, removal of trees or plantings, and any new exterior construction or exterior improvement on a Lot which may not be included in the foregoing. "Improvements" does include both original improvements and all later changes and improvements on a Lot.

Section 1.25 "Individual Assessment" shall mean the assessment levied against a particular Lot or Lots to cover the Association's costs of providing services which benefit only one or a limited number of Lots, as described in Article V hereof.

Section 1.26 "Living Unit" shall mean each single-family residence located within or upon a Lot, which shall constitute the physical building consisting of the attached garage and living space.

Section 1.27 "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property as a "Lot", as well as each platted lot shown upon any recorded subdivision plat of any other real property as may hereafter be brought within the jurisdiction of the Association, and all improvements now or hereafter constructed thereon, with the exception of any Common Area and any dedicated roadways, utility easements, drainage ways, parks, schools, and open space. The boundaries and the identifying number of each existing Lot are set forth on the Plat of the Property. Without limiting the generality of the foregoing, if any platted lot(s) is designated as Common Area in this Declaration, or in any Supplemental Declaration of Annexation, or any amendment thereto, then such lot(s) shall constitute Common Area, as defined herein, rather than a Lot, as defined in this Section.



Section 1.28 "Lots That May Be Included" means eleven (11) Lots, which shall be the maximum number of Lots that may be subject to this Declaration. However, the aforesaid number of Lots that May be Included is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in the Project.

Section 1.29 "Member" shall mean every person or entity who is a record owner of a fee or undivided interest in any Lot, including Declarant and contract sellers, but not including contract purchasers.

Section 1.30 "Mortgage" shall mean any mortgage, deed of trust, or other document pledging a Lot as security for payment of a debt or obligation.

Section 1.31 "Mortgagee" shall mean any person, corporation, partnership, trust, company, association, or other legal entity which takes, owns, holds or receives a mortgage.

Section 1.32 "Outbuilding" shall mean and refer to any enclosed covered structure greater than one hundred twenty (120) square feet, including, without limitation, garages, workshops, sheds, Greenhouses, shelters, and similar structures not directly attached to the Living Unit which it serves.

Section 1.33 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding contract purchasers and those having such interest merely as security for the performance of an obligation.

Section 1.34 "Period of Declarant Control" shall mean a length of time expiring ten (10) years after the initial recording of this Declaration in the office of the Clerk and Recorder, provided that the Period of Declarant Control shall terminate no later than either sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than Declarant, two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business or two (2) years after any right to add new Lots to the Declaration was last exercised.

Section 1.35 "Person" means a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture, or any other entity recognized under the laws of the State of Colorado or any combination thereof.

Section 1.36 "Plat" shall mean any recorded plat for any portion of the Property, and any supplements, amendments, or modifications thereto. Declarant reserves the right to amend the Plat, at any time and from time to time, until termination of the Special Declarant Rights Period in accordance with Section 1.45 below, to conform the Plat according to the actual location of any of the constructed improvements and to establish, vacate, or relocate easements. A Plat, as



described on **Exhibit A** and which includes the Property described on **Exhibit A**, has been recorded.

Section 1.37 "Project" shall mean all of the Property, including real property and improvements annexed thereto pursuant to Section 8.7 hereof, and all improvements thereon, together with all rights, duties, easements, and appurtenances belonging thereto submitted by this Declaration and any amendments and supplements hereto.

Section 1.38 "Property" shall mean and refer to that real property described on **Exhibit A** to this Declaration, and all improvements and structures thereon, and such additional real property as may hereafter be brought within the jurisdiction of the Association.

Section 1.39 "Related User" shall mean a person or entity who obtains all or certain rights of an Owner by reason of such person or entity claiming or being entitled to such rights by, through or under such Owner. Without limiting the generality of the foregoing, "Related User" shall include any occupant, tenant, or contract purchaser of an Owner who resides on the Lot of such Owner and any natural person who is a guest or invitee of such Owner or of such person or entity.

Section 1.40 "Rules and Regulations" shall mean the rules and regulations adopted by the Board pursuant to this Declaration and the Bylaws, as the same may be amended or supplemented from time to time.

Section 1.41 "Small Enclosed Structure" shall mean an enclosed covered structure of which the ground floor area does not exceed one hundred twenty (120) square feet that is not directly attached to the Living Unit which it serves.

Section 1.42 "Special Declarant Rights Period" shall mean the period of time commencing on the date this Declaration is recorded in the real property records of the Clerk and Recorder and terminating automatically on the earlier of: (a) the date of conveyance by Declarant of the last Lot owned by Declarant to an Owner other than Declarant (except a successor Declarant), or (b) December 31, 2030.

Section 1.43 "Storage Shed" shall mean an enclosed structure that is not directly attached to the Living Unit which it serves that is used primarily for the storage of household, gardening, or farm or ranch items, or other miscellaneous items. A Storage Shed may be either an Outbuilding (if greater than one hundred twenty (120) square feet), or a Small Enclosed Structure (if the ground floor area does not exceed one hundred twenty (120) square feet).

Section 1.44 "Town" shall mean the Town of Johnstown, Colorado.

**ARTICLE II
PROPERTY RIGHTS**

Section 2.1. **Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of use and enjoyment in and to the Common Area which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights of and right to the use of any Common Areas and/or recreational facilities owned by the Association by an Owner and/or his Related Users for any period during which any Assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction or breach of the Declaration, the Articles, the Bylaws or the Rules and Regulations;

(b) the right of the Association to dedicate or transfer easements and rights of way in, on, over, under and across all or any part of the Common Area to any public agency, authority, or utility for gas, water, drainage, access, electric, telephone, cable television, or other utility services, or for such other purposes and subject to such conditions as may be approved by a vote of sixty-seven percent (67%) of the Members who are voting, in person or by proxy, at a meeting duly called for such purpose. No such dedication or transfer for "such other purposes" shall be effective unless a written statement, executed by the Secretary of the Association and verifying the requisite approval of members was obtained to such dedication or transfer, has been recorded in the real estate records of the County; and

(c) the right of the Board to adopt Rules and Regulations governing the use of the Common Area and other portions of the Project, provided that such Rules and Regulations shall be uniform and non-discriminatory. Each Owner, for himself and his Related Users, by the acceptance of his deed or other instrument of conveyance or assignment, agrees to be bound by any such Rules and Regulations.

Section 2.2. **Acceptance of Property.** The Association shall accept title to any property, including any improvements thereon and personal property, transferred by the Declarant. The property transferred may include fee simple title, easements, leasehold interests and licenses to use property for any use, including but not limited to trails and other recreational facilities, community use, open space, utilities, drainage, parks, roads, or easements, within this Project, annexed to the properties, or designated by the Declarant. The Association agrees to accept, operate, manage, maintain, care for and repair all such property. The Association may purchase, accept or lease real property from parties other than Declarant upon a vote of more than fifty percent (50%) of the Members who are voting in person or by proxy, at a meeting duly called for such purpose. No Owner shall have the right to partition or seek partition of the Common Area or the other Association properties.

Section 2.3. **Delegation of Use.** Any Owner may delegate his right of enjoyment to the Common Area and related facilities to Related Users who reside on that Owner's Lot.

Section 2.4. **Title to Common Area.** Declarant hereby covenants that it will convey fee simple title to the Common Area described in **Exhibit B** hereto to the Association free of all liens and

encumbrances except those restrictions, reservations, easements and rights of way apparent or of record. Declarant further covenants that upon each annexation of additional property pursuant to Section 8.7 hereof, it will convey fee simple title to the Common Area within such annexed property, if any, to the Association, free and clear of all liens and encumbrances except those restrictions, reservations, easements and rights of way apparent or of record.

Section 2.5. Easements for Encroachments. Easements for encroachments between Lots and portions of the Common Area exist; (i) in favor of all Owners so that the Owner shall have no legal liability when any part of the Common Area encroaches or shall encroach upon a Lot; (ii) in favor of the Owner of each Lot so that the Owner shall have no legal liability when any portion of his Lot encroaches or shall hereafter encroach upon the Common Area or upon another Lot; and (iii) in favor of all Owners, the Association, and the Owner of any encroaching Lot for the maintenance and repair of such encroachment which encroachments are the result of (a) shifting, movement, or settling of any improvements, (b) restoration, shifting, movement, alteration, or repair to the Common Area, or (c) repair or restoration of the Lot improvements after damage by fire or other casualty or condemnation or eminent domain proceedings; provided, that any restored, altered, or repaired improvements are in substantially the same location as prior to such restoration, alteration, or repair. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Area or on the Lots for purposes of marketability of title or other purposes.

Section 2.6. Common Area Easements. The easements over and across the Common Area shall be those shown, or provided for, on the recorded Plat, and such other easements as may be established pursuant to the provisions of this Declaration or other recorded instrument. There is hereby created a blanket easement upon, across, over, and under the Common Area for installing, replacing, repairing, and maintaining all underground utilities, including but not limited to water, sewer, gas, telephone, electricity, internet, and cable television facilities and drainage facilities, if any. By virtue of this easement, it shall be expressly permissible for the utility companies or governmental entities supplying such utility service to erect and maintain the necessary equipment under the Common Area and to affix, repair, and maintain water and sewer pipes, gas, electric, and telephone wires, circuits, conduits, and meters, provided such utilities do not interfere with the use and enjoyment of the Common Area. In addition, the Association, its Board, agents, managing agent, and employees shall have an unrestricted, irrevocable easement to traverse, cross, and utilize any portion of the Common Area which may be necessary in order to perform any of its functions as described in this Declaration. Emergency vehicles and attendants shall have the right during emergencies to access through the Property, including, without limitation, the right to use any portions of the Common Area, and any private drives and parking areas within the Property.

Section 2.7. Mechanic's Lien Rights and Indemnification. No labor performed or materials furnished and incorporated within a Lot with the consent of or at the request of the Owner thereof or his agent, or his contractor or subcontractor, shall be the basis for the filing of a lien against any other Lot if the Owner of such other Lot has not expressly consented to, or requested

the same, or the Common Area, unless the Association has executed a written contract with contractor for the work performed on the Common Areas. Each Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against such other Owner's Lot for construction performed, or for labor, materials, services, or products incorporated in the Owner's Lot at such Owner's express or implied request. The provisions herein contained are subject to the rights of the Association as set forth in this Declaration. Notwithstanding the foregoing, any First Mortgagee of a Lot who shall become the Owner of such Lot pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify or hold harmless any Owners of the abutting Lots or the Association against liability for claims arising prior to the date such First Mortgagee becomes an Owner, but shall be under such obligation for any claims arising thereafter.

Section 2.8. Unlawful Activity Prohibited. No unlawful use shall be made of the Project or any other property in which the Association owns an interest, nor any part thereof, and all valid laws, zoning ordinances, and regulations of all governmental or quasi-governmental bodies having jurisdiction shall be observed; provided, however, the Association shall have no obligation or duty to take action for the enforcement of such laws, ordinances and regulations.

ARTICLE III ASSOCIATION AND MEMBERSHIP

Section 3.1. Association. The administration of the Project shall be governed by this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association. The Association has been or will be formed as a Colorado nonprofit corporation. The Association shall have the duties, powers and rights set forth in this Declaration and in the Articles and Bylaws.

Section 3.2. Board. Except as otherwise provided in this Declaration or the Association Bylaws, the affairs of the Association shall be managed by the Board, which shall consist of not fewer than three persons. Notwithstanding the foregoing, during the Period of Declarant Control, the number of Directors shall be three (3) and the Declarant shall have the right to appoint all three (3) of such Directors, unless the Declarant sooner relinquishes its right of appointment by means of an instrument recorded in the real property records of the County. Directors appointed by the Declarant do not have to be Owners. Subject to the foregoing, the number, term, election and qualifications of the Board shall be fixed in the Articles or the Bylaws or both. By resolution, the Board may delegate portions of its authority to an executive committee or to other committees, to tribunals, 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 management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board or any duly authorized executive committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Declaration, the Articles, or the Bylaws.



During the Period of Declarant Control, no later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots That May Be Included to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots That May Be Included to Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board of Directors must be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of seventy-five percent (75%) of the Lots That May Be Included to Owners other than Declarant, the Owners shall elect a Board of Directors of at least three (3) members, at least a majority of whom shall be Owners other than the Declarant or designated representatives of Owners other than Declarant. Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver to the Association the property of the Owners that is specified under Section 38-33.3-303(9) of the Act.

On or before the date that is ninety (90) days after the Owners other than the Declarant elect a majority of the members of the Board of Directors (and on or before the date that is ninety (90) days after a change of the Association's address, designated agent, or management company), the Association shall make available the information specified in Section 38-33.3-209.4(1) of the Act for review by the Owners on reasonable notice.

On or before the date that is ninety (90) days after the Owners other than the Declarant elect a majority of the members of the Board of Directors (and on or before the date that is ninety (90) days after the end of each fiscal year of the Association thereafter), the Association shall make available the information specified in Section 38-33.3-209.4(2) of the Act for review by the Owners on reasonable notice.

The information described in this Section 3.2 shall be provided to the Owners by the Association either by (a) posting such information on an internet website with notice of the URL for such website delivered to the Owners by electronic mail or first-class mail; (b) placing such information on a literature table or in a binder in the Association's main office; (c) mail or personal delivery; or (d) such other method as may be permitted under the Act.

Section 3.3. Membership in Association. Each Owner of a Lot shall become a Member of the Association upon conveyance to such Owner of an interest in a Lot and shall remain a Member for the period of such ownership. The Owner of a Lot shall automatically be the holder of the membership in the Association appurtenant to that Lot, and such membership shall automatically pass with fee simple title to the Lot. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot. 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 such Owner's rights as an Owner to use improvements or otherwise to a Related User or Mortgagee and may arrange for a Related User to perform some or all of such Owner's



obligations as provided in this Declaration, but no Owner shall be permitted to relieve itself of the responsibility for fulfillment of all of the obligations of an Owner under this Declaration.

Section 3.4. One Class of Membership. The Association shall have one class of voting membership. Each Owner shall be entitled to One (1) vote for each Lot owned in accordance with the Allocated Interest attributable to each Lot, except that no votes allocated to a Lot owned by the Association may be cast. The total number of votes which may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association.

Each Member shall have the right to cast the votes for the Lots owned by such Member except that, in the event any Lot is owned by more than one (1) Member, any Member who is Owner of that Lot and is present to vote at any meeting may cast the votes for such Lot. If more than one (1) Member who is an Owner of that Lot is present at a meeting, the vote for such Lot shall be cast as such Members shall agree and determine between themselves, or, in the absence of agreement, by the Member who has the largest fractional interest in such Lot, as such fractional interest is set forth in the deed conveying the Owners' interest in said Lot. However, if any Lot is owned by more than one (1) Member, and the Members do not agree as to how the vote for such Lot shall be cast, and the deed conveying the Owners' interest in said Lot does not specify the fractional interest of each Owner, the Owners shall be passed over and their right to vote on the issue shall be lost if said Owners are unable, within a reasonable time, to agree on how to cast the vote for their Lot. For clarity, the vote for each Lot shall be exercised as the Owner(s) of said Lot among themselves determine, but in no event shall more than one vote be cast with respect to any Lot and in no event shall the vote for such Lot be fractionalized.

Except as otherwise provided herein, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and members of the Board of Directors, and may remove all officers and members of the Board of Directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control; but, in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

**ARTICLE IV
DUTIES AND POWERS OF THE ASSOCIATION**

Section 4.1. General Duties and Powers of the Association. The Association has been formed to further the common interests of the Owners. The Association, acting through the Board or through Persons to whom the Board has delegated any authorized powers of the Board, shall have all of the duties and powers hereinafter set forth and, in general, the powers to perform its duties described in this Declaration and, subject to any limitation set forth in this Declaration, the power to do anything that may be necessary or desirable to further the common interests of the

Owners, or to maintain, improve and enhance the Common Area and other Association properties, including all implied powers authorized by the Act.

Section 4.2. Duty to Accept Property and Facilities Transferred by the Declarant. The Association shall accept title to any Common Area, including any improvements thereon, and related real and personal property, transferred to the Association by the Declarant, together with the responsibility to perform any and all administrative functions associated therewith, provided that such property and functions are not inconsistent with the provisions contained in this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and licenses to use.

Section 4.3. Duty to Manage and Care for Property. The Association shall manage, operate, care for, maintain and repair all Common Area and related Association properties and keep them in a safe, attractive and desirable condition for the use and enjoyment of the Owners, and the cost of said management, operation, maintenance, care, and repair shall be a Common Expense. The Association shall maintain any sidewalks immediately adjacent to Association-owned Common Area to the extent required by the Town, including without limitation snow removal from such sidewalks. The Association shall not need prior approval of its Members to cause such maintenance to be accomplished. The Association shall have the irrevocable right to have access to each Lot from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any portion of the Common Area or to do any other work required or reasonably necessary under this Declaration for the proper performance of its duties hereunder, or at any time for making emergency repairs therein necessary to prevent damage to the Common Area or to another Lot. Damage to any part of a Lot resulting from the maintenance, repair, emergency repair, or replacement of any portion of the Common Area or as a result of emergency repairs to another Lot, at the instance of the Association, shall be a Common Expense of all of the Owners. No diminution or abatement of Common Expense Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance, or order of a governmental authority. The damaged improvements shall be restored to substantially the same condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs and expenses of repairing such damage.

Section 4.4. Duty to Pay Taxes. The Association shall pay all ad valorem taxes and governmental assessments levied upon the Common Area and other Association properties to which the Association holds fee simple title, and shall also pay all other taxes and assessments payable by the Association. Nevertheless, the Association shall have the right to contest in good faith any such taxes or assessments.

Section 4.5. Casualty Insurance. To the extent required by the Act, and if not required by the Act, to the extent deemed desirable by the Board, the Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, casualty, fire and extended



coverage insurance with respect to all insurable improvements of the Common Area and personal property owned by the Association, in an amount not less than the full insurable replacement value of all the insured property less applicable deductibles at the time the insurance is purchased and at any renewal date, with the Association as the owner and beneficiary of such insurance. Insurance proceeds shall be used by the Association for the repair and replacement of the property for which the insurance was carried, unless otherwise provided in this Declaration. Premiums for all insurance carried by the Association shall be a Common Expense.

Section 4.6. Liability Insurance. To the extent required by the Act, and if not required by the Act, to the extent deemed desirable by the Board, the Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, broad form comprehensive liability insurance covering public liability for bodily injury and property damage in such amounts as the Board may from time to time determine, but not in an amount less than \$1,000,000.00 per person, per occurrence, covering all claims for bodily injury and/or property damage, insuring the Board of Directors, the Association, any management and their respective employees, agents and all Persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Board of Directors. The Owners shall also be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area. The policy shall contain a "severability of interests" endorsement.

Section 4.7. General Provisions Respecting Insurance.

(a) Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. To the extent the Association settles claims for damages, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. In the event that more than one (1) Lot is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

Any loss to any Living Unit or to any Common Area which the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the Persons sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Board of Directors.

Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, his tenants, family members, guests or invitees. Upon said determination by the Association, any such loss or portion thereof may be assessed to

the Owner in question and the Association may collect the amount from said Owner in the same manner as any Assessment.

Except as may be approved in writing by the Board, nothing shall be done or kept on property within the Project which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association. No Owner shall cause or permit a situation or condition to exist on that Owner's Lot which causes or might reasonably cause the insurance rates for neighboring Lots to be increased beyond those that would be applicable absent such situation or condition.

(b) Insurance obtained by the Association shall, to the extent reasonably possible without undue cost, contain a waiver of rights of subrogation as against the Association and each Owner, and against any officer, director, agent or employee of any of the foregoing, and waivers of any defense based on invalidity arising from any acts of an Owner, and shall provide that such policies may not be canceled or materially modified without at least thirty (30) days' prior written notice to all of the insureds, including First Mortgagees.

(c) Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to all First Mortgagees who have requested in writing the same at least ten (10) days prior to expiration of the then current policies.

(d) To the extent reasonably possible, insurance obtained by the Association shall name the Declarant as an additional insured in such Declarant's capacity as an owner and member of the Board of Directors and contain a waiver of rights of subrogation as against the Declarant and any officer, director, agent or employee of the Declarant.

(e) Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Common Area and other Association properties and/or property of the Declarant. Insurance shall be written with companies licensed to do business in Colorado. The Board shall not obtain any policy where: (i) under the terms of the insurance company's charter, bylaws or policy contributions or assessments may be made against the mortgagor, Mortgagee or Mortgagee's designee, or become a lien against the mortgaged property superior to a First Mortgage; (ii) by the terms of carrier's charter, bylaws or policy, lost payments are contingent upon action of the company's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent Mortgagees or the mortgagor from collecting insurance proceeds.

(f) All policies shall contain a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Lot, which clause shall provide that the loss, if any, thereunder shall be payable to the Association, for the use and benefit of First Mortgagees as their interest may appear. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Each Owner hereby irrevocably appoints the Association as attorney-in-fact for the purpose of purchasing and maintaining such insurance,

including: (a) the collection and appropriate disposition of the proceeds thereof; (b) the negotiation of losses and execution of releases of liability; (c) the execution of all documents; and (d) the performance of all other acts necessary to accomplish such purpose. No distribution of any insurance proceeds shall be made to any Owner whose Lot is encumbered by a First Mortgage unless any such proceeds are made payable jointly to such Owner and such Owner's First Mortgagee, as their interest may then appear in the County's real estate records with the Clerk and Recorder.

Section 4.8. Fidelity Coverage. To the extent reasonably obtainable, the Association shall obtain and keep in full force and effect at all times a fidelity policy or bond providing fidelity coverage against dishonest acts on the part of directors, officers, employees and volunteers of the Association responsible for handling funds collected and held for the benefit of the Owners or otherwise belonging to or administered by the Association. All such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employee(s)" or similar terms or expressions. The premium on all bonds required herein, except those maintained by a managing agent, shall be paid by the Association as a cost of insurance. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of a premium) without at least ten (10) days' prior written notice to the Association and to any First Mortgagee who requests that such notice be given.

Section 4.9. Other Insurance and Bonds. If the Project is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, the Association shall obtain a blanket policy of flood insurance on the Common Area, if within such identified area, in an amount which is the lesser of the maximum amount of insurance available under the Act, the aggregate unpaid principal balance of the First Mortgages on the Lots, or the value of the insurable improvements. The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws. The Association shall have the power to obtain such other insurance and such other fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

Section 4.10. Insurance to be Maintained by Owners. An insurance policy issued to the Association does not alleviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Lot and the Improvements thereon, including but not limited to flood insurance, if necessary, and the furnishings and other items of personal property belonging to an



Owner, and public liability insurance coverage on each Lot shall be the responsibility of the Owner of such Lot.

Section 4.11. Duty to Prepare Budgets. The Association shall prepare annual budgets in accordance with the requirements of the Act, as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

Section 4.12. Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

Section 4.13. Power to Acquire Property and Construct Improvements. Other than property received from Declarant (the conveyance of which is governed by Section 4.2 hereof), and subject to the limitations set forth in this Declaration, the Association may acquire property or interests in property for the common benefit of Owners, including improvements and personal property. Subject to the limitations set forth in this Declaration, the Association may construct improvements on property and may repair, maintain, remodel and demolish existing improvements.

Section 4.14. Power to Adopt Rules and Regulations. The Association, acting through the Board, or the Committee, may from time to time adopt, amend, repeal and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, or the use and enjoyment of the Common Area. Any such Rules and Regulations shall be reasonable and uniformly applied. Each Owner shall comply with such Rules and Regulations. In the event of any conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 4.15. Power to Enforce Declaration, Articles, Bylaws, and Rules and Regulations. Subject to the terms and conditions of this Declaration, the Association shall have the power to enforce the provisions of this Declaration and the provisions of the Articles, the Bylaws, and the Rules and Regulations, by legal and equitable means, and shall take such action as the Board deems necessary or desirable to cause such compliance by each Owner and each Related User.

Section 4.16. Power to Convey and Dedicate Property to Government Agencies. Subject to Section 2.1 of this Declaration, the Association shall have the power to grant, convey, dedicate or transfer any Common Area or Association properties or facilities to any public or governmental agency or authority for public use, provided that portions of the Common Area may be conveyed only if persons entitled to cast at least sixty-seven percent (67%) of the votes in the Association agree to that action. However, if the means of ingress to and egress from a Lot is through any such Common Area, then any such grant, conveyance, dedication or transfer shall be effected so as to provide continued ingress and egress for the benefit of the Owner of such Lot.



Section 4.17. **Power to Borrow Money.** Subject to the limitations contained in this Declaration, the Association shall have the power to borrow money and, with the prior approval of the Owners and First Mortgagees of not less than sixty-seven percent (67%) of the Lots then subject to this Declaration, the power to encumber Association properties as security for such borrowing.

Section 4.18. **Contracts; Power to Employ Managers; Management Contracts.** The Association may enter into contracts, including contracts for professional management of the Association's business, and incur liabilities. Without limiting the foregoing, the Association shall have the power to retain and pay for the services of a manager or managers to undertake any of the management duties and functions for which the Association has responsibility, and the Association may delegate any of its duties, powers or functions to any such manager. Notwithstanding any delegation to a manager of any duties, powers or functions of the Association, the Association and the Board shall remain ultimately responsible for the performance and exercise of such duties, powers and functions.

Section 4.19. **Power to Engage Employees, Agents and Consultants.** The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal, accounting and other services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

Section 4.20. **General Corporate Powers.** The Association shall have all of the ordinary powers and rights of a Colorado nonprofit corporation, including without limitation the power and right to enter into partnerships and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles or the Bylaws. The Association shall also have the power to do any and all lawful things which may be authorized, required or permitted to be done under this Declaration, or under the Articles, the Bylaws or Rules and Regulations, and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration or under the Articles, Bylaws or Rules and Regulations.

Section 4.21. **Condemnation.** If at any time or times during the continuance of ownership of the Common Area by the Association pursuant to this Declaration, all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Section 4.21 shall apply:

(a) **Proceeds.** All compensation, damages, or other proceeds received from an entity having the power of condemnation, pursuant to either a condemnation action or a sale in lieu of condemnation, is hereafter called the "Condemnation Award."

(b) **Complete Taking.** In the event that the entire Common Area is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the

Condemnation Award shall be used to replace the Common Area, if practicable. In the event it is not practicable to replace the Common Area, in the sole discretion of the Board, then the Condemnation Award shall be apportioned among the Owners on the same basis as set forth in Subsection (c) of this Section 4.21; provided, however, that if a standard different from the value of the property as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. On the basis of the principle set forth in Subsection (c) below, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable by check made payable jointly to Owners and their respective First Mortgagees, as their interest may then appear in the County's real estate records.

(c) Partial Taking. In the event that less than the entire Common Area is taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof and the Condemnation Award, in the sole discretion of the Board, is sufficient to completely rebuild and/or replace the Common Area, and improvements thereon, damaged or taken by the condemning public authority, the Condemnation Award shall first be applied by the Association to the rebuilding and/or replacement of the Common Area, and improvements thereon, damaged or taken unless a "Declaration Not to Rebuild" signed by the Owners representing not less than sixty-seven percent (67%) of the votes in the Association and not less than sixty-seven percent (67%) of First Mortgagees of record is recorded in the real property records of the County within one hundred (100) days of the date such property was taken or otherwise disposed of indicating their intention not to rebuild and replace. If the Board determines that the Condemnation Award is not sufficient to completely rebuild and/or replace the Common Area and improvements thereon, which has been damaged or taken, then the Board shall call a special meeting of the Members to approve a Special Assessment to fund any additional costs of rebuilding or replacement as is provided in Section 5.7 of this Declaration. If such Special Assessment is approved by the Members as provided in Section 5.7, the Association shall first apply the Condemnation Award and then the Special Assessment to the rebuilding and/or replacement of such Common Area, and improvements thereon. Any surplus of the Special Assessment not used for rebuilding and/or replacement shall be disbursed to the Owners in equal shares (or as close to equal shares as is reasonably practicable). If the Special Assessment is not approved by the Members, or if a proper "Declaration Not to Rebuild" is signed and recorded as provided above, the Condemnation Award shall be allocated and disbursed as hereinafter provided. Any surplus of the Condemnation Award or other portion thereof not used for rebuilding and replacement shall be allocated according to the following procedures. The Owners of each Lot shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable, the Association shall reasonably and in good faith allocate the Condemnation Award between compensation, damages, or other proceeds and shall apportion the amounts so allocated among the Owners as follows: (i) the total amount allocated to the taking or injury to the Common Area shall be apportioned equitably among the Owners according to the loss suffered; (ii) the total amount allocated to severance damages shall be apportioned equitably to those Lots which were not taken or condemned; and (iii) the total

amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If the allocation of the Condemnation Award is already established in negotiations, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distributions of apportioned proceeds shall be disbursed as soon as practicable in the same manner as provided in Subsection (b) of this Section 4.21.

(d) **Notice.** The Association shall notify in writing each First Mortgagee of any Lot that has requested in writing such notice, of the commencement of the condemnation proceedings against the Common Area and shall notify said Mortgagees in the event of the taking of all or any part of the Common Area, if the value of the Common Area taken exceeds \$25,000.00.

Section 4.22. **Damage; Destruction of Common Area Improvements.**

(a) **Association as Attorney-in-Fact - Damage and Destruction.** This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the issue of the total or partial destruction to Common Area improvements. Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any subsequent Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association, in their names, place, and stead for the purpose of dealing with the issue of the total or partial destruction of the Common Area improvements as hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary, shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the Common Area improvement(s) as used in the succeeding subsections means restoring the Common Area improvement(s) to substantially the same condition in which it existed prior to the damage. Except as otherwise herein provided, the proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, or replacement unless the Owners and First Mortgagees agree not to rebuild or repair in accordance with the provisions set forth hereinafter. Assessments by the Association for those purposes stated herein shall not be abated during the period of insurance adjustment and repair and reconstruction.

(b) **Proceeds Sufficient.** In the event of damage or destruction to the Common Area improvements to the extent of not more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost thereof, not including land, due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the Common Area improvement(s) shall be applied by the Association as attorney-in-fact, to such reconstruction, and the Common Area improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair and restoration of the Common Area improvement(s).

(c) **Proceeds Insufficient; Not More Than 2/3 Damage.** If the insurance proceeds are insufficient to repair and reconstruct the Common Area improvement(s), and if such damage is to the extent of not more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost of the Common Area improvement(s), not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an Assessment to be made against all of the Owners. Such deficiency assessment shall be a Common Expense and made pro rata according to the number of Lots in the Association and shall be due and payable as set forth in the written notice of such Assessment. The Association shall have full authority, right, and power, as attorney-in-fact, to cause the repair or restoration of the Common Area improvement(s) using all of the insurance proceeds and such Assessment. The deficiency assessment provided for herein shall be a Common Area Liability of each Owner and a lien on his Lot and be enforced and collected as is provided in this Declaration with respect to Special Assessments.

(d) **Proceeds Insufficient; More Than 2/3 Damage.** If the insurance proceeds are insufficient to repair the Common Area improvement(s), and if such damage is more than sixty-six and two-thirds percent (66-2/3%) of the total replacement cost of all the Common Area improvement(s), not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of a Special Assessment (which shall not require a vote of the Members) to be made against all of the Owners and their Lots; provided, however, that the Owners representing not less than sixty-seven percent (67%) of the votes in the Association and not less than sixty-seven percent (67%) of the First Mortgagees of record may agree not to repair or reconstruct the Common Area improvement(s) by signing and recording in the real estate records of the Clerk and Recorder a "Declaration Not to Rebuild" within one hundred (100) days of the date of such damage. In such event, the insurance settlement proceeds shall be collected by the Association, such proceeds shall be divided by the Association equally, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Lots. Each such account shall be in the name of the Association, and shall be further identified by Lot designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each such account without contribution from one account to another as attorney-in-fact, for the same purpose and in the same order as is provided in subsection (c) of this Section 4.22.

Section 4.23. Cooperation with Other Associations. The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other community association(s) and/or any district(s), to share the costs and/or responsibility for any maintenance, repair, replacement or other matters; to perform maintenance, repair or replacement for any person(s) in consideration of payment or reimbursement therefor; to utilize the same contractors, subcontractors, managers or others who may perform services for the Association, any other community association(s) and/or any district(s); or to otherwise cooperate with any other community association(s) and/or any district(s) in order to increase consistency or coordination, reduce costs or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if



any, shall be shared or apportioned between the Association and/or any other community associations and/or any districts, as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community associations, and/or any districts to collect assessments, other charges, or other amounts which may be due to such entity and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

Section 4.24. Association Records. The Association's books and records shall be subject to an audit or a review as further provided in this Declaration. Except as otherwise provided below, or as specified by Section 38-33.3-317 of the Act, the Association shall make reasonably available for inspection and copying by Owners, Mortgagees, and insurers or guarantors of any Mortgage, current copies of all of the governing documents, financial documents and all other documents described in Section 38-33.3-317 of the Act. The Person(s) accessing and/or copying such documents shall pay all costs associated therewith. "Reasonably available" shall mean available during normal business hours, upon prior notice of at least ten (10) business days, or at the next regularly scheduled meeting if such meeting occurs within thirty (30) days after the request.

Notwithstanding the above, a membership list or any part thereof may not be obtained or used by any Person for any purpose unrelated to an Owner's interest as an Owner without the consent of the Board. Without limiting the generality of the foregoing, without the consent of the Board, a membership list or any part thereof may not be: (a) used to solicit 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; (b) used for any commercial purpose; or (c) sold to or purchased by any Person.

The information described in this Section shall be provided to the Owners by the Association either by (a) posting such information on an internet website with notice of the URL for such website delivered to the Owners by electronic mail or first-class mail; (b) placing such information on a literature table or in a binder in the Association's main office; (c) mail or personal delivery; or (d) such other method as may be permitted under the Act. In the event the Act is amended to remove, modify, or otherwise revise the requirements under this Section of this Declaration, this Section shall be deemed amended to require only that which is required pursuant to the Act, as amended.

**ARTICLE V
ASSESSMENTS**

Section 5.1. Common Expense Assessments. The Association, through its Board, shall levy "Common Expense Assessments" against Lots within the Project for (a) the purposes of promoting the recreation, health, safety and welfare of the Lot Owners, (b) the performance of all



Association management, maintenance, repair and replacement obligations under this Declaration, (c) any other maintenance obligations or common services which may be deemed necessary by the Association for the common benefit of the Owners or the maintenance of property values, (d) payment of any common utility expenses not directly billed to the Owners and not individually metered for each Lot, (e) insurance as required by this Declaration, (f) providing an adequate reserve fund for maintenance, repair, and replacement of any portions of the Lots and Residences for which the Association is responsible under this Declaration, (g) such reasonable administrative costs and overhead charges incurred by the Association, as well as enforcement and collection costs, and any management fee paid by the Association, related to the performance of the obligations and provisions of services referenced in this Declaration; (h) such other purposes as may be described in this Declaration, and (i) the payment of any other expenses incurred by the Association in performing its duties under this Declaration and the Act. The assessment year shall be January 1 to December 31, unless a different fiscal year is chosen by the Association's Board. The Common Expense Assessments shall be made annually against all Lots based upon the Association's advance budget cash requirements needed by it to provide for administration and performance of its duties. The Common Expense Assessments may be collected in periodic installments as determined by the Board. Within 90 days after adoption of any proposed budget for the Association, the Board shall mail, by ordinary first-class mail, post on the Association's website or otherwise deliver, a summary of the budget to all Lot Owners and shall set a date for a meeting of the Lot Owners to consider the budget. Such meeting shall occur not less than fourteen (14) days nor more than sixty (60) days after mailing or other delivery of the summary. The Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners will be continued until a subsequent budget proposed by the Board is not vetoed by the Owners. If the Board, in its reasonable discretion, deems it necessary at any time following adoption of an annual budget to amend or modify that budget because of unexpected changes in the Association's costs or other unforeseen circumstances, the Board may do so and copies of the revised budget (including the revised Common Expense Assessments) shall be sent to the Owners in the same manner as the original budget. The omission or failure of the Association to fix the annual Common Expense Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.

Section 5.2. Due Date. Common Expense Assessments shall be payable in such manner and in such installments as may be determined from time to time by the Board; provided, however, that Common Expense Assessments shall be paid to the Association at least annually. If any such Assessment or installment thereof shall not be paid within ten (10) days after it shall become due and payable, the Board may assess a "late charge" thereon in an amount that the Board of Directors may determine from time to time to cover the extra cost and expenses involved in handling such delinquent Assessments. Any Assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per

annum, or at such other lawful rate as may be set from time to time by the Board of Directors. The Association shall cause to be prepared and delivered or mailed to each Member at least once each year a payment statement setting forth the estimated Common Expense Assessments for the ensuing year.

Section 5.3. Prorations. In the event membership in the Association commences on a day other than the first day of the Assessment period, the Assessments for that period will be prorated.

Section 5.4. Commencement; Amount of Common Expense. The obligation to pay Common Expense Assessments shall commence on the first day of the month immediately following the month in which the conveyance of the first Lot from Declarant to a purchaser (other than a successor Declarant) occurs. The first installment of Common Expense Assessments for each Lot shall be prorated according to the number of days remaining in the period of that first installment and shall be prepaid to the end of such installment period at time of the initial conveyance. Common Expense Assessments shall be based upon the cash requirements deemed to be such aggregate sum as the Board shall determine for each Assessment year, as necessary to provide for the payment of all estimated expenses relating to or connected with the administration, maintenance, ownership, insurance, repair, operation, addition, alteration, and improvement of any recreational facilities and other portions of the Common Area, the Project, and personal property owned by the Association.

The amount of annual Common Expense Assessments against Lots on which a certificate of occupancy has not been issued for the Living Unit hereafter to be located on such Lot may be set at a lower rate than the rate of annual Assessment against those Lots on which a certificate of occupancy has been issued pursuant to C.R.S. §38-33.3-315(3)(b), as amended, since such Lots do not receive certain benefits, including the same services as other Lots. The lower rate of Common Expense Assessment against such Lots shall be determined by the Board based upon the costs and expenses of the services actually provided to such Lots. Written notice of Common Expense Assessments shall be sent to every Owner subject thereto.

Section 5.5. No Waiver. The omission or failure to fix any Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or release of the Members from their obligations to pay the same.

Section 5.6. Reserve Fund(s). The Association shall be obligated to establish a reserve fund or funds for the maintenance, repair, and replacement of those Common Areas and facilities that must be replaced periodically and such reserve fund or funds shall be funded through the monthly payments of the Common Expense Assessments and not by extraordinary Special Assessments.

Section 5.7. Special Assessment. In addition to the Assessments authorized above, the Association may at any time and from time to time determine, levy, and assess in any Assessment year, which determination, levy, and assessment may be made by the Board with the



consent of two-thirds (2/3) of the votes of the Members of the Association who are voting in person or by proxy, and, during the Period of Declarant Control, with the consent of Declarant, a Special Assessment applicable to that particular Assessment Year for the purpose of defraying, in whole or in part, payments for any deficit remaining from a previous period and the unbudgeted costs, fees, and expenses of any construction, renewal and reconstruction, repair, demolition, replacement, or maintenance of the Common Area, specifically including any fixtures and personal property relating thereto; provided, however, such consent shall not be required if such acts are otherwise specifically covered by Article IV of this Declaration, in which case the specific provisions of Article IV shall apply. The amounts determined, levied, and assessed pursuant hereto shall be assessed to each Lot equally, and shall be due and payable as set forth in the Notice of Assessment promulgated by the Board.

Section 5.8. Individual Assessments. The Board shall levy against particular Lots Individual Assessments to cover the Association's cost of providing services which benefit only those particular Lots, or which otherwise are properly allocable to these Lots. By way of example only, the Board may levy Individual Assessments against a Lot to reimburse the Association for the expense of performing maintenance required to be performed by that Lot's Owner but which such Owner has failed to so perform. By way of further example only, upon demand by the Committee and receipt of reasonably satisfactory evidence supporting the same, the Board promptly shall levy Individual Assessments against a Lot to reimburse the Committee for its costs in removing nonconforming Improvements, and upon collection of the same, promptly shall remit the amount of such costs to the Committee. Individual Assessments shall be levied in addition to all other Assessments levied by the Association and shall not be subject to the provisions of Section 5.7 of this Declaration.

Section 5.9. Joint Liability. All Owners of a particular Lot shall be jointly and severally liable to the Association for the payment of all Assessments attributable to such Lot, including without limitation the annual Common Expense Assessments, Individual Assessments, Special Assessments and Penalty Assessments assessed against their particular Lot.

Section 5.10 Penalty Assessments. In addition to the Assessments authorized by these Articles, the Association may levy Penalty Assessments which will include penalties or fines imposed against individual Owners for violations of the provisions of this Declaration or the Articles, the Bylaws, the Architectural Guidelines or the Rules and Regulations. Any such Penalty Assessments will be levied only after notice and an opportunity to be heard. Any Penalty Assessment not paid within thirty (30) days of the date on which it is due will bear interest commencing retroactively on the date the Assessment was due and continuing until the Assessment, together with any accrued interest thereon, is paid in full. All Penalty Assessments shall be enforced and collected in the same manner as all other Assessments required to be paid by such Owner(s).

Section 5.11. Lien for Nonpayment of Assessments.



(a) All sums assessed by the Association but unpaid by the Owner of any Lot, including interest thereon, shall constitute a lien on such Lot superior (prior) to all other liens and encumbrances on the Lot, except only for a First Mortgage on the Lot which was recorded or perfected before the date on which the Assessment sought to be enforced became delinquent, except for tax and special assessment liens in favor of a governmental assessing entity and except for liens and encumbrances recorded before the recordation of this Declaration. A lien under this section is also prior to the First Mortgage described in the preceding sentence to the extent, if any, provided in the Act. Each Owner hereby agrees that the Association's lien on a Lot for Assessments shall be superior to any homestead exemption provided by Section 38-41-201, C.R.S., or by other state or federal law and each Owner agrees that the acceptance of the deed or other instrument of conveyance in regard to any Lot within the Project shall signify such grantee's waiver of such homestead rights with respect to such lien.

(b) Recording of this Declaration constitutes record notice and perfection of the lien for Assessments. No further recordation of any claim of lien for unpaid Assessments is required. However, the Board of Directors or managing agent of the Association may prepare and record in the real property records of office of the Clerk and Recorder, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. Such lien may be enforced by foreclosure by the Association of the defaulting Owner's Lot in like manner as mortgages on real property. The lien provided herein shall be in favor of the Association and for the benefit of all of the Owners. In any such foreclosure or lawsuit to recover a money judgment, the Owner shall be required to pay the costs and expenses of such proceedings, the costs, expenses, and attorneys' fees for filing the notice or claim of lien, and all reasonable attorneys' fees in connection with such foreclosure or lawsuit. The Association, on behalf of the Owners, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey such Lot.

(c) The Association may take any such lawful enforcement action as it deems appropriate, in conformance with the Association's policy related to collection of past-due assessments as required by the Act. In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action, to the extent of the Association's Assessments.

Section 5.12. Member's Obligation for Payment of Assessments. All amounts assessed by the Association against each Lot, whether as a Common Expense, Special Assessment, or Penalty Assessment, including interest thereon commencing on the due date if said Assessment is not paid within thirty (30) days after the due date (except in the case of Special Assessments wherein such interest commences thirty (30) days after the due date) shall be the personal and individual debt of each Owner at the time the Assessment is made. Suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving any lien securing the same. No Owner may exempt himself from Common Expense Liability for his



contribution toward the expenses of the Association by a waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.

Section 5.13. Liability for Common Expenses upon Transfer of Lot.

(a) Upon payment of a reasonable fee to be established from time to time by the Board of Directors, and upon the written request of any Owner, any Mortgagee, or any prospective Mortgagee delivered personally or by certified mail to the Association's registered agent, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot, the amount of the current monthly Assessments and the date that such Assessments become due. The statement shall be furnished within fourteen (14) calendar days after receipt of the request, and the statement shall be conclusive and binding upon the Association, the Board and every Owner.

(b) Except for any amount equal to an Assessment which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the Association or any party holding a lien senior to any portion of the Association lien created under this instrument, the grantee of a Lot, including a first Mortgagee who comes into possession of a Lot pursuant to the remedies provided in its Mortgage or becomes an Owner of a Lot pursuant to foreclosure of its Mortgage or by the taking of a deed in lieu thereof, and any purchaser at a foreclosure sale, shall not be liable with the grantor for unpaid Assessments against the latter for the grantor's proportionate share of Common Expenses up to the time of the grant or conveyance of a Lot, unless the grantee expressly assumes such liability. Any such express assumption shall be without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Upon payment of a reasonable fee to be determined from time to time by the Board of Directors, and upon written request, any prospective grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid Assessments, if any, with respect to the subject Lot, the amount of the current monthly Assessments and the date that such Assessments become due, any credits for advanced payments or for prepaid items, including, but not limited to, insurance premiums, which statement shall be conclusive upon the Association.

(c) No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall relieve any Owner from liability for any Assessments thereafter becoming due, nor from the lien thereof.

Section 5.14 Working Capital Fund. The Association shall require the first Owner (other than Declarant or a builder approved by Declarant who acquires one or more Lots from Declarant for the purpose of constructing Living Unit(s) thereon for resale to a third party purchaser) of any Lot who purchases that Lot from Declarant or a builder approved by Declarant to make a non-refundable contribution to the Association in an amount equal to two (2) times the then current monthly installment of the annual Assessment (regardless of whether or not annual Assessments have commenced as provided in Section 5.4 hereof). At the time of each subsequent sale of a

Lot, either by the first Owner or any subsequent Owner, to a third-party purchaser, the purchaser shall make a non-refundable contribution to the Association in an amount equal to two (2) times the then current monthly installment of the annual Assessment. The contributions contemplated by this Section 5.14 shall be collected and transferred to the Association at the time of closing of the sale (by Declarant, a builder approved by Declarant, and an Owner, as applicable) of each Lot and shall, until used, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase equipment, property, or services. The contributions to the working capital fund as provided for herein shall not relieve any Owner of said Owner's obligation to make regular payments of Assessments as the same become due.

ARTICLE VI DESIGN REVIEW COMMITTEE

Section 6.1. **Composition - Removal.** The Committee shall be composed of three members. The three (3) members shall be appointed by the Board of Directors. Such members may be removed at any time by the Board of Directors, and in the event of such removal or the death, incapacity or resignation of any one of such three members, the Board of Directors shall have full authority to designate a successor who, in like manner, may be removed at any time by the Board of Directors. The Board of Directors may designate a person to serve on the Committee during the temporary absence of any such member. The removal of members, the appointment of successor members, and the designation of such temporary members for the three (3) positions of the Committee shall all be made by the Board of Directors. Notwithstanding the foregoing, until all of the Lots that May Be Included have been conveyed to the first Owner thereof, other than Declarant, Declarant may appoint the members of the Committee, fill any vacancy therein, and remove any member, with or without cause, at any time, and appoint the successor thereof.

Section 6.2. **Review by Committee.** No structure, including but not limited to residences, accessory buildings, fences, walls, house numbers, mail boxes, exterior lighting, swimming pools, tennis courts, spas, irrigation system, or other Improvements shall be constructed, altered, re-platted, or otherwise maintained upon any Lot, unless complete plans and specifications therefor, showing the exterior design, height, building material and color scheme thereof, the location of the structures plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, walls and windbreaks, and the grading plan, as applicable, shall have been submitted to and approved in writing by the Committee, and a copy of such plans, specifications, as finally approved, deposited with the Committee, except Declarant shall be exempt from seeking or obtaining Committee approval during Declarant's development of, construction on or sales of any Lot or Living Unit thereon, or except as prior approval may be waived or certain Improvements exempted in writing or under written guidelines or rules promulgated by the Committee because approval in such case or cases is not reasonably required to carry out the purposes of this Declaration.



Section 6.3. Procedures. The Committee may charge a fee, to be set by the Committee, for the review of each set of plans and specifications submitted for each Lot. The amount of the fee will be dependent upon the extent of the necessary review, i.e., if third party professionals (such as architects or engineers) are consulted. The Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvements or that the fee shall be determined in any other reasonable manner, such as based upon the estimated cost of the proposed Improvements. Such charges shall be paid by the person or persons submitting such plans and specifications for approval to the Committee.

The Committee shall, from time to time, promulgate, adopt, amend and issue guidelines or rules (the "Architectural Guidelines") relating to the procedures, materials to be submitted and additional factors which will be taken into consideration in connection with the approval of any proposed Improvements. The Architectural Guidelines may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations would be unreasonable or unduly harsh under the circumstances. The Architectural Guidelines may waive the requirement for approval of any one (1) or more Improvements or exempt any one (1) or more Improvements from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration.

A quorum at any meeting of such Committee shall consist of two (2) of the members thereof and any decision shall be reached by the vote of a majority of such members. The Committee's approval or disapproval, as required by any provision of this Declaration shall be in writing. The Committee shall approve or disapprove within thirty (30) days after plans and specifications have been actually received by it, unless such time period is extended by mutual agreement. The decision of the Committee shall be promptly transmitted to the persons or entity submitting the request for approval (the "Applicant") at the address of the Applicant furnished by the Applicant to the Committee. No plans shall be approved by the Committee unless said plans comply in every respect with the Architectural Guidelines, or the Committee grants a waiver, exemption or variance to the Architectural Guidelines. The Committee shall maintain written records of all applications submitted to it and of all actions it has taken. The Board, the Committee, the members thereof, and their duly authorized representatives shall not be liable, in any manner, for any action or failure of action, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 6.4. Committee's Discretion and Enforcement Powers. The Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations of lands and structures thereon within the Project conform to and harmonize with existing surroundings and structures. The Committee shall not be liable for damages to any person submitting a request for approval or to any Owner within the Project by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such request. Approvals by the Committee are related to the aesthetics and no party shall rely upon such approvals as certifying structural integrity, safety, engineering, soil conditions or absence of natural hazards and the



Committee shall have no liability for any defects in the structural integrity, engineering or soils conditions or from effects of natural hazards. Owners shall be responsible for compliance with all applicable building, zoning, and other codes of any governmental or quasi-governmental authority having jurisdiction.

Subject to any approval granted by the Committee, if any Improvements are made in the Project which do not comply with the Architectural Guidelines, then the Committee may require removal of the nonconforming Improvements. If the nonconforming improvements are not timely removed as required by the Committee, then the Committee may enter the Property and/or Lot and remove the nonconforming Improvements, and, pursuant to Section 5.8, require the Board to assess the Owner for the Committee's costs. If any of the above listed activities are commenced without the approval of the Committee as provided herein, the Owner also shall be subject to a fine of up to \$200.00 per day for every day the violation exists, which fine shall be paid to, and the collection of which as a special assessment may be enforced by, the Association. By the purchase of a Lot, each Owner agrees, and by its acceptance of title to any Common Area, the Association agrees that the Board and/or Committee shall have all rights at law and equity to abate the nonconforming improvements and to enforce these covenants. The selection of any one remedy by the Committee shall not be deemed an exclusive remedy, and the Committee may concurrently or subsequently utilize other remedies to enforce the covenants on the same matter.

Section 6.5. Appeal to Board. If the Committee denies, imposes conditions on, or refuses approval of a proposed Improvement, the Applicant may appeal to the Board by giving written notice of such appeal to the Association and the Committee within thirty (30) days after such denial, imposition of conditions or refusal. The Board shall hear the appeal in accordance with the provisions of the Bylaws or any applicable policy for Notice and Hearing, and, based upon the Board's findings the Board shall decide whether or not the proposed Improvement or conditions imposed by the Committee, or its successor or assign designated in writing, shall be approved, disapproved or modified.

Section 6.6. Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement shall be deemed approved by the Committee unless notice of disapproval or a request for additional information or materials is given to the Applicant within sixty (60) days after the date of receipt by the Committee unless such time period is extended by mutual agreement.

Section 6.7. Development by Declarant; Reservation of Special Declarant Rights. No provision of this Declaration, including this Article VI, shall be construed to prevent or limit Declarant's rights during the Special Declarant Rights Period to complete development of property within the boundaries of the Project or elect not to complete development of any part of the Project; to develop Common Areas or to construct Improvements thereon, whether or not required by the Plat or any other requirements imposed by the Town in connection with the approval of the Plat; to construct or alter Improvements on any property owned by Declarant

within the Project, to maintain model homes and offices for construction, sales purposes, or similar facilities on any property owned by Declarant within the Project; or to post signs or do any other act or thing incidental to development, construction, promotion, marketing, or sales of property within the boundaries of the Project. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals during the Special Declarant Rights Period, and Declarant expressly reserves the right, to: (a) excavate, cut, fill, or grade any property owned by Declarant or to construct, alter, demolish, or replace any Improvements on any property owned by Declarant, (b) use any structure on any property owned by Declarant as a construction office, model home, or real estate sales office in connection with the sale of any property within the boundaries of the Project, (c) store construction materials, supplies, equipment, tools, waste or other items on property within the Project that is owned by Declarant, (d) require Declarant to seek or obtain the approval of the Committee or of the Association for any such activity or Improvement on any property owned by Declarant; (e) to develop Common Areas or to construct Improvements to Property thereon, whether or not required by the Town in connection with the approval of the Plat, or to seek or obtain the approval of the Committee or the Association for any such activity or Improvement; (f) right to merge or consolidate the common interest community created hereby with another common interest community of the same form of ownership; or (g) exercise any of the reserved rights of Declarant as elsewhere provided in this Declaration (collectively the "Special Declarant Rights").

ARTICLE VII LAND USE RESTRICTIONS

All real property within the Project shall be held, used and enjoyed subject to the following easements, limitations, and restrictions, subject to exemptions of Declarant set forth in this Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Board in its discretion if such strict application is not necessary to achieve the purposes of this Declaration or, under the circumstances, would be unreasonably or unduly harsh in comparison to the goals of this Declaration that such strict application is necessary to achieve. Any such modification or waiver must be in writing or be contained in written guidelines or Rules and Regulations promulgated by the Board.

Section 7.1. **Regulations.** Ordinances, rules and regulations of the governmental entity having jurisdiction, including but not limited to, the requirement that Owners obtain building permits and other related approves from the Town prior to and for the construction of any Living Unit or Outbuilding, shall be observed, and to any extent that these covenants might establish minimum requirements which are more restrictive than the minimum requirements established by said ordinances, rules and regulations, the most restrictive shall apply.

Section 7.2. **Residential Purposes Only.** All Lots shall be for residential purposes only and no building shall be erected or placed on any Lot other than one Living Unit, together with a maximum of two (2) Outbuildings and two (2) Small Enclosed Structures, as permitted in

accordance with and provided in Section 7.5; provided however, that no Outbuilding shall be greater than seventy-five percent (75%) of the total square footage of the Living Unit and the combined total square footage of all Outbuildings and Small Enclosed Structures cannot exceed one hundred twenty-five percent (125%) of the square footage of the Living Unit.

Section 7.3. No Business Activity. Except for a permitted business activity as described in this Section 7.3, and the business activities of Declarant, its successors and assigns, no trade, business or commercial activity shall be conducted, carried on, or practiced on any Lot or in a Living Unit constructed thereon and the Owner of said Lot shall not suffer or permit any Living Unit erected thereon to be used or employed for any purpose that will constitute a nuisance in law or that will detract from the residential value of said Lot or the other Lots in the Project; provided, however, that an Owner may use said Owner's Lot for professional or home occupation(s), so long as the applicable zoning permits such use, there is no external evidence thereof, if customers, clients, or other business associates do not come to the Owner's Lot for any business purposes or the receipt of services, and no unreasonable inconvenience to the residents of any of the other Lots in the Project is created thereby. Nothing herein shall prevent an Owner from renting or leasing said Owner's Living Unit for a single-family residence in accordance with the terms hereof. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the Bylaws and the Rules and Regulations of the Association. Immediately upon execution of any Lease, the Owner of such leased Lot must provide the Association with a copy of such Lease along with the name and address for the tenant under such Lease and the contact address for such Owner. Any Living Unit lease, rental agreement, sublease, or other arrangement for occupancy of a Living Unit by a Person other than the Owner or the Owner's immediate family shall have a term, and be for a period, of not less than twelve (12) months. The establishment of sales offices or model homes by Declarant or its authorized designee is deemed a permitted business activity, and exempt from this Section.

Section 7.4. Living Unit. Each single-family Living Unit shall be built on at least one Lot and shall meet the following requirements:

(a) **Orientation of Living Unit.** The Living Unit shall be constructed so that the front of the Living Unit faces generally toward the front lot line and is set back in a manner consistent with the Architectural Guidelines and the applicable development code of any governmental authority with jurisdiction. Exceptions for the orientation of the Living Unit may be granted by the Committee if the exterior appearance of sides or rear of house facing the front lot line is equal to or better appearing than the front of the house.

(b) **Submittal of Plans and Specifications for the Living Unit.** Prior to construction of the Living Unit, and subject to all Ordinances, rules and regulations of the governmental entity having jurisdiction (including the requirement that an Owner obtain a building permit), the Owner shall submit to the Committee, for its approval, the plans and specifications for the Living Unit in accordance with the provisions of Section 6.2 hereof and the Architectural Guidelines.



Notwithstanding the specifications provided for herein, all plans and specifications for any Living Unit are subject to the prior written approval of the Committee.

(c) **Square Footage of Floor Area.** The minimum square footage of floor area for a Living Unit based on the building footprint of the Living Unit shall be as follows:

- i) one-story - 2,500 square feet;
- ii) two-story - 2,500 square feet; and
- iii) other configurations (i.e., bi-level, tri-level)- 2,500 square feet.

The square footage of floor area in a Living Unit shall be calculated in accordance with the zoning and building regulations of the governmental entity having jurisdiction. Each Living Unit must have an attached garage with a minimum three-car capacity, and the square footage of the garage shall not be included in the floor area of the Living Unit.

Section 7.5. Outbuildings and Small Enclosed Structures.

(a) **Types.** Outbuildings, as defined in Section 4.32, and to the extent permitted in accordance with the zoning and building regulations of the governmental entity having jurisdiction, are permitted on the Lots, and must be well-maintained and constructed in accordance with the Architectural Guidelines.

(b) **Number of Outbuildings.** Subject to the restrictions set forth in Section 7.2 hereof, only Two (2) Outbuildings may be constructed upon each Lot.

(c) **Size of Outbuildings.**

- i) The Outbuildings shall comply with the Architectural Guidelines, and shall not exceed twenty feet (20') in height, as measured from finished grade to roof peak;
- ii) The square footage of floor area of a single Outbuilding shall not exceed seventy-five percent (75%) of the square footage of the floor area of the Living Unit, and the combined square footage of floor area of Outbuildings shall not exceed (125%) of the square footage of the floor area of the Living Unit.

(d) **Location of Outbuildings.** Subject to all applicable governmental requirements, and in accordance with any setbacks or other requirements and conditions set forth in the Architectural Guidelines, the Outbuilding must be placed on the rear portion of the Lot, which is that portion of the Lot between the rear Lot line and the nearest line or point of the Living Unit, and shall be set back at least twenty-five (25) feet from the side and rear Lot lines, except

Outbuildings housing any animals shall be set back fifty (50) feet from any Living Unit, whether on any adjacent Lot or otherwise.

(e) **Design of Outbuildings.** The Outbuildings must be of design, materials, and style similar to, and compatible with, the design, materials and style of the Living Unit, and shall be in compliance with the Architectural Guidelines.

(f) **Submittal of Plans and Specifications for Outbuildings.** Prior to construction of an Outbuilding, and subject to all Ordinances, rules and regulations of the governmental entity having jurisdiction (including the requirement that an Owner obtain a building permit), the Owner shall submit to the Committee, for its approval, the plans and specifications for any Outbuilding in accordance with the provisions of Section 6.2 hereof and Architectural Guidelines, and a schedule for the construction of the Outbuilding.

(g) **Number, Size, and Location of Small Enclosed Structures.** In addition to two (2) Outbuildings permitted on each Lot, and subject to all requirements set forth with respect to Outbuildings in Section 7.5(d), (e) and (f) above (which such requirements shall apply), two (2), but not more than two (2), Small Enclosed Structures may be constructed upon each Lot.

Section 7.6. **Animals Generally.**

(a) **Permitted Animals.** Any animal which is not prohibited by ordinances of the governmental entity having jurisdiction, is permitted to be kept upon a Lot in accordance herewith and in accordance with any Rules and Regulations promulgated hereunder and all applicable laws and municipal ordinances governing such animal.

(b) **Prohibited Animals.** In addition to any animal that may be prohibited by ordinances of the governmental entity having jurisdiction, no exotic animals are permitted to be raised, grown, maintained, or cared for upon any Lot.

(c) **Buildings and Fences for Animals.** In addition to any required approvals from any governmental entity having jurisdiction, the Committee's approval is required, pursuant to Article VI of this Declaration, for the erection and maintenance of buildings and fences for animals, including but not limited to Household Pets; provided, however, that a doghouse that is no more than eight (8) square feet and constructed of design, materials, and style compatible with the Living Unit is permitted without Committee approval.

Section 7.7. **Household Pets; Domesticated Rabbits.**

(a) **Number of Household Pets.** No more than three (3) adult Household Pets of any kind shall be kept, maintained or cared for upon any Property or Lot, including, but not limited to, no more than three (3) adult dogs.



(b) **Leash Requirements.** Household Pets shall not be allowed to run at large within the Project, but shall be at all times on a leash. Household Pets may run at large on the Owner's Lot, so long as such Household Pets are confined to the Lot in a fenced area. Household Pets may be confined to a Lot by an underground electronic "invisible" fence.

(c) **Domesticated Rabbits.** Domesticated Rabbits are permitted to be kept indoors or outdoors, but in no event more than 10 such Domesticated Rabbits are permitted to be kept outdoors and must be kept in the appropriate hutch(es), which shall not be visible from the street or anywhere in the Project.

Section 7.8. Animals; Chickens. Subject to all applicable laws and municipal ordinances, Chickens will be allowed upon a Lot if kept in accordance with any Rules and Regulations promulgated hereunder and if the following criteria are met:

(a) **Number of Chickens.** No more than four (4) adult Chickens will be allowed for each Lot; provided, however, that roosters shall not be permitted to be kept or maintained on any Lot at any time. A temporary exception may be obtained from the Board, in writing, for young offspring of Chickens kept on the Lot as deemed appropriate by the Board in its discretion.

(b) **Chicken Coup.** A chicken coup, constructed in accordance with the provisions of Section 7.5, shall not exceed four (4) square feet per chicken and shall have founts and feeders for the proper and tidy storage of food and water. All haystacks, hay bales, and any other feed for animals permitted hereunder, if any, shall be kept inside an Owner's appropriate Outbuilding or Small Enclosed Structure, and shall not be stored outside or visible from the street or anywhere in the Project.

(c) **Fenced Open Space.** An outdoor fenced open space may be included on a Lot.

i) **Size.** The fenced open space shall be a minimum of five thousand (5,000) square feet total.

ii) **Location.** The fenced open space must be located on the rear of a Lot, between the rear Lot line and the nearest line or point of the Living Unit, and shall be set back fifty (50) feet from any Living Unit, whether on any adjacent Lot or otherwise.

iii) **Use.** Fenced open space shall be used only by animals, including Chickens, as is customary and appropriate for such animal. Any fenced open space for Chickens shall not exceed an area that is greater than ten (10) square feet per Chicken.

iv) **Fence Material.** Fences used for outdoor fenced open space shall be three-rail log fences of solid wood, either in a natural state or treated with a stain or preservative which does not require painting and is essentially maintenance-free. The fences shall not exceed the maximum height set forth in the Architectural Guidelines with respect to open

rail fencing and may be lined with 2" x 4", 4" x 4" or 6" x 6" welded wire stable mesh horse fencing material; provided that the Committee may, in its discretion, grant variances to the requirements under this Subsection (c).

(d) **Runoff and Erosion Control.** The runoff and erosion from each Outbuilding shall be controlled so the runoff of water, including waste water does not flow onto adjacent properties or Lots. The Owner shall be responsible for installing and maintaining all runoff control measures.

(e) **Manure Storage and Removal.** All manure must be removed from a Lot within a reasonable time and shall not be permitted to be stored or piled on any Lot, and each Owner keeping any animal on a Lot shall be required to remove the manure from the Lot at least two (2) times per month. An Owner shall be required to remove such materials more frequently if the accumulation is creating a nuisance, including but not limited to gathering of flies, odors drifting onto neighboring properties or unsightly conditions.

(f) **Grazing.** The Owner of any animal kept within a Lot must feed said animal primarily with food procured away from the Lot. In addition, the Owner must take all steps necessary to protect and maintain grass, trees, shrubs and vegetation on the Lot, and shall not allow de-vegetation to occur. If it comes to the attention of the Committee that any Owner is grazing any animal on the Lot, and has failed to protect and maintain the vegetation, the Committee may immediately issue an order to cease and desist and take all other actions necessary to enforce this provision.

(g) **Governmental Regulations.** The Owner of any Chickens or other animal kept within a Lot, in addition to compliance with the regulations contained herein, must comply with all regulations promulgated by any governmental authority ("Governmental Regulations"), and should there be a conflict between these Declarations and any Governmental Regulation, the Governmental Regulation shall control.

(h) **Deceased Animals.** No animal shall be slaughtered on or at the Property. In no event will any animal be buried on the Property.

(i) **Purpose for Animals.** All animals permitted hereunder shall be kept and maintained on the Lots solely for the personal use and enjoyment of the respective Owners thereof, and shall not be raised, kept, maintained, or otherwise located on any Lot for any commercial purpose.

Section 7.9. Commencement and Completion of Construction or Alteration.

(a) **Requirement to Commence Construction.** After plans and specifications, erosion control plans, landscaping plans, grading plans and location have been approved by the Committee, then the construction or alteration of the same shall be carried out forthwith. Such construction or alteration must commence within a period of one hundred eighty (180) days from the date of approval unless the Committee provides otherwise. Except as otherwise approved by



the Committee, if no construction activity has taken place within such one hundred eighty (180) day time period, then any approval of the Committee shall be considered null and void, and any later commencement of construction or alteration that was previously approved by the Committee shall not be so commenced until a new application, including the payment of necessary fees, has been submitted to and final approval issued by the Committee.

(b) **Completion.** All construction or alteration must be completed within nine (9) months from the date the construction or alteration is commenced; provided, however, that the time limit for completion of the construction or alteration may be extended by the Committee as deemed appropriate.

Section 7.10. Antennae, Tanks, Hazardous Materials. Subject to federal statutes and regulations governing common interest communities, only Permitted Antennas shall be allowed within the Project. "Permitted Antennas" are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes and regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes and regulations, such antenna will no longer be a Permitted Antenna for purposes of this Article.

Permitted Antennas shall be installed on a Lot in the least conspicuous location available which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association or the Committee may adopt Rules and Regulations regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulations, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Lot.

No wind powered electric generators shall be allowed, and no outdoor clothes lines (unless retractable) shall be installed nor allowed to remain upon any Lot, unless the same, in each instance, is expressly permitted in writing by the Board or Committee or is permitted by the Act as an energy efficiency measure. Where such written permission is granted, such permission is revocable if the item or condition becomes obnoxious to other Owners, in which event the Lot Owner or person having the item or condition complained of shall be given a written notice by the to correct the problem or, if not corrected, the Lot Owner upon written notice will be required to remove the item/condition from their Lot and from the Project.

No storage tanks which extend above the ground shall be erected, placed, or permitted upon any Lot; provided, however, that a Lot may have a single water storage tank not to exceed 250 gallons, subject to restrictions on placement, materials, other features, and use in the Architectural Guidelines and subject to all requirements and restrictions of all applicable laws and any governmental authority with jurisdiction over the same. No Lot shall be used for storage of explosives, gasoline, or other volatile and/or incendiary materials or devices. Gasoline or fuel, or other chemicals or solvents such as paint thinner, motor oil, and cleaning chemicals may be maintained on an incidental basis on a Lot in an aggregate amount not to exceed twenty (20) gallons.

Section 7.11. Mailboxes and External Lighting. All mailboxes and external lighting to be installed shall require the prior approval of the Committee pursuant to Article VI of this Declaration and shall be of a consistent design and quality throughout the Project, shall be in accordance with the Architectural Guidelines, and shall conform to postal service standards.

Section 7.12. Landscaping.

(a) Landscaping Plan. On or before one hundred twenty (120) days after the conveyance of a Lot to a third party purchaser, or at any time an Owner desires to install additional landscaping on any Lot, the Owner shall submit to the Committee, for its approval, a landscaping plan for the Lot, at a scale of 1"=20' or larger, which shall contain the following information (for purposes of this document, a "third party purchaser" shall mean the purchaser of a Lot and the completed Living Unit constructed thereon):

- i) Existing and proposed structures and paving;
- ii) Berms, walls, fences or any other buffering devices;
- iii) Planting layout, showing tree and shrub locations, ground covers to be used, plant schedule showing number of each species, plant name, size and condition (ball and burlap or container);
- iv) A written or graphic statement describing type of irrigation system proposed and areas to be covered; and
- v) Any other proposed improvements visible to adjacent Lot Owners or the public.

Any approved landscape plan, including the revegetation of all areas disturbed by construction, shall be completed in accordance with this Declaration and the Architectural Guidelines. Sprinkler systems are mandatory for improved landscaped areas. Irrigation systems shall efficiently distribute water directly to the plants. Temporary, drip or other low-water consumption irrigation systems will be encouraged where appropriate. The Project is subject to



irrigation limitations pursuant to the terms of a Water and Sewer Service Agreement between Declarant and the Town, which Water and Sewer Service Agreement is recorded or will be recorded in the records of the Clerk and Recorder. Except during the Establishment Period, as hereinafter defined, each Lot shall be limited to the equivalent of 5,900 square feet of spray-irrigated landscape area, which irrigation may include spray irrigation, drip irrigation, and xeric drip irrigation as appropriate for the approved landscaping. More details about spray irrigation, drip irrigation, and xeric drip irrigation limitations and equivalents are set forth in the Architectural Guidelines.

The Owner of each Lot, in addition to revegetation of all disturbed areas, shall be required to introduce new planting within a period of two (2) years from the date the certificate of occupancy is issued for a Living Unit on a Lot, in accordance with the Architectural Guidelines.

(c) **Erosion Control Plan.** A plan of the erosion control measures shall be implemented to stabilize the Lot during construction and prior to landscaping and the schedule for installation of such erosion control measures shall be provided to the Committee.

(d) **Completion of Landscaping.** For the purposes of this section, a "growing season" shall mean and refer to the period of May 1 through September 30 of each year. As soon as practicable after the certificate of occupancy is issued for a Living Unit on a Lot, the Owner shall have substantially completed the landscaping described above. In the event a certificate of occupancy is issued during a growing season, landscaping must be completed prior to the end of the next full growing season. In the event a certificate of occupancy is issued between October 1 and April 30, landscaping must be completed prior to the end of the next immediate growing season.

(e) **Protection Prior to Landscaping.** In the event landscaping is not completed during the first growing season after the certificate of occupancy is issued (the "Establishment Period"), all areas of unplanted soil shall be protected from erosion by straw mulch and seed, hay bales and/or erosion control matting as necessary to prevent erosion, runoff and loss of bare ground areas.

(f) **Existing Trees.** No tree(s), whether now growing or hereafter grown upon any part of the Project, shall be cut down, moved or transplanted without the prior written approval of the Committee, provided, however, that this restriction shall not apply unless such tree is more than four (4) inches in caliper as measured one (1) foot above grade, and provided further that this restriction shall not be construed to limit in any way reasonable trimming of any trees upon the Project, or which is otherwise specifically approved by the Committee.

(g) **Enforcement.** Should any Owner fail to comply with this Section 7.12, the Committee shall have the power to obtain an order from a court of proper jurisdiction requiring specific performance, or alternatively, may complete the landscaping and require the Owner to



pay the costs for such completion to the Association as an Individual Assessment, the collection and enforcement of which shall be performed by the Association.

(h) **Gardens; Composting.** Gardens will be permitted on each Lot for the planting of flowers and/or edible crop, provided that such gardens will be constructed of appropriate material and general aesthetic in accordance with the Architectural Guidelines. All gardens must be irrigated by a drip system only (no sprinkler or flood systems permitted) and shall not cause any Lot to exceed the maximum permitted irrigation limitations for said Lot as set forth herein and in the Architectural Guidelines. Lot Owners are permitted to engage in, and construct or install reasonably appropriate structures for, composting activities, provided such activities and structures comply with the Architectural Review Guidelines.

Section 7.13. Fencing.

(a) **Perimeter Fencing.** Perimeter fencing is the fence on or along the property lines of the Lot (or at the rear of any Lot along the front edge of the drainage and/or utility easement located thereon, as applicable) and any fences from perimeter fence on the Lot to the Living Unit or Outbuilding.

i) **Design and Materials.** Except as otherwise set forth herein, perimeter fences along the street frontage, rear Lot lines (or at the rear of any Lot along the front edge of any drainage and/or utility easement, as applicable), and common property lines shall be a three-rail western wood post and rail in accordance with the requirements for post and rail sizing set forth in the Architectural Guidelines. Notwithstanding the foregoing or anything herein to the contrary, to the extent required by the Town or as set forth in the Architectural Guidelines, Lots 1, and 8 through 11, inclusive, shall, at all times, maintain a 6-foot privacy fence with masonry pilasters every 100' and on the corners along the portion of the perimeter of such Lots (and on the property lines of such Lots) that is adjacent to Weld County Road 42 and South Parish Avenue (as shown on the plat), which such privacy fence will be maintained by the Association, included in the Common Expenses, levied as a Common Expense Assessment, and paid by all of the Lot Owners as part of their respective Common Expense Liability.

ii) **Attached Wire Fencing.** The interior side of any open rail perimeter fencing located on a Lot, including both the rear Lot line (or at the rear of any Lot along the front edge of any drainage and/or utility easement, as applicable) and the side Lot lines, if applicable, between the rear of such Lot and the nearest point or line of the Living Unit, may have attached to it steel wire of a type and design so it is not visible from a distance in order to confine children, Household Pets, and animals onto the Lot.

iii) **Location of Perimeter Fencing.** Except as otherwise provided herein or as permitted by the Committee, no perimeter fence on any Lot may extend forward of the front building elevation on said Lot. Notwithstanding the foregoing, the fencing along the

perimeter of Lots 5 and 6 adjacent to Outlot A, as such Outlot A is depicted on the Plat, shall extend to the front property line of Lots 5 and 6, respectively. Any perimeter fencing installed at the rear of any Lot subject to a drainage and/or utility easement, shall be installed along the front edge of such drainage and/or utility easement located thereon, as applicable.

(b) Screening Fences.

i) Design and Materials. All screening fences must be attached to an Outbuilding and shall be of a design, natural hue and materials architecturally compatible to and coordinated with the design, hue and materials of the Outbuildings. The screened area must be fully enclosed, on all sides. Screening fences shall not exceed five (5) feet in height and must be located on the rear portion of the Lot.

ii) Use. Screening fences shall be used solely for the purpose of screening all views of hay, storage, tool storage or any other exterior storage.

(c) Privacy Fences. Any privacy fencing to be constructed on any Lot shall be subject to the prior review and approval of the Committee regarding area to be fenced, as well as design and materials.

(d) Swimming Pool and Tennis Court Fencing.

i) Swimming Pools. Subject to applicable government requirements, a swimming pool may be constructed on a Lot, provided such swimming pool is constructed in accordance with Architectural Guidelines and applicable government requirements. Any fencing constructed around a swimming pool on a Lot shall be subject to prior approval of the Committee. Swimming pool fences shall not interfere, to the extent practicable, with the views from neighboring Lots. Swimming pools are not an area requiring privacy fencing, but such fencing is permitted provided it is constructed in accordance with the Architectural Guidelines. Swimming pool fences should be designed and constructed to provide the necessary security and safety.

ii) Tennis Court Fencing. Subject to applicable government requirements, a tennis court may be constructed on a Lot, provided such tennis court is constructed in accordance with Architectural Guidelines and applicable government requirements. Fencing constructed around a tennis court shall be subject to prior approval by the Committee, and shall not interfere, to the extent practicable, with the views from neighboring Lots. A tennis court, including tennis court fences, should be architecturally compatible with the Living Unit.

(e) Prohibited Fencing Materials; Location. No fences of barbed wire, chain link, wire mesh (except for a(ii) above), slump block, or concrete block (CMU) shall be allowed. No

fencing shall be located in or otherwise encroach into the drainage easement or drainage and utility easement, as applicable, on any Lot, as such easements are shown on the Plat.

(f) **General Height and Design Requirements.** Except as required by the Plat or otherwise set forth herein, fences, walls, or hedges must be the height specifically required in the Architectural Guidelines, but may not exceed 6 feet in height, and must be approved by the Committee in accordance with the Architectural Guidelines. Except for fencing required by the Plat, permitted by the Architectural Guidelines, or specifically intended and approved by the Committee to screen portions of a Lot from view, fences shall be of a design and material so as to allow light to pass through and not be a solid wall.

(g) **Approval Required.** All fencing must be specifically approved by the Committee pursuant to Article VI of this Declaration.

(h) **Fence Maintenance.** Except as set forth herein with respect to the 7.13(a)(i) with respect to the privacy fence referenced therein, the Owner shall maintain in good repair and condition all fencing installed on such Owner's Lot, and shall ensure that such fencing is sufficient at all times to prevent permitted Household Pets and animals located on such Lot from straying outside the boundaries thereof.

Section 7.14. Sight Distance at Intersections. No structure, fence, wall, hedge, or shrub planting which obstructs sight lines set forth in the Plat shall be placed or permitted to remain on any corner Lot. No tree shall be planted within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 7.15. Driveways, Vehicles and Parking.

(a) **Surface Material of Driveways.** All access from the nearest street to the Living Unit on a Lot shall have a permanent surface of asphalt paving and/or concrete. The driveway shall have a minimum fifteen (15) foot concrete pan between the driveway and the street and a twenty (20) foot deep concrete apron the full width of the garage doors.

(b) **No Permanent Street Parking.** No vehicle of any kind including, without limitation, automobiles, trucks, semi-trucks and/or trailer, buses, tractors, trailers, camping vehicles, boats, boat trailers, snow mobiles, mobile homes, two- and three-wheeled motor vehicles, or other wheeled vehicles shall be permitted to be parked on any public street for more than twelve (12) hours within the Project.

(c) **Large Vehicles.** Boats, campers, campers not on a truck, mobile or motor homes, trucks other than pickup trucks, horse trailers and other trailers, and other large vehicles shall not be permitted on the Property except within a structure approved in writing by the Committee for such purposes, in a properly screened area as set forth in 7.13, and except for vehicles of guests, visitors, and other Related Users for a period not to exceed Seventy-Two (72) hours in any one



(1) month. Tractors, permitted vehicles other than automobiles, snow removal equipment, and garden or maintenance equipment shall be kept at all times, except when in actual use, in a structure approved in writing by the Committee for such purposes.

(d) **Vehicle Repairs.** No maintenance, servicing, repair, dismantling, or repainting of any type of vehicle, boat, trailer, machine, or device may be carried on, except within a completely enclosed portion of the Common Area or Lot, so as to screen the sight and sound of the activity from the street and from other Lots.

(e) **Enforcement.** Without limiting the generality of the powers of the Association with respect to parking, the Association is specifically authorized to have any vehicle parked in an area not designated for parking immediately removed at the expense of the Owner(s) of the Lot who either owns such vehicle or whose Related Users owns such vehicle. The expenses incurred by the Association in accomplishing such removal (and storage, if necessary) shall be an Individual Assessment levied against such Owners and their Lot.

Section 7.16. **Owner Landscape Maintenance Obligations.**

(a) **General.** Each Owner shall be required to maintain his or her Lot and Living Unit in a clean and slightly condition, and in accordance with the Community-Wide Standard (defined below) of the Project and the Common Interest Community, which shall include, but not be limited to, cutting of ground cover, weeding, and removal of rubbish, trash or garbage, and shall also include snow removal on, and maintenance and repair of, sidewalk segments adjacent to local streets adjacent to said Owner's Lot. Community-Wide Standard shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Project. Such standard may be more specifically determined by the Board and the Committee. No property within the Project shall be permitted to fall into disrepair, and all property within the Project, including the Living Units, fences, Improvements, and landscaping thereon, shall be kept and maintained in a clean, attractive, and slightly condition and in good repair. Maintenance, as used in this Article VII, shall include, without limitation, repair and replacement as needed, as well as such other duties, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

(b) **Nuisance Weeds.** Each Owner shall kill and/or remove all nuisance plants and weeds as designated in the Colorado Noxious Weed Act, §35-5.5-101, C.R.S. et seq., and any similar laws promulgated by any other governmental entity with jurisdiction.

(c) **Replacement Landscaping.** In the event of death or destruction of any landscaping, including trees, shrubbery or sodding initially required when plans for construction have been approved, the then Owner shall be required to replace such landscaping within thirty (30) days of death or destruction, or if such destruction occurs outside the growing season, within thirty (30) days of the start of the next growing season. Such replacement landscaping shall meet the

minimum standards and requirements of this Declaration and the Architectural Guidelines unless a variance is granted by the Committee.

(d) **Swales and Culverts.** Drainage swales and driveway culverts for each Lot shall be maintained and kept free of weeds and other debris by the Owner of said Lot. Owners shall not alter, obstruct, or obliterate, in any manner, any drainage swales, pans, easements, or channels located or installed, or required to be located or installed, upon the Property pursuant to an Established Drainage Pattern (hereinafter defined).

Section 7.17 General Owner Maintenance.

(a) **Repairs to Structures.** In the event of damage to any Living Unit or other structure located upon a Lot, the Owner thereof shall promptly repair such structure within thirty (30) days to substantially its original state, except if such damage renders the structure uninhabitable or a total loss, in which event the Owner shall, within one hundred twenty (120) days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction or demolish the structure and remove all debris from the Lot, unless otherwise approved in writing by the Committee.

(b) **Screening.** All equipment, garbage cans, woodpiles, or outdoor storage shall be kept screened by adequate planting or conforming building materials so as to be concealed from view of neighboring residences and streets as set forth in Section 7.13(b).

(c) **Trash.** No rubbish, trash, papers, junk or debris shall be burned or allowed to remain or accumulate upon any Lot. No such waste intended for trash pickup shall be placed in a street, driveway, yard, or any area visible from the street or neighboring residences more than twenty-four (24) hours prior to the scheduled pickup.

(d) **Garage Doors.** Garage doors shall be kept closed when not in use.

(e) **Sidewalks.** Each Owner shall provide all maintenance for the sidewalk(s) immediately adjacent to such Owner's Lot to the extent required by the Town, which maintenance will include, without limitation, snow removal on sidewalk segments along the streets immediately adjacent to such Owner's Lot.

Section 7.18. No Temporary Structures. No temporary house, trailer, tent or other temporary structure shall be placed or erected on any portion of the Project, and no Living Unit shall be occupied in any manner at any time prior to the issue of a certificate of occupancy for such Living Unit, except that temporary canopies and tents may be erected for special events with the prior written approval of the Committee. Further, nothing herein shall prevent Declarant from establishing and maintaining construction offices, offices for security, sales offices and model homes within and upon the Project.



Section 7.19. Signage; Flags. No sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Project so as to be evident to public view, except signs as may be approved in writing by the Committee. One two-sided sign advertising a Lot for sale or for lease may be placed on such Lot; provided, however, that standards relating to dimensions, color, style, and location of such sign shall be determined from time to time by the Board; provided, however, no signs advertising a Lot for sale or for lease may be placed on the exterior of a Lot or within any yard or landscaped area for such Lot during the development, construction, and sales period for the Project; such signs may be placed on the inside of a window of the Living Unit within such Lot. Notwithstanding the foregoing, during the Special Declarant Rights Period, Declarant shall be permitted to place one-sided or two-sided signs on any Lots which it owns or in the Common Areas to advertise the Lots during the development, construction, and sales period. The Owner or occupants of a Lot may display political signs within the boundaries of a Lot or in the window of a Lot (as defined under Section 38-33.3-106.5(1)(c)(III) of the Act) during the period that begins forty-five (45) days prior to an election and ends seven (7) days after an election, provided that such signs are no larger than the smaller of (a) the size of political signs allowed by local ordinance, or (b) thirty-six (36) inches by forty-eight (48) inches. Notwithstanding anything to the contrary herein, the Owner or occupants of a Lot may display the American flag, service flags and political signs in conformance with C.R.S. § 38-33.3-106.5, and subject to the Rules and Regulations adopted by the Committee or the Board from time to time.

Section 7.20. No Drilling or Mining. No oil or gas drilling, oil or gas development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon the surface of any Lot, nor shall oil or gas wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any Lot. This provision shall not apply to any rights granted to any third party to extract oil, gas or minerals granted prior to the recording of the Plat and the recording of this Declaration, nor shall this provision apply to underground operations to remove oil or natural gas from the subsurface under any Lot by means of wells drilled from remote locations outside of the Project.

Section 7.21. Heating and Cooling Units and Solar Panels. Heating and cooling units, shall not be installed or allowed to remain on the roof of any building or structure unless such heating and cooling unit is screened from view. Subject to the requirements of the Act, solar panels shall be approved if installed, to the extent practicable, on the roof or on the ground in such a manner as to cause minimal visual impact to surrounding Lots; provided, however, that ground-mounted solar panels shall be screened completely from the street view.

Section 7.22. Utility Lines. All utility lines, including, without limitation, water, sewer, gas, electric, telephone, internet, and cable television, shall be buried underground.



Section 7.23. Sales Offices/Model Homes. The Declarant may permit sales offices or model homes to be maintained within the Properties, and on specified Lots for the purpose of selling Lots or Living Units. Permission for sales offices must be in writing and signed by the Declarant.

Section 7.24. Resubdivision of Lots. The Declarant may, until December 31, 2030, resubdivide any Lot or Lots within the Property. No Lot or Lots shall be subdivided by the Owners or, after December 31, 2030, by the Declarant, except for the purpose of combining portions of a Lot with an adjoining Lot so that no additional building site is created thereby. In no event shall the Lots redesignated by Declarant or the Owners after December 31, 2030, establish any greater number of Lots than approved in the Plat, unless the subdivision is approved by a majority of the votes in the Association.

Section 7.25. Building Setback and View Protection. The building setbacks, as set forth in the Architectural Guidelines, shall be complied with on all Lots. In addition to the required building setbacks, plans for the construction of the Living Unit, Outbuildings, fencing and landscaping for each Lot should take into consideration the views from the Lot and the potential impacts of the improvements to be constructed on the view corridors of neighboring Lots. In reviewing plans, the Design Review Committee will consider views and view corridors. Although the Design Review Committee will consider views, there is no guarantee or assurance whatsoever that any particular views can be maintained. It is intended that each Lot within the Project can and will have a Living Unit and associated improvements, such as Outbuildings and landscaping, and that to accommodate the Owner's utilization of each Lot, such improvements may impair some view corridors.

Section 7.26. Easements.

(a) **Easements Reserved.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat or in deeds for utility easements. The Project is also subject to the recorded easements, licenses and other matters listed on **Exhibit C** attached hereto and made a part hereof.

(b) **Maintenance Easement.** The Association, its Board, agents, managing agent, and employees shall have an unrestricted, irrevocable easement to traverse and cross any Lot in the Property in order to perform any of its functions as described in this Declaration.

(c) **Restrictions on Activities in Easements.** Within the easements reserved as shown on the Plat or in deeds for utility easement or described in subsection (b) above, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

(d) **Owners' Maintenance Obligations.** The drainage and utility easements of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

(e) **Easement for Unannexed Property.** The Declarant hereby reserves, for the use and benefit of the annexable Development Property described on **Exhibit D** attached hereto, a non-exclusive, perpetual easement and right of way for pedestrian and vehicular access, ingress and egress, on, over and across the roads, driveways, streets, sidewalks, access ways and similar Common Areas, now or hereafter constructed, erected, installed or located in or on the Project, and on, over, across and under the Common Areas for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement and use of any utilities Improvements that may now or hereafter serve the annexable land or any portion thereof described on Exhibit D attached hereto (herein collectively the "Annexable Area Easement"). By virtue of this Annexable Area Easement, the Declarant generally intends to provide for pedestrian and vehicular access and for utilities services to those portion(s) of the annexable Development Property which have not been included, from time to time, in the Project pursuant to Section 8.7 hereof. Hence, the Annexable Area Easement shall be in effect for each portion of the Development Property, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Development Property at such time as the following have occurred with respect to such portion of the Development Property: annexation of such portion of the Development Property to this Declaration pursuant to the aforesaid Section; and expiration of the Declarant's right to annex or withdraw such portion of the Development Property from this Declaration.

Section 7.27 Surface Drainage and Erosion Control.

(a) **Acknowledgement.** The soils within Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of a Living Unit or other structure if the Living Unit, the other structures and the Lot on which they are constructed are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils. The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils.

(b) **Disclaimer.** The Declarant, as well as its members and its managers, shall not be liable for any loss or damage to any Living Unit or other structure or to any Person, caused by, resulting from, or in any way connected with soil conditions on any Lot, including, by example and not limitation, expansive soils.

(c) **Moisture.** Each Owner of a Lot shall use his or her best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the Living Unit constructed thereon remain stable and shall not introduce excessive water into the soils surrounding the Living Unit or other Living Units.



(d) **Natural Flows.** All natural surface drainage, whether off site or on site, shall always be permitted to freely pass through all Lots as required in order to reach its natural destination. The Owner of a Lot shall not impede or hinder in any way the water falling on or passing through the Lot from reaching any "Established Drainage Pattern" for the Lot and the Property. "Established Drainage Pattern" means the drainage pattern which exists at the time of the overall grading of any Lot and includes the positive slope away from the Residence built on the Lot in accordance with the status thereof as of the date of the completion of the Residence on the Lot as reflected on the finished grading plan and as-built civil engineering plan for such Lot and the drainage certificate, if any, provided to the Owner of each Lot reflecting the existing positive slope away from the Residence upon completion thereof.

(e) **No Interference.** There shall be no interference with the Established Drainage Pattern over any other portion of the Property, except as approved in writing by the Committee. Approval shall not be granted unless provision is made for adequate alternate drainage evidenced by a certified report from a civil engineer. No Owner will install Improvements, including, but not limited to, landscaping, items related to landscaping, earth berms, walls, walks, driveways, parking pads, patios, fences, Living Units, additions to a Living Unit, Outbuildings, or any other item or Improvement which will change the grading and Established Drainage Pattern of the Lot or any other area of the Property.

(b) **Erosion.** The Owner shall implement erosion control measures to stabilize the Lot during construction and prior to landscaping to protect the Lot from erosion and to prevent erosion of the Lot and runoff from the Lot from flowing onto the streets, adjoining Lots and public areas or Common Areas. The owner shall implement and maintain erosion control measures following construction and landscaping if necessary to protect the Lot from erosion and to prevent erosion of the Lot and runoff from flowing onto the streets, adjoining Lots and public areas or Common Areas.

Section 7.28. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on or allowed upon any portion of the Project nor shall anything be placed on any portion of the Project which is a nuisance or causes embarrassment, disturbance or annoyance to others. Additionally, the discharge of firearms on any portion of the Project is expressly prohibited, and no open fires shall be lighted or permitted on any property within the Project except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

Section 7.29. No Annoying Light, Sounds or Odors. No light shall be emitted from any portion of the Project which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Property which is unreasonably loud or annoying; and no odor shall be emitted on any portion of the Project which is noxious or offensive to others. By way of example and without limitation, habitually barking, howling or yelping dogs shall be deemed a nuisance.



Section 7.30. Private Water Supplies and Sewage Disposal. No individual water supply system shall be permitted on any Lot, except as otherwise set forth in Section 7.10 hereof with respect to a single water storage tank, and except for any reasonably related collection systems, subject to the Architectural Guidelines and applicable law.

Section 7.31. Windows and Awnings. No reflective materials, including but not limited to aluminum foil, reflective screens or glass, mirrored or similar type items shall be permitted to be installed or placed on the outside or inside of any windows of any Living Unit or Outbuilding or any other part of a Lot, which can be seen from the outside of the Project or from other portions of the Project, unless otherwise approved by the Committee. Further, no bed sheets, newspaper or similar items shall be permitted to be installed or placed on the outside or inside of any windows of any Living Unit or Outbuilding or any other part of a Lot which can be seen from outside of the Lot, unless otherwise approved in writing by the Committee.

Section 7.32. Amendment of Land Use Restrictions/Variances.

(a) **Amendment.** Article VII of this Declaration may be amended in accordance with the applicable provisions of the Act.

(b) **Variances.** Notwithstanding the foregoing, the Committee may authorize variances from compliance with any of the provisions, covenants, conditions and restrictions contained in this Article VII when circumstances such as topography, natural destruction or hardship may require. Such variances must be evidenced in writing and may be recorded. If such variances are granted, no violation of the provisions, covenants, restrictions, and conditions contained in this Article VII shall be deemed to have occurred with respect to the manner for which the variance was granted, and subsequent Owners may rely on and shall be bound by the provisions set forth in the variance. The granting of such a variance shall not operate to waive any of the provisions, covenants, conditions and restrictions contained in this Declaration for any purpose except as to the particular portion of the Property and the particular provision covered by the variance.

Section 7.33. Illegal Acts; Marijuana. Nothing shall be done or kept in or on any Lot or within the Common Areas or any part thereof that would be a violation of any statute, rule, ordinance, regulation, permit, or other validly-imposed requirement of any governmental or quasi-governmental body having jurisdiction. **Specific provisions related to Marijuana, Colorado Amendments 20 and 64 permit the cultivation, distribution and use of marijuana in specific and limited circumstances. The State of Colorado also has passed additional legislation governing the use of medical and recreational marijuana (hereafter, "Colorado Marijuana Laws"). Despite these Colorado Marijuana Laws, the Federal Controlled Substances Act categorizes marijuana as a Schedule 1 Controlled Substance, and further provides that the cultivation, distribution, or possession of marijuana is a federal criminal offense. No Common Area, Lot, Living Unit or other Improvements thereon may be used for any display, transfer, distribution, processing, sale, storage (other than an amount for personal use as permitted by Colorado law), transportation, or cultivation of marijuana or any part**

of a marijuana plant in violation of the Federal Controlled Substances Act. Any possession, consumption, cultivation or medical or recreational use of marijuana or any part of a marijuana plant shall be in strict compliance with any and all laws of the State of Colorado and the Town.

Section 7.34. Rules and Regulations. The restrictions contained in this Article VII are minimum restrictions, and nothing contained herein shall restrict the right of the Board to adopt more stringent restrictions as permitted by Section 2.1 (c) of this Declaration.

Section 7.35. Severability. In the event any provisions of the Land Use Restrictions contained in this Article VII, or any part thereof, shall be held to be unenforceable by a court of competent jurisdiction, the remaining provisions will be unaffected.

ARTICLE VIII GENERAL PROVISIONS

Section 8.1. Enforcement. Subject to any policies regarding the enforcement of this Declaration approved by the Board, the Owner of any Lot within the Project, or the Association, or the Declarant, may enforce the restrictions and limitations or covenants herein set forth by proceedings at law or in equity against any person or persons violating or attempting to violate any of the said restrictions and limitations or covenants either to recover damages for such violations or to restrain such violation or attempted violations or may recover such damages as may ensue because of such violation including costs of suit and attorney's fees. Selection of any one remedy shall not prevent the Owner, Declarant, or Association from also utilizing other legal or equitable remedies to enforce those provisions. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 8.2. Severability; Gender. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions, which shall remain in full force and effect. Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

Section 8.3. Amendment and Termination. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of the Owner of any Lot subject to this Declaration, their respective legal representatives, their heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. Subject to the Declarant's reservations in this Section 8.3 and in Section 8.7 of this Declaration, and to other provisions of this Declaration, this Declaration may be amended or revoked, and additional real property annexed to the Property, by an instrument signed by not less than sixty-seven percent (67%) of the Owners of Lots then covered by this Declaration, which instrument shall be recorded in the real estate records of the Clerk and Recorder. Notwithstanding the foregoing, Declarant hereby reserves and is granted the right and power but not the duty to record a special

amendment to this Declaration at any time and from time to time until December 31, 2030, which amends this Declaration (i) to comply with the requirements of the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee Mortgages covering Lots; (iii) to correct clerical, typographical or technical errors; or (iv) to comply with the requirements of the governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a special amendment on behalf of each Owner. Each deed, Mortgage or other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make or consent to a special amendment. No special amendment made by Declarant shall impair the lien of a First Mortgage upon a Lot or any warranties made by an Owner or Mortgagee in order to induce any of the above agencies or entities to make, purchase, insure, or guarantee a Mortgage on such Owner's Lot.

(a) **Amendments Before Conveyances.** Until the first Lot subject to this Declaration is conveyed by Declarant to the first Owner (other than Declarant or a successor declarant), any of the provisions contained in the Declaration may be amended or terminated by Declarant by the recordation in the real property records of the Clerk and Recorder of an amendment, executed by Declarant, setting forth such amendment or termination.

(b) **Amendments for Exercise of Reserved Rights.** During the Special Declarant Rights Period, the Declarant may make amendments to this Declaration as necessary and as required by applicable law in connection with the exercise of any rights reserved by the Declarant under this Declaration.

Section 8.4. Limited Liability and Indemnification. Neither the Declarant, nor its successors or assigns designated in writing, nor the Association, nor the Board, nor the Committee, nor any member, agent or employee of any of the same shall be liable to any party for any act or failure to act with respect to any matter, if the action taken or failure to act was in good faith and without malice. Such parties shall be reimbursed by the Association for any costs and expenses, including attorneys' fees, incurred by them, with the prior approval of the Association (which approval shall not be unreasonably withheld or delayed), as a result of threatened or pending litigation in which they are or may be named as parties.

Section 8.5. Association Maintenance. By the purchase of a Lot, each Owner agrees that the Association may, if deemed necessary by the Association in its sole discretion, enter into any exterior portions of any Lot and perform maintenance required by this Declaration if the Owner has neglected or refused to perform the maintenance in a timely or prudent manner. If the Association performs said maintenance, the Association may assess as an Individual Assessment all maintenance, and related administrative and legal costs, against the Owner and the Lot.



Section 8.6. Notices. Any notice permitted or required to be given under this Declaration or under the Bylaws, including any notice by the Association to any Member or Owner and any notice by any Member or Owner to another Member or Owner required by this Declaration or the Bylaws, shall, unless otherwise specified in this Declaration or in the Bylaws, be in writing and may be given either personally, by regular mail, certified mail, registered mail, local or national commercial courier or delivery service, successful and confirmed facsimile transmission, or by any other means that is then commonly in use in the United States as a means of giving important notices and which is designated by the Board as an appropriate means for giving notices hereunder. All notices given by regular mail shall be deemed to have been received on the third business day after being mailed and all other notices shall be deemed to have been received on the date actually delivered unless the Board of Directors shall adopt a universally applicable rule as to any specific method of giving notices, in which case such rule shall be applicable to all notices given by such method. All notices shall be 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. Such address may be changed from time to time by notice in writing to the Association, provided that all such notices shall be at addresses located in the United States and no more than two (2) Persons and addresses (other than the First Mortgagee) may be designated as being entitled to notices with respect to any Lot. If directions for notice are given to the Association that are inconsistent with the foregoing, the Association may ignore such directions.

Section 8.7. Annexation by Declarant.

(a) Notwithstanding anything to the contrary herein, the Declarant, for itself, its successors and assigns, reserves until December 31, 2030, the right to annex additional Development Property to this Declaration, as described on Exhibit D attached hereto, without the consent of the Members. However, any such annexation is subject to a determination by HUD or VA (If the Declarant desires to attempt to obtain HUD or VA approval of the property being annexed) that the annexation is in accord with the general plan approved by them and that the structures to be located thereon will be of comparable style, quality, size and cost to the existing Improvements. Each such annexation shall be effected, if at all, by recording of a plat or map of the property to be annexed (unless such plat or map has previously been recorded), and by recording in the office of the Clerk and Recorder a Supplemental Declaration of Annexation, which document shall provide for annexation to this Declaration of the property described in such Supplemental Declaration of Annexation, shall state that the Declarant (or other Person) is the owner of the Lots thereby created, shall assign an identifying number to each new Lot, shall describe any Common Area within the property being annexed, shall reallocate the Allocated Interests among all Lots, shall set forth the effective date of such annexation and reallocation of interests, and may include such other provisions as Declarant deems appropriate. All provisions of this Declaration, including but not limited to, those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members, shall apply to annexed property as provided for in the recorded Supplemental Declaration of Annexation with respect



thereto. Such Supplemental Declaration of Annexation shall be deemed an amendment to the Declaration for purposes of the Act. In addition to the foregoing, the Declarant may amend this Declaration at any time until December 31, 2030, as noted hereinabove, in order to add additional real estate to the Project from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Project pursuant to this sentence, and not described in the attached Exhibit A does not exceed ten percent (10%) of the total area described in the attached Exhibits A and D.

(b) Each portion of the Project which is annexed to this Declaration by a Supplemental Declaration of Annexation, as provided in the preceding subsection (a), shall be subject to a right of withdrawal by the Declarant. Such withdrawal may be accomplished, if at all, in accordance with the Act. However, the Declarant's right to withdraw each such portion of the Project shall expire and terminate, as to each portion of the Project which has been annexed to this Declaration, upon the first conveyance of any Lot in such portion of the Project to any Person other than the Declarant.

(c) Except as may be otherwise provided by the provisions of such supplement(s) of this Declaration, all of the provisions contained in this Declaration shall be applicable to such additional Lots submitted to the Project. Although it is contemplated that additional lands may be ultimately annexed to this Project, the Declarant, its appointees, successors and assigns, shall have no affirmative obligation to do so. The rights of the Declarant, its appointees, successors and assigns, as defined in this Declaration, shall apply to all real property which is added to this Project in accordance with these provisions relating to enlargement thereof. Each Owner shall have the non-exclusive right, together with all other Owners, to use all Common Areas in the Project, and any supplements or additions thereto in any property owned by the Association for the general use of Owners, subject to the terms of this Declaration and the reasonable Rules and Regulations of the Association. This easement shall be irrevocable and shall be for the purpose of ingress and egress, recreational, and social use and shall apply to all Common Areas and all property hereafter owned by the Association and committed to the Project. Voting rights shall commence as to each Lot upon its annexation to the Project pursuant to this Section 8.7.

Section 8.8. Acceptance of Provisions of all Documents. The conveyance or encumbrance of a Lot shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles, the Bylaws, the Architectural Guidelines and the Rules and Regulations, and shall be binding upon each grantee without the necessity or inclusion of such express provision in the instrument or conveyance or encumbrance. The easements and rights created in this Declaration for the benefit of an Owner shall be appurtenant to the Lot of that Owner and all conveyances and other instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights as provided in this Declaration, as though set forth in said instrument in full, even though specific reference to such easements or rights do not appear therein.

Section 8.9. Conflicts. In the event there shall be any conflict between the provisions of this Declaration and any provision of the Articles, Bylaws, Architectural Guidelines, or any Rule or Regulation, the provisions of this Declaration shall be deemed controlling.

Section 8.10. Transfer of Special Declarant Rights. Any or all of the Special Declarant Rights, including but not limited to the right to annex Development Property, may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer or assignment shall be effective unless it is in a Recorded instrument signed by Declarant and the Person to whom the rights are transferred or assigned.

Section 8.11. Mortgage Provisions.

(a) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association; provided, however, First Mortgagees may not exercise rights hereunder as long as the Association is contesting any tax or other charges in good faith.

(b) Upon written request to the Association which identifies the name and address of the First Mortgagee and the Lot number or address, a First Mortgagee will be entitled to timely written notice of (i) any proposed termination of the Project (ii) any delinquency in the payment of assessments or charges owed by an Owner subject to a First Mortgage which remains uncured for a period of sixty (60) days, or any other default under the terms of the Declaration, the Articles, or the Bylaws which remains uncured for a period of sixty (60) days and (iii) any proposed action or amendment of the Declaration, the Articles or the Bylaws for which the consent of a specified percentage of First Mortgagees is required.

(c) Any lien which the Association may have on any Lot in the Project for the payment of Assessments attributable to such Lot shall be subordinate to prior tax liens and, subject to the terms of this instrument and any law to the contrary, to the lien of any First Mortgage on the Lot recorded prior to the date any such Assessments become due.

(d) Subject to the Act and subject to the provisions of this instrument, each holder of a First Mortgage who acquires title to a Lot by virtue of a foreclosure or a deed in lieu thereof, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid Assessments and charges against the Lot which accrue prior to the time such Mortgagee or purchaser acquires title to the Lot, except for claims for a pro rata reallocation of such Assessments or charges to all Lots including the mortgaged Lot.



(e) No breach of any of the covenants, conditions, or restrictions of this Declaration shall defeat or render invalid the lien of a First Mortgage made in good faith and for value.

Section 8.12. Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

Section 8.13. Costs and Attorneys' Fees. In any action or proceeding under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees.

Section 8.14. Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purposes set forth herein.

Section 8.15. Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado

Section 8.16. Mediation of Disputes. All claims and disputes between any Owner or the Association acting on behalf of any Owner(s) against the Declarant or Declarant's assignees arising or relating either to the terms of the home buyer warranty or concerning any other construction and development defect shall first be submitted to mediation before resorting to arbitration or court action. Mediation is a process in which parties attempt to resolve a dispute by submitting it to an impartial, neutral mediator who is authorized to facilitate the resolution of the dispute, but who is not empowered to impose a settlement on the parties. Mediation fees, if any, shall be divided equally between the parties involved. Before the mediation begins, the parties agree to sign a document limiting the admissibility in arbitration or any civil action or anything said, any admission made, and any documents prepared, in the course of the mediation consistent with Colorado law. If any party commences an arbitration or court action based on a dispute or claim to which this paragraph applies without first attempting to resolve the matter through mediation, then in the discretion of the arbitrator or judge, the party shall not be entitled to recover attorneys' fees even if they would otherwise be available to that party in any such arbitration or court action.

Section 8.17. Arbitration of Disputes. Any and all disputes, claims and/or controversies in law or equity between any Owner or the Association acting on behalf of any Owner(s) against the Declarant arising out of, related to, or in any way connected with the Property, this Declaration, or any resulting transaction, which are not settled through mediation shall be decided by neutral, binding arbitration and not by court action. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association (AAA) under its Construction Industry Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a party unsuccessfully



contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial and on appeal, to the non-contesting party. All decisions respecting the arbitrability of any claim shall be decided by the arbitrator.

The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all parties to the claim.

Section 8.18. No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Project, or any Improvement, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 8.19. Disclaimer Regarding Safety. DECLARANT AND THE ASSOCIATION HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE PROJECT. BY ACCEPTING A DEED TO PROPERTY WITHIN THE PROJECT, EACH OWNER ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS, AND RULES AND REGULATIONS OF THE ASSOCIATION. AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROJECT.


Section 8.20. Dedication of Common Areas. Declarant, in recording this Declaration, has designated certain areas of land as Common Areas intended for the common use and enjoyment of Owners for recreation and other activities and purposes, as provided in this Declaration. Except for easements within the Common Areas that are dedicated by the Plat as public access, drainage or utility easements, the Common Areas owned by the Association are not dedicated hereby for use by the general public, but are dedicated to the common use and enjoyment of the Owners as more fully provided in this Declaration.

Section 8.21. Radon Gas Notice. Elevated levels of naturally occurring radon gas may be present in some residential structures in Colorado. Governmental authorities have voiced concerns about the possible adverse effects on human health from long term exposure to high levels of radon gas. Each Owner is responsible to conduct such Owner's own investigation and consult with such experts as such Owner deems appropriate with respect to the presence or absence of radon gas in the soil on that Owner's Lot. Furthermore, each Owner shall be solely responsible for the mitigation of radon gas on such Owner's Lot. The Declarant, its members and managers, and the builder of the initial Living Unit on a Lot shall not be liable for the existence

of radon gas in any Living Unit, for any loss or damage to any Living Unit or other structure, or for any injury to any Person caused by or resulting from, or in any way connected with the existence of radon gas on any Lot.

Section 8.23. **Incorporation of Recitals.** The Recitals are incorporated into this Declaration as substantive provisions.

[SIGNATURE PAGE FOLLOWS]

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Carly Koppes, Clerk and Recorder, Weld County, CO


IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 21st day of JULY, 2022.

DECLARANT:
PFI Properties I LLC

By: [Signature]
Name: PAUL PAUTLER
Its: OWNER/MANAGER

STATE OF COLORADO)
COUNTY OF Weld) ss.

The foregoing instrument was acknowledged before me this 21 day of JULY, 2022 by Paul John Pautler, as owner / manager of PFI Properties I LLC, Declarant.

Witness my hand and official seal.

My commission expires: June 25, 2025

SEAL

[Signature]
Notary Public

JOELY ARLEEN MARTINEZ AROSTEGUI
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 20134036030
MY COMMISSION EXPIRES JUN 25, 2025

JOELY ARLEEN MARTINEZ AROSTEGUI
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 20134036030
MY COMMISSION EXPIRES JUN 25, 2025

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Carly Koppes, Clerk and Recorder, Weld County, CO



EXHIBIT A
DESCRIPTION OF PROPERTY

Lots 1 through 11, inclusive; and
Outlots A and B,
Pautler Farms Estates, Town of Johnstown, County of Weld, State of Colorado.

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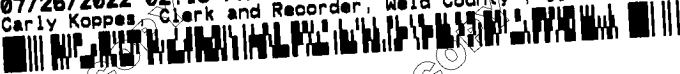


EXHIBIT B
DESCRIPTION OF THE COMMON AREA

Outlots A and B,

Pautler Farms Estates, Town of Johnstown, County of Weld, State of Colorado.


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EXHIBIT C
RECORDED EASEMENTS AND LICENSES

1. Right of Way for railroad as reserved in instrument recorded June 25, 1877, in Book 22 at Page 91.
2. Right of way for county roads 30 feet on either side of section and township lines, as established by the board of county commissioners for Weld county, recorded October 14, 1889, in Book 86 at Page 273.
3. The following documents which reserve minerals or relate to minerals and mineral rights:
 - a. Deed recorded November 11, 1894, in Book 57 at Page 345;
 - b. Deed recorded August 21, 1889, in Book 86 at Page 203;
 - c. Deed recorded May 03, 1934, in Book 959 at Page 456; and
 - d. Deed recorded February 27, 1954, in Book 1383 at Page 318.
4. Right of Way as granted to Panhandle Eastern Pipe Line Co. as set forth in instrument recorded July 2, 1974, at Reception No. 1639891.
5. An Oil and Gas Lease, executed by Alice Pearl Evans, also known as Alice Evans as Lessor(s) and by Cobal Gulf Exploration Corporation as Lessee(s) for a primary term of 5 years, dated September 19, 1979, recorded December 3, 1979, at Reception No. 1810823; and any and all assignments thereof or interests therein. NOTE: Matters affecting the present interest of the lessor or lessee are not shown herein.
6. An Oil and Gas Lease, executed by Albert J. Stroh and Lydia Stroh as Lessor(s) and by Cobal Gulf Exploration Corporation as Lessee(s) for a primary term of 5 years, dated September 19, 1979, recorded December 3, 1979, at Reception No. 1810824; and any and all assignments thereof or interests therein. NOTE: Matters affecting the present interest of the lessor or lessee are not shown herein.
7. Right of Way as granted to US West Communications Inc. as set forth in instrument recorded July 05, 1994, at Reception No. 02395849.
8. All of the estate's interest in oil, gas and other minerals by and between Lydia Stroh and James W. Stroh, as Co-Personal Representatives of the Estate of Albert J. Stroh and Lydia Stroh in instrument recorded October 2, 1996, at Reception No. 2513823.
9. Terms, agreements, provisions, conditions, obligations, easements, and restrictions, if any, as contained in Annexation Agreement recorded May 24, 1999, at Reception No. 2695598 and December 10, 1999, at Reception No. 2737877.



10. Terms, agreements, provisions, conditions, obligations, easements, and restrictions, if any, as contained in Ordinance No. 99-602 recorded February 28, 2000, at Reception No. 2751800 and Ordinance No. 99-597 recorded February 28, 2000, at Reception No. 2751801.
11. Terms, agreements, provisions, conditions, obligations, easements, and restrictions, if any, as contained in Water and Sewer Service Agreement recorded September 29, 2000, at Reception No. 2797066.
12. Mineral Deed by and between Lydia Stroh and The Ryland Group, Inc., a Maryland corporation in instrument recorded November 2, 2000, at Reception No. 2804158.
13. Terms, agreements, provisions, conditions, obligations, easements, and restrictions, if any, as contained in Notice by the Board of Trustees of the Town of Johnstown recorded December 06, 2000, at Reception No. 2811420.
14. Terms, agreements, provisions, conditions, obligations, easements, and restrictions, if any, as contained in Public Improvements Developer's Agreement recorded December 27, 2000, at Reception No. 2815505.
15. Covenants, conditions, restrictions and easements, if any, which do not contain a forfeiture or reverter clause, (deleting any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as contained in instrument recorded January 05, 2001, at Reception No. 2817718 and any and all amendments and/or supplements thereto.
16. Notes and easements as shown on the Plat of Stroh Farm, Filing No. 6 recorded November 17, 2010, at Reception No. 3732853.
17. Covenants, conditions, restrictions and easements, if any, which do not contain a forfeiture or reverter clause, (deleting any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as contained in instrument recorded May 11, 2011, at Reception No. 3767838 and any and all amendments and/or supplements thereto.
18. Terms, agreements, provisions, conditions, obligations, easements, and restrictions, if any, as contained in Notice recorded March 30, 2012, at Reception No. 3835540.
19. An easement for Perpetual, non-exclusive easement solely for the right to construct, Operate, Maintain, Replace, enlarge, reconstruct, Improve, Inspect, repair and remove electrical facilities for the sole purpose of transmission or distribution of electricity and appurtenances and incidental purposes granted to United Power, Inc. by the instrument recorded March 28, 2013, at Reception No. 3920417 upon the terms and conditions set forth in the instrument.

20. Terms, agreements, provisions, conditions, obligations, easements, and restrictions, if any, as contained in Agreement recorded April 11, 2013, at Reception No. 3923723.
21. An easement for Permanent Utility and incidental purposes granted to Town of Johnstown, Colorado by the instrument recorded May 03, 2017, at Reception Nos. 4299059 and 4299060 upon the terms and conditions set forth in the instrument.
22. Terms, agreements, provisions, conditions, obligations, easements, and restrictions, if any, as contained in Memorandum of Agreement recorded November 16, 2017, at Reception No. 4352971.
23. Terms, agreements, provisions, conditions, obligations, easements, and restrictions, if any, as contained in Easement Agreement recorded November 28, 2018, at Reception No. 4449423.
24. Any interest in all oil, gas and other minerals conveyed to La Folie Holdings, LLC by Mineral Deed, recorded December 18, 2018, at Reception No. 4454237; together with any rights of ingress and egress therein and any and all assignments thereof or interests therein.
25. Terms, agreements, provisions, conditions, obligations, easements, and restrictions, if any, as contained in Special Warranty Deed recorded December 18, 2018, at Reception No. 4454238.
26. Terms, agreements, provisions, conditions, obligations, easements, and restrictions, if any, as contained in ALTA/NSPS Land Title Survey recorded December 18, 2018, at Reception No. 4454373.
27. Terms, agreements, provisions, conditions, obligations, easements, and restrictions, if any, as contained in ALTA/NSPS Land Title Survey recorded February 15, 2019, at Reception No. 4467194.
28. Reservation unto Grantor all oil, gas and other minerals in Special Warranty Deed recorded August 1, 2019 at Reception No. 4511064.
29. Reservation unto Grantor all oil, gas and other minerals in Quit Claim Deed recorded August 1, 2019, at Reception No. 4511065.
30. Notes and easements as shown on the Plat of Pautler Farms Estates recorded June 28, 2022, at Reception No. 4838307.
31. Covenants, conditions, restrictions and easements, if any, which do not contain a forfeiture or reverter clause, (deleting any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as contained in this Declaration.

EXHIBIT D

ANNEXABLE DEVELOPMENT PROPERTY

There is none identified as of the date of this Declaration.

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Carly Koppes Clerk and Recorder, Weld County, CO
