

**DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF
PENRITH PARK**

CITY OF BENNETT, COUNTY OF ADAMS, COLORADO

**WHEN RECORDED RETURN TO:
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EXHIBIT A – Lots

EXHIBIT B – Common Elements

EXHIBIT C – Annexable Area

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
PENRITH PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PENRITH PARK is entered into by Melody Homes, Inc., a Delaware corporation ("Declarant," as hereinafter more fully defined).

RECITALS:

A. Declarant is the owner of the real property situated in the County of Adams, State of Colorado, which is described on Exhibit A and Exhibit B, each of which is attached hereto and incorporated herein by this reference (the "Community," as hereinafter more fully defined); and

B. Declarant desires to subject and place upon the Community certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other provisions; and

C. A common interest community may be created pursuant to CCIOA (as hereinafter defined) 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.

DECLARATION

Declarant hereby declares that one or more plats of the Community have been recorded and that all of the Community shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, all of which shall run with the land.

ARTICLE 1. DEFINITIONS

Section 1.1. *Allocated Interests.*

"Allocated Interests" means the share of Association common expenses and votes 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 Community from time to time.

Section 1.2. *Annexable Area.*

"Annexable Area" means the property described on Exhibit C attached hereto and incorporated herein by this reference, plus such additional real estate from such locations as the Declarant may elect in its sole discretion in an amount not to exceed the maximum permitted pursuant to CCIOA. Unless and until the Annexable Area or any portion thereof is annexed to this Declaration (and not withdrawn), such property shall not be subject to this Declaration or any provision hereof except the right of annexation provided in Section 13.4 of this Declaration.

Section 1.3. *Assessment.*

"Assessment" means annual Assessments and special Assessments, which are provided for in this Declaration. For purposes of Sections 4.1, 4.2, 4.8 through 4.16, inclusive, and 12.6 of this Declaration, "Assessment" means annual Assessments, special Assessments, and late charges, fines, fees, interest, costs, expenses, reasonable attorneys' fees, and any other amounts, which are provided for in this Declaration.

Section 1.4. *Association.*

"Association" means Penrith Park Homeowners Association, Inc., its successors and assigns, a community association as provided in CCIOA.

Section 1.5. *Board of Directors.*

"Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration, the Articles of Incorporation and the Bylaws of the Association to act on behalf of the Association.

Section 1.6. *Builder.*

"Builder" means (i) any Person who acquires more than one Lot for the purpose of constructing a residential structure on each such Lot for sale to the public or (ii) any Person who acquires more than one Lot for sale to any Person fitting the description in Section 1.6(i).

Section 1.7. *CCIOA.*

"CCIOA" means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as amended.

Section 1.8. *Common Elements.*

"Common Elements" means any real property and Improvements owned or leased by the Association other than a Lot, which exists for the common use of more than one of the Owners. The real property that is the Common Elements at the time of recordation of this Declaration are described on the attached Exhibit B. Additional Common Elements may be annexed by Declarant as provided in Section 13.4 of this Declaration.

Section 1.9. *Community.*

"Community" means real estate described on the attached Exhibit A and the attached Exhibit B to this Declaration, as supplemented and amended from time to time. The Community is a planned community under CCIOA. The name of the Community is Penrith Park.

Section 1.10. *Declarant.*

"Declarant" means Melody Homes, Inc., a Delaware corporation, and any other Person(s) to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds).

Section 1.11. *Declaration.*

"Declaration" means this Declaration of Covenants, Conditions and Restrictions of Penrith Park and any other recorded instruments, however denominated, that create this Community,

including any supplements and amendments to those instruments and also including, but not limited to, maps and plats.

Section 1.12. *Design Review Committee or Committee.*

"Design Review Committee" or "Committee" means the committee appointed by the Declarant until automatic termination of the Special Declarant Rights and then appointed by the Board of Directors, all as provided in Section 5.1.1 of this Declaration. The Committee shall review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

Section 1.13. *Development Rights.*

"Development Rights" means the following rights or combination of rights reserved by the Declarant as provided in this Declaration:

- 1.13.1. add real estate to this Community;
- 1.13.2. create Lots and/or Common Elements;
- 1.13.3. subdivide or replat Lots; and
- 1.13.4. withdraw real estate from this Community.

The Declarant's right to exercise Development Rights shall terminate automatically as provided in Section 1.27 of this Declaration.

Section 1.14. *Governing Documents.*

"Governing Documents" means this Declaration, the Articles of Incorporation, Bylaws, and any rules and regulations, policies and procedures, design guidelines, and similar documents, of the Association.

Section 1.15. *HUD.*

"HUD" means the U.S. Department of Housing and Urban Development, including the Federal Housing Administration, and their successors.

Section 1.16. *Improvements.*

"Improvements" means all improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features. The foregoing shall include, without limitation, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, driveways, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball backboards and hoops, whether fixed or movable, signs, exterior tanks, utilities facilities, pipes, lines and exterior air conditioning, cooling, heating and water softening equipment, if any. For purposes of Article 5 of this Declaration and only in such Article, the word "exterior" shall be inserted immediately preceding the fourth word "improvements" in the first sentence of this Section.

Section 1.17. *Initially Unoccupied Lots.*

"Initially Unoccupied Lots" means only those Lots which have not been conveyed to the initial Owner other than the Declarant or a Builder.

Section 1.18. *Lot.*

"Lot" means each platted lot that is specifically described on the attached Exhibit A, as the same may be subdivided or replatted from time to time (and "Lot" shall include all lots created as a result of such subdivision or replatting), and any other platted lot(s) that may hereafter annexed to this Declaration as provided in Section 13.4, with the exception of the *Common Elements* and any publicly dedicated property. Each Lot shall constitute a "unit" under CCIOA and it shall not be necessary to use the term "unit" as a part of a legally sufficient description of a Lot.

Section 1.19. *Lots that May Be Included.*

"Lots that May Be Included" means 180 Lots, which shall be the maximum number of Lots that may be subject to this Declaration, including the Lots described on Exhibit A and those Lots which may be added if all of the Annexable Area is annexed 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 or constructed as part of the Community.

Section 1.20. *Member.*

"Member" means all Owners of a Lot collectively or, following termination of the Community, all former Owners of each Lot entitled to distributions of proceeds under CCIOA or their heirs, personal representatives, successors or assigns.

Section 1.21. *Owner.*

"Owner" means each fee simple title holder of a Lot, including, the Declarant, Builder, or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. There may be more than one Owner of a Lot.

Section 1.22. *Person.*

"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 1.23. *Plat.*

"Plat" means the Penrith Park Amendment #2 Final Plat recorded on August 8, 2018, at Reception No. 2018000064291 in the Records, as amended from time to time.

Section 1.24. *Records.*

"Records" means the office of the Clerk and Recorder of Adams County, Colorado.

Section 1.25. *Security Interest.*

"Security Interest" means an interest in real estate or personal property in the Community or any portion thereof, created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.12 of this Declaration and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2 of this Declaration, "Security Interest" shall also mean and refer to

any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Records in which the property described on Exhibit A (as amended and supplemented from time to time) is located show the Administrator as having the record title to the Lot.

Section 1.26. *Security Interest Holder.*

"Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Section 4.12 of this Declaration and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2 of this Declaration, the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records of the Records in which the property described on Exhibit A (as amended and supplemented from time to time) is located, show the said Administrator as having the record title to the Lot), or any successor to the interest of any such Person under such Security Interest.

Section 1.27. *Special Declarant Rights.*

"Special Declarant Rights" means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, model homes and signs advertising the Community and sale of Lots; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to make the Community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the Association or any director during any 75% Control Period. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. The Declarant may exercise its Development Rights at any time and from time to time in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any Development Rights. Such rights shall terminate automatically either twenty (20) years after the date of recording of this Declaration or at such time as Declarant and its assigns no longer owns any portion of the property described on the attached Exhibits A, B and C, whichever occurs first.

Section 1.28. *VA.*

"VA" means the U.S. Veterans Administration and its successors.

Section 1.29. *75% Control Period.*

"75% Control Period" means a length of time that terminates upon the first to occur of the following events: sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant or Builder; two (2) years after the last conveyance of a Lot by the Declarant or a Builder in the ordinary course of business; or two (2) years after any right to add new Lots to the Declaration was last exercised.

ARTICLE 2. MEMBERSHIP AND VOTING RIGHTS

Section 2.1. *Membership.*

The Association shall have one (1) class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot shall have one (1) membership and there is only one (1) Member per Lot, even if the Lot is owned by multiple Owners.

Section 2.2. *Voting Rights.*

Each Member shall be entitled to one (1) vote for each Lot owned 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.

ARTICLE 3. ASSOCIATION

Section 3.1. *Association.*

The Association has been or will be formed as a Colorado non-profit corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration, its Articles of Incorporation and Bylaws, and law.

Section 3.2. *Board of Directors.*

The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Articles of Incorporation and Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

Section 3.3. *Authority of the Board of Directors.*

Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee without a vote of the Members, except as otherwise specifically provided in this Declaration, the Articles of Incorporation or Bylaws of the Association.

Section 3.4. *Election of Part of the Board During the 75% Control Period.*

No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May Be Included to Owners other than a Declarant or a Builder, at least one (1) director and not less than twenty-five percent (25%) of the directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that May Be Included to Owners other than a Declarant or a Builder, not less than thirty-three and one-third percent (33 1/3%) of the directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board.

Section 3.5. Authority of Declarant During 75% Control Period.

Except as otherwise provided in this Article, during the 75% Control Period, the Declarant or Persons appointed by the Declarant may appoint all officers and directors of the Association, and may remove all officers and directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and directors of the Association before termination of the 75% Control Period; but, in that event, the Declarant may require, for the duration of the 75% Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed only by the Declarant, be approved by the Declarant before they become effective.

Section 3.6. Termination of 75% Control Period.

After termination of the 75% Control Period, the Members shall elect a Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers.

Section 3.7. Budget and Review or Audit.

3.7.1. Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board of Directors shall give notice to the Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Board of Directors 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 sixty-seven percent (67%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last approved by the Board of Directors and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

3.7.2. At the discretion of the Board of Directors or as required pursuant to subsections 3.7.2.1 or 3.7.2.2 below, the Association's books and records shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified Person selected by the Board of Directors. Such Person need not be a certified public accountant except in the case of an audit. A Person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

3.7.2.1. An audit shall be required only when both of the following conditions are met:

- (i) The Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000); and

(ii) An audit is requested by the Owners of at least one-third (1/3) of the Lots represented by the Association.

3.7.2.2. A review shall be required only when requested by the Owners of at least one-third (1/3) of the Lots represented by the Association.

3.7.2.3. Copies of an audit or review under this subsection 3.7.2 shall be made available upon request to any Owner beginning no later than thirty (30) days after its completion.

3.7.3. In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under Section 3.7 of this Declaration, Section 3.7 shall be deemed amended to require only that which is required pursuant to CCIOA, as amended.

Section 3.8. Association Books and Records.

3.8.1. 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 in subsection 3.8.2 below, the Association shall make reasonably available for inspection and copying by Owners, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of all of the Governing Documents and financial documents as listed in the most recent available version of the contract to buy and sell real estate promulgated by the Colorado Real Estate Commission. 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.

3.8.2. Notwithstanding subsection 3.8.1, 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 of Directors. Without limiting the generality of the foregoing, without the consent of the Board of Directors, a membership list or any part thereof may not be:

3.8.2.1. 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;

3.8.2.2. Used for any commercial purpose; or

3.8.2.3. Sold to or purchased by any Person.

3.8.3. The information described in this Section 3.8 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 CCIOA. In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under Section 3.8 of this Declaration, Section 3.8 shall be deemed amended to require only that which is required pursuant to CCIOA, as amended.

Section 3.9. *Rules and Regulations and Policies and Procedures.*

Rules and regulations and policies and procedures concerning and governing the Lots, Common Elements, and/or this Community may be adopted, amended and/or repealed from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations or policies and procedures. The rules and regulations and policies and procedures may include procedural requirements, interpretations and applications of this Declaration and law, including without limitation, blanket requirements, blanket interpretations, and blanket applications. The Board has the authority to adopt or vary one or more rules and regulations or policies and procedures that are different for different types of residences, if any exist. Any rules and regulations or policies and procedures that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration.

Section 3.10. *Cooperation with, and/or Delegation to, Other Community Association(s) and/or Any District(s).*

3.10.1. The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with, and/or delegate to, any 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, suppliers, laborers, managers, or others who may perform services for the Association and/or any other community association(s) and/or any district(s), or to otherwise cooperate with, and/or delegate to, 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 association(s) and/or any district(s), 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, and/or delegate to, any other community association(s), and/or any district(s) 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 any other community association(s) and/or any district(s).

3.10.2. Without limiting the generality of the foregoing, the governing board of one or more metropolitan districts may furnish covenant enforcement and/or design review services, as well as any other matters.

Section 3.11. *Management Agreements and Other Contracts.*

Any agreement for professional management of the Association's business or other contracts providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereof, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice;

provided, however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the 75% Control Period shall be subject to review and approval by HUD or VA, if at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one or more Security Interests (and if HUD or VA requires such approval).

Section 3.12. *Merger.*

The Declarant hereby reserves the right to merge the Association with one or more other common interest communities without the approval of any Member or any other Person. This right shall terminate automatically as provided in Section 1.27 of this Declaration.

Section 3.13. *Compliance with Maintenance Manuals.*

Notwithstanding anything to the contrary, the Board of Directors, acting on behalf of the Association, shall comply with all maintenance manuals, if any, given by the Declarant to the Board of Directors or the Association, regarding maintenance, repair and/or replacement of any portion of the Community or any Improvements therein. Further, the Board of Directors shall cooperate, at no cost or expense to the Board of Directors, with all inspections that may be undertaken by or at the request of the Declarant, on or with respect to the Community and Improvements therein.

Section 3.14. *Notice of Meetings and Other Matters of the Association.*

Notices of any meetings, news letters and other correspondence or documents concerning the Association shall be sent to the Declarant at the same time that such notices, news letters, and other correspondence or documents are sent to the Members. However, the foregoing shall expire twenty (20) years after initial recording of this Declaration in Adams County, Colorado.

ARTICLE 4. ASSESSMENTS

Section 4.1. *Personal Obligation for Assessments.*

Each Owner of a Lot, including the Declarant and each Builder, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association: annual Assessments or charges, special Assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such Assessments and other amounts to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all Assessments, fees, charges and other amounts attributable to their Lot. Each amount, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of all Person(s) who were an Owner of such Lot at the time when the amount became due. The personal obligation for delinquent amounts (including Assessments) shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 4.2. *Purpose of Assessments.*

The Assessments levied by the Association shall be used to promote the recreation, health and welfare of the residents of the Lots, and for all of those purposes and activities which may be

required of the Association, or the Board of Directors, or which the Association or the Board of Directors may be empowered to pursue, as provided in any of the Governing Documents or law.

Section 4.3. *Initial Annual Assessment.*

Until the effective date of an Association budget proposed by the Board of Directors and not vetoed by the Owners, as provided herein, the amount of the annual Assessment against each Lot shall not exceed Eighty and 00/100 Dollars (\$80.00) per month, exclusive of any amounts due to any other community association, any district, and/or any other Person or entity. However, the rate of the Assessments against the Initially Unoccupied Lots shall be less than that against the other Lots, as provided in the next Section.

Section 4.4. *Rate of Assessment.*

4.4.1. Annual and special Assessments shall be sufficient to meet the expected needs of the Association and shall be apportioned among the Lots in accordance with their Allocated Interests. Notwithstanding the foregoing, however, the amount of the annual and special Assessments against the Initially Unoccupied Lots shall be set at a lower rate than the rate of annual Assessments and special Assessments against other Lots, because the Initially Unoccupied Lots receive and benefit from fewer services funded by such Assessments than the other Lots. Colorado Revised Statutes §38-33.3-315(3)(b) states that "Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited." Based on this provision, the Initially Unoccupied Lots shall pay annual and special Assessments at the rate of twenty-five percent (25%) of any annual Assessment or special Assessment charged to Lots other than the Initially Unoccupied Lots.

4.4.2. The annual Assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced by the Association on a periodic basis.

Section 4.5. *Date of Commencement of Annual Assessments.*

The annual Assessments shall commence at such time as the Board of Directors may determine in its discretion. After any annual Assessment has been made by the Association, annual Assessments shall not be greater than the amount set forth in Section 4.3 until a budget is proposed by the Board of Directors and not vetoed by the Owners, as provided in this Declaration. The annual Assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines in its discretion from time to time, provided that the first annual Assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

Section 4.6. *Special Assessments.*

In addition to the annual Assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of sixty-seven percent (67%) of a quorum of the Association as provided in Section 4.7, at a meeting duly called for this purpose, a special Assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, repair or replacement of a capital improvement upon any portion of real property

for which the Association has repair and/or replacement obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements, or for the funding of any expense or deficit of the Association. Any such special Assessment shall be set against each Lot in accordance with the Allocated Interests set forth in this Declaration, except that the special Assessments against Initially Unoccupied Lots shall be set in accordance with Section 4.4.1 hereof. A meeting of the Members called for the purpose approving a special Assessment shall be held in conformance with Section 4.7.

Section 4.7. *Notice and Quorum for Any Special Assessments.*

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.6 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.8. *Association Funding by Declarant.*

The Declarant may, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall constitute loans from the Declarant to the Association, with such loan(s) to be repaid by the Association to the Declarant, without interest, at such time(s) as may be determined by the Declarant; provided, however, that at all times all amounts advanced by the Declarant to the Association which have not been repaid to the Declarant prior to such time shall constitute advances against amounts due from the Declarant (including Assessments). If the Declarant elects to loan any amounts as provided in this subsection, Declarant shall not, under any circumstances, be obligated to continue loans, payment or funding of any amount(s) in the future.

Section 4.9. *Assessments/Charges for Services to Less than All Lots.*

The Association may provide services to less than all of the Lots in the Community. If such services are not funded by the annual Assessments or special Assessments, then the Owner(s) of the applicable Lot(s) shall pay to the Association the anticipated costs, fees and expenses for such services and/or reimburse the Association for the same.

Section 4.10. *Lien for Assessments.*

4.10.1. The Association has a lien on each Lot for any amount levied against that Lot or the Owner(s) thereof, including for fines imposed against the Lot's Owner(s). Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as Assessments under this Article. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

4.10.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and record in the county in which the applicable Lot is located, a written notice setting forth the amount of the

unpaid indebtedness, the name of the Owner(s) of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the Assessments for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

Section 4.11. *Priority of Association Lien.*

4.11.1. A lien under this Article 4 is prior to all other liens and encumbrances on a Lot except:

4.11.1.1. liens and encumbrances recorded before the recordation of the Declaration;

4.11.1.2. a Security Interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the amount(s) due to the Association became delinquent; and

4.11.1.3. liens for real estate taxes and other governmental assessments or charges against the Lot.

4.11.2. A lien under this Section is also prior to the Security Interests described in the preceding subsection 4.11.1.2 to the extent, if any, provided in CCIOA.

4.11.3. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other amounts made by the Association.

4.11.4. The Association's lien on a Lot for Assessments and other amounts shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado and any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Association lien.

Section 4.12. *Certificate of Status of Assessments.*

The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid Assessments, if any, currently levied against such Owner's Lot. The statement shall be furnished after written request within such times as required by law, and is binding on the Association, the Board of Directors, and every Owner. The Association or its agents shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 4.13. *Application of Payments; Effect of Non-Payment of Assessments; Remedies of the Association.*

4.13.1. Application of payments received by the Association for payment of amounts due to the Association by Owners, shall be applied first to the payment of attorneys fees, fines, late charges and any other amounts (other than annual Assessments or special Assessments) due to the Association, in the order listed, if any; second to the payment of accrued interest at the rate specified in subsection 4.13.2 below, if any; and third to the payment of annual Assessments and special Assessments due to the Association.

4.13.2. Any Assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors, and the Board of Directors may assess thereon a periodic late charge in such amount and for such period(s) as the Board of Directors may determine. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained including, without limitation, in a foreclosure action, such judgment or decree shall include interest (as provided above) and reasonable attorney's fees, together with the costs of the action, and may include late charges as above provided. No Owner may be exempt from liability for payment of any Assessment by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot against which the Assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

Section 4.14. *Surplus Funds.*

Any surplus funds of the Association remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves, shall be retained by the Association and need not be paid to the Owners or credited to them.

Section 4.15. *Working Capital Fund.*

The Association shall require the each Owner (other than the Declarant or a Builder) of any Lot who purchases that Lot from the Declarant or a Builder, to make a non-refundable contribution to the Association in an amount equal to Two Hundred and Fifty and no/100 Dollars (\$250.00) (regardless of whether or not annual Assessments have commenced as provided in Section 4.5 of this Declaration (Date of Commencement of Annual Assessments)). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant or a Builder of each Lot and shall be for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due.

Section 4.16. *Other Charges.*

The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such amounts(s) as the Board of Directors may determine, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; returned checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the Assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments.

Section 4.17. *Charges for Misconduct.*

If any Association expense is caused by the misconduct of any Owner, his family members, tenants, guests or invitees, the Association may assess that Association expense against such Owner and his Lot.

ARTICLE 5. DESIGN REVIEW COMMITTEE

Section 5.1. *Composition of Committee; Authority of Representative.*

5.1.1. The Design Review Committee shall consist of three (3) or more persons. Until automatic termination of the Special Declarant Rights as provided in Section 1.27 of this Declaration, the Declarant has the right to appoint the Design Review Committee; subsequent to such date, the Design Review Committee shall be appointed by the Board of Directors. The power to "appoint" the Design Review Committee, as provided herein, shall include without limitation the power to: constitute the initial members of the Design Review Committee; appoint member(s) to the Design Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Design Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the appointor. The appointments of all then-current members of the Committee who were appointed by the Declarant shall automatically terminate at such time as the Declarant's power to appoint members of the Committee expires. The members of the Design Review Committee shall not be "officers" of the Association solely as a result of their membership on the Committee and thus, solely as a result of such membership on the Committee, shall not have any of the rights or duties attributable to officers of the Association.

5.1.2. The Committee may at any time, from time to time, appoint a representative to act on its behalf. If the Committee does so, then the actions of such representative shall be the actions of the Committee, subject to the right of appeal as provided below. However, if such a representative is appointed by the Committee, then the Committee shall have full power over such representative, including without limitation the power to at any time withdraw from such representative any of such representative's authority to act on behalf of the Committee and the power to at any time remove or replace such representative.

Section 5.2. *Review and Approval by Committee; Reimbursement for Expenses; Requirement for Approval by Governmental Entities.*

5.2.1. Except as provided in Sections 5.9 and 5.13 of this Declaration, no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Design Review Committee), shall have been first submitted to and approved by the Design Review Committee.

5.2.2. The Design Review Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures.

5.2.3. In its review of such plans, specifications and other materials and information, the Design Review Committee may require that the applicant(s) reimburse the Committee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, shall be levied in addition to the Assessments against the Lot for which the request for Design Review Committee approval was made, but shall be subject to the Association's lien for Assessments and subject to all other rights of the Association for the collection of Assessments, as more fully provided in this Declaration.

5.2.4. In addition to the required approvals by the Design Review Committee as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvement shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the City of Thornton, Colorado, if required, shall be a precondition to commencement of construction of, alteration of, addition to or change in any Improvement.

Section 5.3. *Delegation (and Acceptance) of Design Review and Approval.*

5.3.1. The Declarant, during the time when the Declarant has the right to appoint the Design Review Committee, and the Board thereafter, may delegate any or all design review and/or approval functions pursuant to this Declaration to any other architectural/design review committee, and may accept from any architectural/design review committee(s) delegation of any or all review and/or approval functions of such architectural/design review committee(s). The Committee shall also have the right and authority to otherwise cooperate with any architectural/design review committee in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Declarant or by the Board of Directors, as applicable, in their discretion from time to time.

5.3.2. The party with the right to appoint the Design Review Committee may, at any time, determine to reclaim the delegated rights. In order to reclaim the delegated rights, written notice must be given to the governing body of the entity to whom delegation was made, that such right is being reclaimed, and the reclamation shall be effective upon receipt of the notice by the governing body of the entity to whom delegation was made. No delegation of design review and/or approval shall constitute a waiver of the Association's right of design review and/or approval as provided in this Declaration.

5.3.3. The rights and duties under this Article may be delegated with conditions and restrictions that the entity accepting the delegation must follow.

Section 5.4. *Procedures.*

The Design Review Committee shall decide each request for approval within forty-five (45) days after the complete submission of all plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the Design Review Committee fails

to decide any request within forty-five (45) days after the complete submission of all plans, specifications, materials and other information with respect thereto, then such request shall be deemed to have been denied by the Committee.

Section 5.5. *Vote and Appeal.*

A majority vote of the Design Review Committee is required to approve a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Design Review Committee decides a request for approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Committee, upon a written request therefor submitted to the Committee within ten (10) days after such decision by the Committee's representative. The decision of the Committee shall be final. No additional or further appeals are permitted, nor will any be recognized.

Section 5.6. *Prosecution of Work After Approval.*

After approval of any proposed Improvement by the Design Review Committee, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the terms and conditions of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application, or such other time period as may be agreed to in writing by the Design Review Committee, or to complete the Improvement in complete conformance with the terms and conditions of the approval, shall constitute noncompliance with the requirements for approval issued by the Design Review Committee and a violation of this Article; provided, however, that the Design Review Committee may, in its discretion, grant extensions of time for completion of any proposed Improvement(s).

Section 5.7. *Inspection of Work.*

The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement prior to, during or after completion of the same, in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with this Article and any approval therefor granted by the Committee. However, unless the Committee expressly states, in a written document, that an Improvement is being completed or has been completed in conformance with the approval therefor, no such conformance shall be inferred from any inspection of the Improvement either during the work or after completion thereof.

Section 5.8. *Standards/Guidelines.*

The Design Review Committee, with the advice of the Board of Directors, has the authority, at any time from time to time, to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce architectural or design standards, guidelines, rules and regulations to interpret and implement the provisions of this Declaration. Without limiting the generality of the foregoing, such provisions may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the Design Review Committee, may state procedural requirements, may specify acceptable Improvement(s), and may contain architectural standards and design guidelines that are different for different types of dwelling units. In addition, such provisions may provide for blanket approvals, interpretations or restrictions on Improvements. All Improvements proposed to be constructed, and any guidelines that are adopted, shall be done and used in accordance with this Declaration.

Section 5.9. *Variance.*

The Design Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 10 of this Declaration, in order to overcome practical difficulties or prevent unnecessary hardships. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the neighborhood, and shall not militate against the general intent and purpose hereof.

Section 5.10. *Waivers; No Precedent.*

The approval or consent of the Design Review Committee, or any representative thereof, to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Design Review Committee or any representative thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter. The granting or denial of a variance or adjustment by the Design Review Committee, or any representative thereof, shall not be deemed to constitute a waiver of any right to grant or deny any other or future variance or adjustment by the Design Review Committee or any representative thereof, as to any other request for variance or adjustment.

Section 5.11. *Records.*

The Design Review Committee shall, for such period(s) as the Board may determine in its discretion from time to time, maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall, subject to the provisions of Section 3.8 of this Declaration, be available to Members for inspection at reasonable hours of the business day.

Section 5.12. *Liability.*

Neither the Design Review Committee nor any members or representatives thereof, shall be liable in equity or damages to any Person submitting requests for approval or to any Owner or other Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter under this Article 5. In reviewing any matter, neither the Design Review Committee, nor any members or representatives thereof, shall be responsible for the safety, whether structural or otherwise, of any Improvement(s), nor the conformance with applicable building codes or other governmental laws or regulations, nor any other matters, and any approval of an Improvement by the Design Review Committee or any representative thereof shall not be deemed an approval of any of the same. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval or disapproval granted by the Design Review Committee or any representative thereof.

Section 5.13. *Declarant's and Builder's Exemption.*

5.13.1. Notwithstanding anything to the contrary contained in this Declaration, until automatic termination of the Special Declarant Rights as provided in Section 1.27 hereof, the Declarant shall be exempt from the provisions of this Article, except for the requirement to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 5.2.4 hereof).

5.13.2. Notwithstanding anything to the contrary contained in this Declaration, until automatic expiration of the Special Declarant Rights, as provided in Section 1.27 hereof, a Builder who has received design approval from the Declarant shall be exempt from the provisions of this Article except for the requirement to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 5.2.4 of this Declaration).

ARTICLE 6. INSURANCE

Section 6.1. *Insurance.*

The Association shall maintain insurance in connection with the Common Elements. The Association shall maintain insurance as required by applicable law or applicable regulation, including without limitation CCIOA, which insurance shall include, without limitation, property insurance and commercial general liability insurance. In addition, the Association may maintain insurance against such other risks as the Board of Directors may elect from time to time, including, but not limited to, fidelity coverage, workers compensation insurance, and 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 or officers on behalf of the Association, as well as insurance on such other property and/or against such other risks as the Board of Directors may elect in its discretion from time to time.

Section 6.2. *General Provisions of Insurance Policies.*

All policies of insurance carried by the Association shall comply with this Section. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty (30) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest on the Lot insured by such insurance policy. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any Owner or member of such Owner's household. Further, all policies of insurance carried by the Association shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

Section 6.3. *Deductibles.*

The Association may adopt and establish written non-discriminatory rules and regulations or policies and procedures relating to the responsibility for deductibles. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association may, at the election of the Board of Directors in its discretion: be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed; be apportioned among the Persons sharing in a joint duty of repair and maintenance; and/or be partly or wholly

borne by the Association and/or any such Person(s). 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 one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question and the Association may collect such amounts from said Owners in the same manner as any Assessment.

Section 6.4. *Payment of Insurance Proceeds.*

Any loss covered by an insurance policy described in Section 6.1 of this Declaration must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. However, subject to Section 7.1 of this Declaration, the proceeds must be disbursed first for the repair, restoration or replacement of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired, restored or replaced and any budget or reserve deficit funded, or unless the Community is terminated.

Section 6.5. *Insurance to be Maintained by Owners.*

An insurance policy issued to the Association does not eliminate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Owner's Lot and the Improvements thereon, as well as on personal property belonging to an Owner, and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot. Each Lot shall be insured in an amount not less than the full replacement value of the Improvements thereon.

Section 6.6. *Acceptable Insurance Companies.*

Each insurance policy purchased by the Association or an Owner must be written by an insurance carrier which is authorized by law to do business in the State of Colorado. No insurance policy shall be obtained where: (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee; or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

ARTICLE 7. DAMAGE OR DESTRUCTION

Section 7.1. *Damage or Destruction.*

7.1.1. Any portion of the Community for which casualty insurance is required to be carried by the Association under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association except as otherwise permitted by CCIOA.

7.1.2. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds

attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to the Owners and/or lienholders, as their interests may appear, in proportion to the Allocated Interests of the Lots.

Section 7.2. *Lots.*

Except as otherwise permitted by CCIOA, any damage to or destruction of any structure located on a Lot shall be promptly repaired and reconstructed by the Owner(s) thereof in accordance with this Declaration. "Repaired and reconstructed," as used in this Section, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. If the Owner(s) of a Lot do not commence repair or reconstruction activities, as provided above, and diligently pursue the same in conformance with the approval of the Design Review Committee, then the Association may, in its reasonable discretion, after providing the notice required in Section 8.3 of this Declaration, unless the same is an emergency, enter upon the Lot and complete such repair or reconstruction. Except as otherwise provided in this Declaration, the cost of such repair or replacement shall be the personal obligation of the Owner(s) of the Lot on which such work was performed, and shall be subject to the terms and provisions of Article 4 of this Declaration.

ARTICLE 8. EXTERIOR MAINTENANCE

Section 8.1. *General.*

8.1.1. Maintenance, repair or replacement of the Common Elements and all Improvements located thereon, and of any drainage structure or facilities (including without limitation underdrains and interceptor drains), or other public Improvements (including without limitation pedestrian and vehicular accesses and roadways) required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association, unless such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair or replacement or unless such maintenance, repair or replacement has been authorized to be performed by a special district or other municipal or quasi-municipal entity. The Association shall also perform all maintenance, repair and replacement that is to be performed by an owners association, homeowners association, HOA, or similar entity, as provided on the recorded Plat(s) of the Community, or any portion thereof. Further, the Association may provide such other maintenance, repair and replacement as the Board of Directors determines, including publicly-dedicated property and Improvements located thereon. The amounts to be expended for such maintenance, repair and/or replacement shall, subject to Section 8.5 of this Declaration, be collected and enforced by the Association as Assessments as provided in Article 4 of this Declaration.

8.1.2. Without limiting the generality of subsection 8.1.1 above, the Association shall provide maintenance, repair and replacement of the drainage structures (including without limitation underdrains and interceptor drains) in the Community, whether such structures are located on Lots, Common Elements, in easements, and/or on publicly-dedicated property, and the Association hereby accepts such responsibility.

8.1.3. The Association may contract for regular trash removal service to be provided for the Lots, which shall be paid by the Owners as part of the Assessments to the Association that are provided for in Article 4 of this Declaration (Assessments). Any Owner desiring non-regular or extraordinary trash removal shall make his or her own arrangements for the same and pay for the same in addition to the Assessments that are due to the Association.

8.1.4. The extent, degree and timing of maintenance, repair and/or replacement, may be determined by the Board of Directors. In no event shall the Association be responsible for removal of, or damage caused to any Person or property by, ice or the build-up of ice.

8.1.5. Except as provided in subsections 8.1.1, 8.1.2, 8.1.3 and 8.1.4 above, the maintenance, repair and replacement of each Lot, and the Improvements thereon, shall be performed by the Owner(s) thereof at such Owner's sole cost and expense. However, the foregoing is subject to the provisions of Section 8.5 of this Declaration.

Section 8.2. *Changed or Added Improvements.*

Any Improvement which has been changed, altered or modified by or for an Owner or occupant of a Lot shall be maintained, repaired and replaced by such Owner to the extent of the change, alteration or modification. If the Improvement is newly constructed, erected, placed, planted, applied or installed by an Owner or occupant of a Lot after conveyance of such Lot by Declarant or a Builder, then the entirety of such Improvement shall be maintained, repaired and replaced by, the Owner of such Lot. However, the Board may at any time, by resolution, elect to have the Association provide such maintenance, repair or replacement; provided that any such resolution shall be subject to being repealed, revoked, modified, changed or altered, at any time, from time to time, by the Board.

Section 8.3. *Association's Right to Maintain, Repair and Reconstruct.*

In the event any Owner shall fail to perform his maintenance, repair and/or reconstruction obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owner by the Board, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or reconstruction. Notwithstanding the foregoing, no notice shall be required in emergency situations. *The cost of such maintenance, repair or reconstruction shall be the personal obligation of the Owner of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to "Assessments" as provided in Article 4 of this Declaration, including interest, late charges and lien rights.*

Section 8.4. *Non-Interference with Grade and Drainage.*

Each Owner and the Association agree, for themselves and their heirs, personal representatives, successors and assigns, that they will not in any way interfere with or obstruct the established drainage pattern over any real property. Except as to the Declarant or a Builder, in the event that it is necessary or desirable to change the established drainage over any Lot or Common Elements, then the party responsible for the maintenance of such real property shall submit a plan to the Design Review Committee for its review and approval, in accordance with Article 5 of this Declaration, and any such change shall also be made in accordance with all laws, regulations and

resolutions of all applicable governmental entities. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading by the Declarant or Builder, as applicable, is completed.

Section 8.5. *Acts or Omissions.*

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair, replacement and/or reconstruction of the Common Elements or any Lot(s), or any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of any member of such Owner's family or by a tenant, guest or invitee of such Owner, the cost of such repair, maintenance, replacement, and/or reconstruction, or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair, replacement and/or reconstruction shall be added to the Assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Article 4 of this Declaration. A determination of the act or omission of any Owner, or any member of an Owner's family or a tenant, guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Board of Directors at a hearing after notice to the Owner.

ARTICLE 9. EASEMENTS

Section 9.1. *Other Easements.*

In addition to any other easements, including those which may be granted or reserved elsewhere in this Declaration or by law, the following Sections describe easements to which the Community is or may be subject.

Section 9.2. *Access Easement.*

Each Owner hereby grants: to the Association, and to its agents, employees and contractors, a right and easement on, over, across and through such Owner's Lot for maintenance, repair and replacement as provided in this Declaration, including without limitation as provided in Article 8 of this Declaration; to utility companies, their contractors, agents and employees, for access to, inspection, maintenance, repair and replacement of utility meters, lines and appurtenances; and to the Association for and incidental to enforcement of any term or provision of any of the Governing Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot, the Person responsible for the damage, or expense to avoid damage, is liable for the cost of prompt repair. The rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owners or occupants of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance, repair and/or replacement; and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner or occupants of each affected Lot shall be notified of emergency entry as early as is reasonably possible. The interior of any dwelling unit shall not be subject to the easement that is granted in this Section.

Section 9.3. *Utilities Easement.*

Declarant hereby reserves a blanket easement upon, across, over and under the Common Elements for utilities and the installation, use, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master

television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect, use, and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, use, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, or modification of an easement, Declarant reserves and is hereby given the right and authority to grant or modify such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.27 of this Declaration, at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

Section 9.4. *Easement for Encroachments.*

To the extent that any Improvement on a Lot or on the Common Elements encroaches on any other Lot or Common Elements, a valid easement for the encroachment exists.

Section 9.5. *Drainage Easement.*

Declarant hereby reserves, to itself and to the Association, easements for drainage and drainage facilities across the five (5) rear and five (5) side feet of each Lot; provided, however, that if a dwelling unit is located upon any of the areas described in this sentence, then such easement shall be reduced in width to the width of the distance from the nearest lot line to the exterior wall of the dwelling unit on such Lot that is nearest to such lot line. Except for residences as provided in the preceding sentence, no Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon each such rear and side yard drainage easements to construct, repair, replace or change drainage pipes, structures or drainage ways, or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.27 of this Declaration, at which time said reserved right shall vest in the Association

Section 9.6. *Easement for Unannexed Property.*

The Declarant hereby reserves, for the use and benefit of the Annexable Area, a non-exclusive, perpetual easement and right-of-way on, over, across and under the Common Elements for access, ingress and egress, and 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 Area or any portion thereof (herein collectively the "Annexable Area Easement"). By virtue of the Annexable Area Easement, the Declarant generally intends to provide for access and for utilities services to those portion(s) of the Annexable Area, which have not been included in the Community. Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as both of the following

have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration pursuant to the aforesaid Section; and expiration of the Declarant's right to withdraw such portion of the Annexable Area from this Declaration.

ARTICLE 10. RESTRICTIONS

Section 10.1. *General Plan.*

It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Community. The use of individual Lots may also be subject to lease and other restrictions more restrictive than this Article and no Person (other than the Declarant or the Association) may place any structure on the Common Elements.

Section 10.2. *Restrictions Imposed.*

The Community is subject to the easements, licenses and other matters recorded in the Records as of the date of recordation of this Declaration. In addition, the Declarant declares that all of the Community shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. Further, no immoral, improper, offensive or unlawful use shall be permitted in the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed.

Section 10.3. *Residential Use; Certain Permitted Business Activities.*

Subject to Section 13.7 of this Declaration, Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied as determined by the Board:

10.3.1. The business conducted is clearly secondary to the residential use of the home and is conducted entirely within the home;

10.3.2. The existence or operation of the business is not detectable from outside of the home by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

10.3.3. The business does not result in an undue volume of traffic or parking within the Community;

10.3.4. The business conforms to all zoning provisions and is lawful in nature; and

10.3.5. The business conforms to all Association rules and regulations and policies and procedures.

Section 10.4. *Household Pets.*

No animals, horses, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in the Community; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals),

so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Community. The Association shall have, and is hereby given, the right and authority to, from time to time, impose the following, as well as take such other action(s) with regard to these matters as the Board of Directors may determine: set a maximum number of household pets; set a size or poundage limit on pets; regulate the type(s) of pets that are permitted to be kept; determine that any dog(s), cat(s) or other household pet(s) are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to pets; or determine that an Owner is otherwise in violation of any provision of this Section. If the Board determines that any of the foregoing have been or are being violated, the Board may take such action(s) as it may deem appropriate to correct the same. An Owner's right to keep household pets is coupled with the responsibility to pay for any damage caused by such pets, as well as all costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in Article 4 of this Declaration.

Section 10.5. *Miscellaneous Improvements.*

10.5.1. No advertising or signs of any character shall be erected, placed, permitted, or maintained other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House," "For Rent" or security sign(s) of not more than a total of five (5) square feet posted only for the purpose of selling, renting or evidencing the existence of a security system on such Lot, and such other signs, for such length(s) of time, which have the prior written approval of the Committee or are otherwise expressly permitted by law; provided, however, that any and all such advertising or signs shall be subject to any and all specifications and/or rules and regulations adopted by the Committee or the Board of Directors, from time to time. Notwithstanding the foregoing, any signs, advertising, or billboards may be used by the Declarant or by a Builder (with the Declarant's prior written consent) without regard to any specifications or any rules and regulations of the Committee, and without the prior written approval of the Committee. The Owner or occupants of a Lot may display political signs (as defined in CCIOA) 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) 36 inches by 48 inches. Additionally, the Owner or occupants of a Lot may display the American flag in a window, on a balcony of a Unit, or on a flagpole in a manner consistent with the Federal Flag Code, P.L. 94-344; 90 stat.810; 4 U.S.C. Secs. 4 to 10, and subject to the rules and regulations adopted by the Committee or the Board from time to time.

10.5.2. No wood piles or storage areas shall be so located as to be visible from a street, from the ground level of any Lot or from the Common Elements.

10.5.3. Except as may otherwise be permitted in writing by the Design Review Committee, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot, except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its sales or

construction upon the Lots; and provided further, however, that the requirements of this subsection shall be subject to the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended from time to time.

10.5.4. No fences shall be permitted without the prior, written approval of the Design Review Committee, except such fences as may be constructed, installed or located by the Declarant or a Builder in the development of, or construction of Improvements in, the Community.

10.5.5. This Section 10.5 shall be construed and applied in accordance with all applicable laws, including CCIOA.

Section 10.6. *Vehicular Parking, Storage and Repairs, Use of Garages.*

10.6.1. Except as expressly permitted under CCIOA regarding the parking of emergency vehicles, no house trailer, camping trailer, boat trailer, hauling trailer, jet ski, boat, or accessories thereto, truck (excluding, except as hereinafter provided, pickup trucks that are 1 ton or less), self-contained motorized recreational vehicle, or other type of recreational or commercial vehicle or equipment, may be parked or stored on a Lot unless such parking or storage is entirely within the garage area of any Lot or will be suitably screened from view in accordance with the requirements, and prior written approval of, the Design Review Committee (subject to subject to any provisions of any guidelines or standards adopted by the Design Review Committee). A "commercial vehicle" means a vehicle that: is used to transport cargo or passengers for profit or hire, or otherwise to further the purposes of a business or commercial enterprise; and may (but is not required to) contain signage, advertising, or written information on the vehicle or extending from the vehicle. However, any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles that are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon. A "recreational vehicle" includes motor homes, pick-up trucks with camper shells, trailers, self-contained recreational vehicles, motorcycles, motorbikes, snowmobiles, jet skis, all-terrain vehicles, and other apparatus intended for use on land, water, or in the air, and the trailers used for their transportation.

10.6.2. No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of seventy-two (72) hours or longer, or which does not have an operable propulsion system installed therein, or which is not then currently registered and licensed; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

10.6.3. In the event the Association shall determine that a vehicle is parked or stored in violation of subsections 10.6.1 or 10.6.2 hereof, then a written notice describing said vehicle may be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or may be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a

reasonable time thereafter, as determined by the Board, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

10.6.4. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within a completely enclosed structure which screens the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent the washing and polishing of any motor vehicle, boat, trailer, motor cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing on a Lot.

10.6.5. This Section 10.6 shall be construed and applied in accordance with all applicable laws, including CCIOA.

Section 10.7. *Nuisances.*

No nuisance shall be permitted in the Community, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of the Community or any portion thereof. As used herein, the term "nuisance" shall include each violation of the Governing Documents, but shall not include any activities of Declarant or a Builder. No noxious or offensive activity shall be carried on nor shall anything be done or placed which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

Section 10.8. *No Hazardous Activities; No Hazardous Materials or Chemicals.*

No activities shall be conducted which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged and no open fires shall be lighted or permitted except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

Section 10.9. *No Annoying Lights, Sounds or Odors.*

No light shall be emitted which is unreasonably bright or causes unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be permitted which is noxious or offensive to others. Any exterior lighting installed or maintained on a Lot or Improvements(s) shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of adjacent or nearby property. Further, no annoying light, sound or odor shall be permitted which may be seen, heard or smelled.

Section 10.10. *Restrictions on Trash and Materials.*

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any other portion of the Community. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles

shall be maintained in an exposed or unsightly manner. Trash removal is the responsibility of each Owner. However, the Association may, at the discretion of the Board, provide trash removal services for all or any portions of the Community. The scope of trash removal services that may be provided by the Association may be determined by the Board (e.g., the Board may elect to provide and use Assessments to pay for all regularly scheduled trash pickups, but require each Owner to be responsible for scheduling, and paying for, any extraordinary trash pick-ups and/or recycling services).

Section 10.11. *Sightly Condition of Lots.*

Each Lot shall at all times be kept in a clean, sightly and wholesome condition by the Owner thereof. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Lot except as necessary during the period of construction or as provided in Section 10.10 of this Declaration.

Section 10.12. *Leases.*

The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, Improvements thereon, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Lot, or any portion thereof, under the following conditions:

10.12.1.1. All leases shall be in writing; and

10.12.1.2. All leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the Governing Documents; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

10.12.1.3. Short term rentals, including to but not limited to arrangements between the Owner or any Owner's tenant and a short-term rental provider (e.g. Airbnb, VRBO, etc.) are prohibited, whether or not the Owner resides in the unit.

Section 10.13. *Landscaping.*

Within the time frames as hereinafter provided, the Owner (other than Declarant or a Builder) of each Lot shall install landscaping on all of the Lot which is not covered or enclosed by a building, fence or other structure, and shall thereafter maintain such landscaping in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds, and replacement of landscaping. The Owner of each Lot (other than Declarant or a Builder) shall install landscaping on such Lot within one hundred eighty (180) days after acquisition of such Lot by such Owner if said acquisition occurs between April 1 and October 1; if said acquisition does not occur between such dates, then such landscaping shall be installed by such Owner by the following October 1. Landscaping plans and other required documents shall be professionally done, shall be in accordance with the design guidelines, and shall be submitted to the Design Review Committee for review and approval prior to the installation of landscaping, except where installed by the Declarant. If any Owner fails to comply with this Section, or with the requirements of the Design Review Committee in installation of landscaping, the Association may, at the direction of the Board of Directors, enter upon such Lot and install or maintain landscaping for which the Owner shall be obligated to pay, in accordance with and subject to the provisions of Section 8.3 of this Declaration.

Section 10.14. *Restrictions on Mining or Drilling.*

No property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

ARTICLE 11. PROPERTY RIGHTS IN THE COMMON ELEMENTS

Section 11.1. *Owners' Easements of Enjoyment.*

Subject to this Declaration, every Owner shall have a non-exclusive right and easement for the purpose of access to such Owner's Lot and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 11.2. *Extent of Owners' Easements.*

Subject to the other provisions of this Article, the rights and easements of enjoyment created hereby are subject to the following: the Common Elements may not be used in any manner which violates the statutes, rules, or regulations of any governmental authority with jurisdiction over the Common Elements; and no Person (other than the Declarant or the Association) may place any structure on the Common Elements. In addition, such rights and easements are subject to the following:

11.2.1. the right of the Association to borrow money for any purpose and to mortgage the Common Elements as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest except in accordance with CCIOA; and

11.2.2. the right of the Board to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

11.2.3. the right of the Board to promulgate and publish standards, guidelines, rules and regulations or policies and procedures, with which each Member shall strictly comply; and

11.2.4. the right of the Board to suspend the voting rights of a Member for any period during which any Assessment against his Lot remains unpaid and, for any period, for any infraction of the Governing Documents; and

11.2.5. *the right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless the same is done in accordance with CCIOA. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed a transfer within the meaning of this subsection; and*

11.2.6. the right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family

members, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial and/or otherwise appropriate; and

11.2.7. the right of the Association to close or limit the use of the Common Elements or any portion thereof while maintaining, repairing and/or making replacements in the Common Elements.

Section 11.3. *Use of Common Elements by Declarant and Builders.*

An easement is hereby granted to the Declarant and to each Builder on, over, across, under and through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's or Builder's obligations or exercising any Special Declarant Rights or other rights of the Declarant or Builder, as applicable, and no Owner shall engage in any activity which will temporarily or permanently interfere with such easement through the Common Area Elements.

Section 11.4. *Delegation of Use.*

Any Owner may delegate his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

Section 11.5. *Payment of Taxes or Insurance by Security Interest Holders.*

Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may be or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

Section 11.6. *Conveyance or Encumbrance of Common Elements.*

Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only in accordance with CCIOA and this Declaration.

Section 11.7. *Designation of Common Elements.*

Declarant in recording this Declaration has designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities, as provided in this Declaration and other applicable documents. The Common Elements are not dedicated hereby for use by the general public.

Section 11.8. *Duty to Accept Property and Facilities Transferred by Declarant.*

The Association shall accept title and/or maintenance responsibility to any property, including Improvements thereon, as well as personal property, equipment, and easements, transferred to the Association by the Declarant, together with responsibility to perform all duties and functions of the Association which are set forth in this Declaration or otherwise assumed by the Association. As of the date of recording of this Declaration, interests which are planned to be transferred by the Declarant to the Association are planned to consist only of Common Elements and/or easements, in the property described on the attached Exhibit A, the attached Exhibit B, and/or the Annexable Area and/or as provided on the Plat.

ARTICLE 12. DISPUTE RESOLUTION

Section 12.1. *Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.*

12.1.1. Each Party (as defined below) agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims (as defined below) to the procedures set forth in this Article and not to a court of law.

12.1.2. By acceptance of a deed for a Lot, each Owner agrees to abide by the terms of this Article.

12.1.3. No Claim (as defined below) may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

Section 12.2. *Definitions Applicable to this Article.*

For purposes of this Article only, the following terms have the meanings set forth in this Section:

12.2.1. "AAA" means the American Arbitration Association or any other Person subsequently agreed to by the Claimant and Respondent in writing for the purpose of performing the functions of the American Arbitration Association under this Declaration.

12.2.2. "Claimant" means any Party having or asserting a Claim.

12.2.3. "Claim" means, except as excluded or exempted by the terms of this Article, any claim, grievance or dispute between one Party and another, regardless of how the same may have arisen or on what it might be based, including without limitation those arising out of or related to (i) the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Party under any of the Governing Documents; (ii) the design or construction of improvements; (iii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Party. A Claim may be brought by lawsuit, counterclaim, cross-claim, mediation, arbitration, or in any other manner.

12.2.4. "Party" means each of the following: Declarant, its officers, directors, partners, members, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; any builder or contractor, its officers, directors, partners, members, employees and agents, who construct buildings, residences or other Improvements; and any Person not otherwise subject to this Declaration who agrees to submit to this Article.

12.2.5. "Respondent" means any Party against whom a Claimant asserts a Claim.

12.2.6. "Termination of Mediation" means a period of time expiring forty-five (45) days after a mediator has been agreed upon by the parties (however, a mediator shall be selected no later than thirty (30) days after the Claimant has given notice to the Respondent of the Claim and if the Claimant and Respondent are unable to agree on a mediator, one

shall be chosen by the AAA) and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent), and upon the expiration of which the Claimant and Respondent have not settled the Claim.

Section 12.3. *Approval Required for Association Actions.*

The approval of sixty-seven percent (67%) of the Association votes cast by Members voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present (with the "quorum" in such cases to be set as provided in Section 12.4 of this Declaration), must be obtained before the Association shall have the power to institute action on any Claim pursuant to this Article, or to make any counterclaim or cross-claim in any lawsuit with respect to any Claim brought against the Association. Such approval must be obtained in accordance with the requirements of Section 12.4 of this Declaration.

Section 12.4. *Notice and Quorum for Association Actions.*

Written notice of any meeting of Members which includes a vote pursuant to Section 12.3 of this Declaration (Approval Required for Association Actions) shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. Such written notice, or if the vote is to be by written ballot then such written ballot, shall include the following information:

12.4.1. A statement regarding the nature of the Claim. Such statement shall include the name(s) of the proposed Claimant(s) and Respondent(s), the basis and reason for the Claim, and any other information necessary to adequately explain the nature of the proposed Claim; and

12.4.2. A good-faith estimate of the costs and fees, including court costs and other costs, the fees of consultants, expert witnesses and attorneys, reasonably anticipated to be incurred by or for the Association in prosecuting the Claim, with such estimate prepared by the primary attorney the Board proposes to have prosecute the Claim on its behalf; and

12.4.3. A good-faith estimate of the manner in which any monies reasonably anticipated to be recovered from the Claim will be distributed or paid to consultants, expert witnesses, the Association, its attorney(s) and any others, prepared by the primary attorney the Board proposes to have prosecute the Claim on its behalf; and

12.4.4. A good faith estimate of the projected time frame for resolution of the Claim; and

12.4.5. All terms and provisions of the agreement between the Association and the attorney(s) the Board proposes to have prosecute the Claim.

The presence of Members or of proxies, or if by ballot then receipt by the Association of written ballots, entitled to cast sixty-seven percent (67%) of all of the Association votes, shall constitute a quorum at any meeting at which the Members vote on approval of any Claim the Association wishes to bring.

Section 12.5. *Required Form of Proxy or Ballot.*

Each written proxy, and each ballot, which purports to vote on, or authorize a vote on, approval of the Association bringing a Claim shall contain the following statement with respect to any vote approving the Association to bring a Claim:

With full knowledge and understanding that my annual Assessments may be increased by the costs and fees associated with the proposed Claim, I/we APPROVE the authority of the Association to bring such Claim.

Section 12.6. *Exclusions from "Claim".*

Unless specifically exempted by this Article, all Claims between any of the Parties shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all Parties thereto otherwise agree in writing, "Claim" does not include any of the following, and the same shall not be subject to the provisions of this Article:

12.6.1. Any action by the Association to enforce any provision of Article 4 of this Declaration;

12.6.2. Any action by the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the Association or court may deem necessary in order to enforce any of the provisions of Article 10 of this Declaration or of Article 5 of this Declaration;

12.6.3. Any action between or among Owners, which does not include Declarant, a Builder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

12.6.4. Any action in which any indispensable party is not a Party, as defined in this Article.

Section 12.7. *Right to Inspect.*

Prior to any Party commencing any proceeding against another Party, including but not limited to an alleged defect of any Improvement, the Respondent shall have the right to be heard by the Claimant and, if any Claimant is the Association, by the Members, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or to otherwise correct the alleged defect; provided, however, any correction to, or redesign of, an Improvement shall be made upon terms and conditions reasonably acceptable to all affected Parties. In the exercise of the inspection rights contained herein, the inspecting Party shall:

12.7.1. Be careful to avoid unreasonable intrusion upon, or harm, damage or costs to the affected Party including using its best efforts to avoid causing any damage to, or interference with, any Improvements to the subject property;

12.7.2. Minimize any disruption or inconvenience to any Person who occupies the subject property;

12.7.3. Remove daily all debris caused by the inspection and located on the subject property; and

12.7.4. In a reasonable and timely manner, at the sole cost and expense of the inspecting Party, promptly remove all equipment and materials from the subject property and repair and replace all damage, and restore the subject property to the condition of the subject property as of the date of the inspection unless the subject property is to be immediately repaired.

The inspecting Party shall not permit any lien, claim or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the subject property. The inspecting Party shall indemnify, defend, and hold harmless the affected Owners and their tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorneys' fees, resulting from any breach of this Section by the inspecting Party.

Section 12.8. *Mandatory Procedures.*

12.8.1. *Good Faith Negotiations.* The Parties shall make every reasonable effort to meet in person and confer for the purposes of resolving the Claim by good faith negotiation. Any Party may be represented by attorneys and independent consultants to assist such Party in negotiations and to attend meetings.

12.8.2. *Notice.* Prior to proceeding with any claim against a Respondent, each Claimant shall give a notice to each Respondent, which notice shall state plainly and concisely:

12.8.2.1. the nature of the Claim, including all Persons involved and Respondent's role in the Claim;

12.8.2.2. the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

12.8.2.3. the specific relief and/or proposed remedy sought.

12.8.3. *Mediation.*

12.8.3.1. If the Parties do not resolve the Claim through negotiations within thirty days after submission of the Claim to the Respondent(s), Claimant shall have an additional thirty (30) days to submit the Claim to mediation under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Mediation Procedures, as appropriate.

12.8.3.2. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

12.8.3.3. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator shall issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

12.8.3.4. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

12.8.3.5. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 12.8.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 12.8 of this Declaration. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

12.8.4. *Binding Arbitration.*

12.8.4.1. Subject to Section 12.8.3.2. above, upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the parties to the Claim, there shall be one arbitrator who, to the extent feasible, shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

12.8.4.2. 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.

12.8.4.3. 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 12.9. *Liability for Failure of Association to Maintain an Action.*

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

ARTICLE 13. GENERAL PROVISIONS

Section 13.1. *Enforcement; Fines.*

13.1.1. This Section 13.1.1 is subject to Article 12 of this Declaration. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in the Governing Documents may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Except as otherwise provided in this Declaration, the Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings. Remedies for violation(s) of the Governing Documents shall be cumulative and no remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under any of such documents, the prevailing party shall be entitled to recover its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the Governing Documents, shall in no event be deemed a waiver of the right to do so thereafter.

13.1.2. Subject to the following sentence, the Association shall have the right to levy and collect fines (as provided in Article 4 of this Declaration) for the violation of the Governing Documents. Prior to collection of any fines, the Association, the Board of Directors, or an authorized management company of the Association, shall mail a notice of violation to the Person(s) alleged to be in violation of any such provision and such notified Person(s) has a right to a hearing upon submission to the Board of Directors of a written request for hearing, which is properly signed by such Person(s) and dated, within ten (10) days after the notice of violation has been mailed or such other time as the Board of Directors may decide in its discretion from time to time; failure of a notified Person to request a hearing in writing within the required time period shall constitute a waiver of such right to a hearing.

Section 13.2. *Severability.*

All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, including without limitation any provision(s) of Article 12 of this Declaration (Dispute Resolution) by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 13.3. *Conflict of Provisions.*

In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 13.4. *Annexation; Withdrawal.*

13.4.1. Additional property may be annexed to this Declaration with the consent, at the time such annexation is to be effective, of Members casting sixty-seven percent (67%) of the Association votes and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed; provided, however, prior to the termination of the Special Declarant Rights, including without limitation the right to exercise any

Development Rights, no annexation that is provided for in this subsection shall be effective without the prior written approval of the Declarant.

13.4.2. Notwithstanding the foregoing, until automatic termination of the Special Declarant Rights as provided in Section 1.27 of this Declaration, the Declarant (or any Builder so designated in writing by the Declarant) may annex to this Declaration the Annexable Area or any portion(s) thereof, without consent of any other Owners, Security Interest Holders, or any other Person; however, such annexation is subject to a determination by HUD or VA only if the Declarant (or any Builder so designated in writing by the Declarant) desires to attempt to obtain HUD or VA approval of the property being annexed, and if HUD or VA require such approval, 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 an Annexation of Additional Land in the Records, which document:

13.4.2.1. shall provide for annexation to this Declaration of the property described in such Annexation of Additional Land;

13.4.2.2. shall identify the owner(s) of the Lots thereby created;

13.4.2.3. shall assign an identifying number to each new Lot;

13.4.2.4. shall describe any Common Elements within the property being annexed;

13.4.2.5. shall reallocate the Allocated Interests; and

13.4.2.6. may include such other provisions as the Declarant (or any Builder so designated in writing by the Declarant) deems appropriate. Other provisions that may be included in an Annexation of Additional Land include, without limitation, covenants, conditions, restrictions, requirements and/or other provisions, in addition to or different from those contained elsewhere in this Declaration, that apply or will apply to some or all of the property that is thereby being annexed to this Declaration. Any of such other provisions referenced in the preceding sentence may be amended with the consent of the Owners of sixty-seven percent (67%) of the Lots to which such other provisions apply.

13.4.3. In addition to the rights contained in subsection 13.4.2 and notwithstanding anything to the contrary contained in this Declaration, the Declarant (or any Builder so designated in writing by the Declarant) may annex to this Declaration the Annexable Area or any portion(s) thereof, until automatic termination of the Special Declarant Rights as provided in Section 1.27 of this Declaration, by recording one or more deeds by which any such property is conveyed by the Declarant (or by any Builder so designated in writing by the Declarant). Each of such deeds shall be deemed to include the following provisions whether or not such provisions are contained in such deed: the property described in such deed shall be annexed to this Declaration; and the lot and/or tract designation of such Lot(s) and/or tract(s) shall be the identifying number and/or letter assigned to each such Lot(s) and/or tract(s); and the Common Elements, if any, included in such deed shall be the tracts, if any, listed on such deed; and the Allocated Interest

appurtenant to each such Lot shall be that fraction determined in accordance with Section 1.1 of this Declaration. Each annexation which is accomplished by recording of a deed in accordance with this subsection shall be deemed to be effective upon the date of recording of such deed. Notwithstanding the foregoing, a deed which does not convey the Annexable Area, or any portion thereof, from the Declarant (or any Builder so designated in writing by the Declarant) shall not be an annexing deed as provided in this subsection, nor shall a deed which otherwise complies with this subsection if the same states on its face that it is not an "annexing deed" and is initialed by the Declarant.

13.4.4. The Declarant hereby reserves the right to record in the Records one or more documents in order to clarify the effect of any annexation(s), including without limitation any matters contained in Sections 13.4.1, 13.4.2, and/or 13.4.3. Each such document(s), if any, may state the legal description(s) of any property which has been annexed, and may include such other provisions as the Declarant, in its discretion, may determine.

13.4.5. Except as otherwise specifically stated in the document pursuant to which property is annexed, all provisions of this Declaration, including as to Lots, those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon the effective date of the annexing document (which shall constitute the date of recording thereof unless otherwise stated in such document).

13.4.6. Each annexation to this Declaration, if any, shall be deemed to constitute an amendment to this Declaration.

13.4.7. The property which is described on the attached Exhibit A (as hereafter amended) the real property that is described on the attached Exhibit B (as hereafter amended), shall each be subject to a right of withdrawal by the Declarant. Such withdrawal may be accomplished, if at all, in accordance with CCIOA. However, the Declarant's right to withdraw each such portion of the Community shall expire and terminate, as to each portion of the Community, no later than automatic termination of the Special Declarant Rights as provided in Section 1.27 hereof.

Section 13.5. *Minor Violations of Setback Restrictions.*

If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation," for the purpose of this Section, is a violation of not more than four (4) feet beyond the required setback lines or Lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

Section 13.6. *Subdivision or Replatting of Lots.*

The Declarant hereby reserves the right to subdivide or replat any Lot(s) owned by the Declarant in the Community. Without limiting the generality of the foregoing, the Declarant

reserves the right to move any Lot lines(s) on Lot(s) owned by the Declarant, for the purpose of accommodating Improvements which are constructed or may be constructed. The rights provided for in this Section shall terminate automatically upon termination of the Special Declarant Rights, as provided in Section 1.27 hereof. No Lot may be further subdivided from that existing at the time such Lot becomes subject to this Declaration, except by, or with the consent of, Declarant.

Section 13.7. *Declarant's and Builder's Use.*

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, as well as any Builder (but only with the express written consent of the Declarant), to perform such reasonable activities, and to maintain upon portions of the Lots and the Common Elements such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Lots and development and construction of Improvements, including locating, maintaining and relocating management offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as Declarant determines. Any real estate used as a sales office, management office, or a model, shall be a Lot or Common Elements, as designated in this Declaration or any other recorded document(s). Further, nothing contained in this Declaration shall limit the rights of Declarant or require the Declarant to obtain approvals:

13.7.1. to excavate, cut, fill or grade any property (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements;

13.7.2. to use any Improvements on any property (with the consent of the Owner thereof) as a construction, management, model home or sales or leasing office in connection with the development, construction or sale of any property; and/or

13.7.3. to require Declarant to seek or obtain any approvals under this Declaration for any such activity.

The rights provided for in this Section shall terminate automatically upon termination of the Special Declarant Rights, as provided in Section 1.27 hereof.

Section 13.8. *Duration, Revocation, and Amendment.*

13.8.1. Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. Except as otherwise provided in this Declaration (including, without limitation Section 13.4 and subsections 13.8.2 and 13.8.3 of this Declaration), this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests; provided, however, prior to the termination of the Special Declarant Rights, including the right to exercise any Development Rights, no amendment of this Declaration shall be effective without the prior written approval of the Declarant. Further, each amendment of this Declaration enacted by the Members shall be applicable only to disputes, issues, events, circumstances, actions, Claims or causes of action that arose out of circumstances or events that occurred after the date of recording of such amendment in the Records; and no such amendment shall be applied retroactively to any earlier occurring disputes, issues, events, circumstances, actions, Claims or causes of action.

13.8.2. Notwithstanding anything to the contrary contained in this Declaration, Bylaws of the Association and/or Articles of Incorporation of the Association may be

amended in whole or in part, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, HUD, VA, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association. Such right of amendment shall terminate automatically as provided in Section 1.27 of this Declaration.

13.8.3. Notwithstanding anything to the contrary contained in this Declaration, Bylaws of the Association and/or Articles of Incorporation of the Association may be amended in whole or in part, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate automatically as provided in Section 1.27 of this Declaration.

13.8.4. Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant to this Declaration or as permitted by CCIOA, may be signed by the Declarant and shall require no other signatory.

Section 13.9. *Registration of Mailing Address.*

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by U.S. mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the 75% Control Period shall be sent by registered or certified mail, postage prepaid, to 9555 S. Kingston Court, Suite 200, Englewood, Colorado 80112, unless such address is changed by the Association during the 75% Control Period; subsequent to termination of the 75% Control Period, the Association shall notify the Owners of a different address for notices.

Section 13.10. *Limitation on Liability.*

The Association, the Board of Directors, the Design Review Committee, the Declarant and its assigns, any Builder, and the officers, directors, members, partners, agents and employees of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 13.14 shall apply to this Section.

Section 13.11. *No Representations, Guaranties or Warranties.*

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, the

Design Review Committee, any Builder, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, freedom from hazardous or toxic materials, substances or gases, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. The release and waiver set forth in Section 13.14 shall apply to this Section.

Section 13.12. *Disclaimer Regarding Safety.*

THE DECLARANT AND ITS ASSIGNS, THE BUILDERS, THE ASSOCIATION, THE DESIGN REVIEW COMMITTEE, THE BOARD OF DIRECTORS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE BUILDERS, THE ASSOCIATION, THE DESIGN REVIEW COMMITTEE, THE BOARD OF DIRECTORS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS, RULES AND REGULATIONS OR POLICIES AND PROCEDURES 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 COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 13.14 SHALL APPLY TO THIS SECTION.

Section 13.13. *Development Within and Surrounding the Community.*

Each Owner acknowledges that development within and surrounding the Community may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses may change over time. Such development may entail changes to or alterations in the access to the Community, views of or from the Community or the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot subject to the foregoing, and waives and releases any claim against the Declarant, the Association, the Board of Directors, the Design Review Committee, each Builder, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 13.14 shall apply to this Section.

Section 13.14. *Waiver.*

By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant and its assigns, the Association, the Board of Directors, the Design Review Committee, each Builder, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth

in this Declaration, including without limitation, those contained in Sections 13.10, 13.11, 13.12 and 13.13.

Section 13.15. HUD or VA Approval.

During the 75% Control Period, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more Security Interests, and HUD or VA require such approval: annexation of additional real property (if the Declarant desires to obtain HUD or VA approval of the property that is being annexed and if HUD or VA require such approval); amendment of this Declaration, except as provided in Sections 13.4, 13.8.2 and 13.8.3 hereof; termination of this Community; dedication of Common Elements; or merger or consolidation of the Association, except as provided in Section 3.12 of this Declaration (Merger).

Section 13.16. Headings.

The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

Section 13.17. Gender.

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

Section 13.18. Use of "Include," "Includes" and "Including".

All uses in the Governing Documents of the words "include," "includes" and "including" shall be deemed to include the words "without limitation" immediately thereafter.

Section 13.19. Action.

Any action that has been or may be taken by the Declarant, the Association, the Design Review Committee, the Board, any Member, any director, any committee, or any other Person, may be taken "at any time, from time to time". Each provision that authorizes, directs or permits action shall be deemed to include such language.

Section 13.20. Sole Discretion.

All actions which are taken by the Declarant, the Association, the Design Review Committee, the Board, any Member, any director, any committee, or any other Person, shall be deemed to be taken "in the sole discretion" of each of such parties.

Section 13.21. Run with Land; Binding Upon Successors.

The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon this Community and all real property and Improvements which are now or hereafter become a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Builders, the Association and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 3rd day of June, 2020.

MELODY HOMES, INC., a Delaware corporation

By: [Signature]

Its: HOA Coordinator

STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this day of June 3rd, 2020, by James Whaffan as HOA Coordinator of MELODY HOMES, INC., a Delaware corporation.

Witness my hand and official seal.

(SEAL)

Notary Public [Signature]

My Commission Expires: Feb. 6, 2022

SUSAN H MILBRATH
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20024004066
MY COMMISSION EXPIRES FEBRUARY 6, 2022

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
PENRITH PARK**

(Lots)

The following property as shown on the final plat of Penrith Park Amendment #2 Final Plat, recorded on August 8, 2018, at Reception No. 2018000064291, in the records of the office of the Clerk and Recorder of Adams County, Colorado, as amended and supplemented from time to time:

Lots 1 through 4, Block 1
Lots 1 through 52, Block 2
Lots 1 through 7, Block 3
Lots 1 through 28, Block 4
Lots 1 through 28 Block 5
Lots 1 through 8, Block 6
Lots 1 through 8, Block 7
Lots 1 through 20, Block 8
Lots 1 through 20, Block 9

**EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
PENRITH PARK**

(Common Elements)

The following property as shown on the final plat of Penrith Park Amendment #2 Final Plat, recorded on August 8, 2018, at Reception No. 2018000064291, in the records of the office of the Clerk and Recorder of Adams County, Colorado, as amended and supplemented from time to time:

Tract C
Tract D
Tract E
Tract F
Tract G
Tract H
Tract I
Tract J

**EXHIBIT C
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
PENRITH PARK**

(Annexable Area)

The property as shown on the final plat of Penrith Park Amendment #2 Final Plat, recorded on August 8, 2018, at Reception No. 2018000064291, in the records of the office of the Clerk and Recorder of Adams County, Colorado, as amended and supplemented from time to time.