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**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE ENCLAVE AT MEADOW HILLS**

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This Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Enclave at Meadow Hills is made effective on the date of recording by The Enclave at Meadow Hills Homeowners Association, Inc., a Colorado nonprofit corporation.

## **RECITALS**

WHEREAS, The Genesee Company (hereafter referred to as "Declarant" initially encumbered the property depicted on that certain subdivision plat of Meadow Hills Country Club Subdivision Filing No. 12, recorded in the real property records of Arapahoe Count, Colorado on November 4, 1992, at Reception No. 0124504 (the "Map") by recording the Declaration of Covenants, Conditions and Restrictions of The Enclave at Meadow Hills on 6/15/93 at Reception number 9300074460 ("Original Declaration").

WHEREAS, the Property is a part of a planned community commonly known as "The Enclave at Meadow Hills." The Original Declaration established certain easements, covenants, conditions and restrictions to provide for the cooperative development, improvement, use, operation, maintenance, repair and enjoyment of Property located within such planned community. The Original Declaration established certain mutually beneficial easements, covenants, restrictions and equitable servitudes for the cooperative development, improvement, use, operation, maintenance, repair and enjoyment of such planned community under a general plan for the purpose of enhancing and perfecting the value, desirability and attractiveness of such planned community.

WHEREAS, the Owners and the Association desire to amend and restate all provisions of the Original Declaration, as amended and supplemented, by virtue of this Amended and Restated Declaration for The Enclave at Meadow Hills ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and instruments creating covenants, conditions, restrictions and reservations on the Property shall be superseded and replaced by this Declaration.

WHEREAS, Paragraph 6.1 of the Original Declaration provides that it could be amended by the affirmative vote or written consent of Members to whom at least 67% of the votes in the Association are allocated with the exception of those matters in section 6.1.3 of the Original Declaration which require unanimous consent. Furthermore, a majority of First Mortgagees must consent to amendments to provisions pertaining to voting and assessments, among other things.

WHEREAS, all Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts, disclosures and/or notices of the Association and by other means.

WHEREAS, these amendments have been approved and determined to be reasonable and not burdensome by the Owners.

WHEREAS, the purposes of the amendments in this Declaration are to remove developer "boilerplate" language that is no longer applicable to the community, remove provisions that do

not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, and add provisions that provide the proper tools for the Association to solve problems within the community.

WHEREAS, pursuant to the Colorado Common Interest Ownership Act, §38-33.3-217(4.5), C.R.S. and section 6.1.3 of the Original Declaration, the Owners have unanimously consented to this Amended and Restated Declaration. Furthermore, pursuant to section 6.2 of the Original Declaration and §38-33.3-217(1)(b), C.R.S., a majority of First Mortgagees have consent to these amendments. Alternatively, this Amended and Restated Declaration was approved by the District Court of Arapahoe County pursuant to §38-33.3-217, C.R.S.

NOW, THEREFORE, the Original Declaration is hereby amended and restated in its entirety as follows. This Declaration shall (i) run with the land and all parts thereof at law and as an equitable servitude; (ii) bind all Persons having or acquiring any interest in the Property or any part thereof; (iii) inure to the benefit of and be binding upon every part of the Property and every interest therein; and (iv) inure to the benefit of, be binding upon, and be enforceable by Declarant, its successors in interest, each Owner, their grantees, heirs and assigns and successors in interest; and the Association and its successors in interest.

## **ARTICLE 1 DEFINITIONS**

1.1 Definitions. Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings specified below.

1.1.1 "Act" means the Colorado Common Interest Ownership Act codified at Colorado Revised Statutes ("C.R.S.") §§ 38-33.3-101 et seq., as amended.

1.1.2 "Additional Lands" means property contiguous to the real property described on attached **Exhibit A**. For the purposes of this Section, real property separated from real property described on attached **Exhibit A** by Common Areas, public rights-of-way and/or any other public property will be deemed to be contiguous. Such Additional Lands include, without limitation, the real property described on attached **Exhibit B**. Further, the Additional Lands include the real property described on **Exhibit B** together with additional real property not to exceed 10% of the total area of the Property; provided, however, that in no event may the Declarant increase the number of Lots beyond the number stated in Section 1.1.20 below.

1.1.3 "Architectural Review Committee" (sometimes referred to as the "Committee") means the committee described in Article 6 of this Declaration.

1.1.4 "Articles" means the articles of incorporation of The Enclave at Meadow Hills Homeowners' Association, a Colorado nonprofit corporation, filed in the office of the Secretary of State of the State of Colorado, as the same may from time to time be amended.

1.1.5 "Assessments" means the Regular Assessments, Default Assessments, Long-Term Reserve and the Special Assessments.

1.1.6 "Association" means The Enclave at Meadow Hills Homeowners' Association, a Colorado nonprofit corporation described in Article 4 of this Declaration and its successors.

1.1.7 "Association Property" means all real and personal property now or hereafter owned by, or leased to, the Association.

1.1.8 "Beneficiary" means a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be.

1.1.9 "Board" means the Board of Directors of the Association.

1.1.10 "Bylaws" means the Bylaws of the Association which may be adopted by the Board, as such Bylaws may be amended from time to time.

1.1.11 "Common Area" means any portion of the Property together with all improvements thereon owned by the Association itself for the primary benefit of all Members and the Property as a whole including, without limitation, landscaped areas adjacent to public rights-of-ways, landscaped areas within island and/or 'median areas associated with public rights-of-ways, entrance areas, postal facilities, parking areas, trails, parks, gardens, detention or retention facilities, Recreation Areas and other personal and real property now or hereafter owned or controlled by the Association. Common Areas are subject to the terms, limitations, rules and regulations provided in this Declaration and those established by the Board from time to time.

1.1.12 "Declarant" means The Genesee Company, a Colorado corporation.

1.1.13 "Declaration" means this instrument as it may be amended from time to time.

1.1.14 "Developer" means a Person, other than the Declarant, that purchases or owns a portion of the Property for purposes of subdivision, development and/or resale.

1.1.15 "Development Rights" means the rights hereby reserved by the Declarant to (i) add to the Property and make subject to this Declaration the Additional Lands; (ii) create Lots and/or Common Areas within the Property; and (iii) further subdivide Lots or convert Lots into Common Areas.

1.1.16 "First Mortgage" means any unpaid and outstanding mortgage, deed of trust or other security instrument encumbering the Property or a portion thereof recorded in the Records having priority of record over all other recorded liens except those liens made superior by statute (such as, for example, general ad valorem tax liens and special assessments, mechanic's liens and the Association's lien for Assessments).

1.1.17 "First Mortgagee" means any Person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such Person under such First Mortgage.

1.1.18 "General Common Allocation" means with respect to each Lot, the fractional number obtained by dividing one by the total number of Lots.

1.1.19 "Improvement" means every structure and all appurtenances thereto of every type and kind including, but not limited to, buildings, outbuildings, fixtures, utilities, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, poles, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone, regular or cable television, or other utilities.

1.1.20 "Lot" means and refers to any plot of land shown upon any recorded subdivision map or plat of the Property, or any portion thereof, with the exception of the Common Area and public streets, but including all appurtenances and improvements now or hereafter located thereon. The term "Lot" is synonymous with the term "unit" as defined in the Act. The total number of Lots shall not exceed 53 Lots.

1.1.21 "Member" means any Person who is a member of the Association pursuant to Section 4.2.

1.1.22 "Owner" means a Person or Persons (including Declarant or any Developer), owning a Recorded fee simple interest in a Lot from time to time. Such term shall include a contract vendee under an installment land sales contract but shall not include (i) the vendor under such a contract; or (ii) a Person holding an interest in a Lot merely as security for the performance of an obligation (unless and until such a security holder becomes an owner in fee simple of a Lot).

1.1.23 "Period of Declarant Control" has terminated.

1.1.24 "Person" means a natural individual or any other entity with the legal right to hold title to real property.

1.1.25 "Plans and Specifications" means any and all documents designed to guide or control the construction of an Improvement including, but not limited to, those indicating size, shape, configuration or materials; all site plans; excavation and grading plans; foundation plans; drainage plans; landscaping and fencing plans; elevation drawings; floor plans; specifications on all building products and construction techniques; samples of exterior colors; plans for utility services and all other documentation or information relevant to the particular Improvement.

1.1.26 "Property" means all of the real property described on attached **Exhibit A** along with any and all Improvements now in place or hereafter constructed thereon. The Property also includes Additional Lands which have been subjected to this Declaration by Declarant or by others with Declarant's written consent pursuant to Section 2.2.



1.1.27 "Records" means the official real property records of Arapahoe County, Colorado; "to Record" means to file for recording in the Records; and "of Record" and "Recorded" means having been recorded in the Records.

1.1.28 "Recreation Areas" means all Common Areas designated by Declarant as such to be held for recreational purposes for the benefit of all Members and the benefit of the Property as a whole; provided, however, that access to any area or facility may be limited to dues-paying members, subject to fees and other charges, or otherwise conditioned or restricted, and made available to non-members, all on such terms and conditions as the Board may determine.

1.1.29 "Regular Assessments" means those Assessments levied by the Association pursuant to Section 5.1.

1.1.30 "Restrictions" means (i) this Declaration as amended from time to time; (ii) the Rules from time to time in effect; and (iii) the Articles and Bylaws of the Association from time to time in effect.

1.1.31 "Rules" means the rules adopted by the Board as they may be amended from time to time.

1.1.32 "Security Interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an 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 lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

1.1.33 "Special Declarant Rights" means the rights hereby reserved for the benefit of Declarant to perform the following acts as specified in parts 2 and 3 of the Act and Section 10.7 of this Declaration: to complete improvements indicated on the Map; to exercise any Development Right; to maintain sales offices, management offices, signs advertising and marketing the Property and models; to use easements through the Common Areas for the purpose of making improvements within the Property and the Additional Lands; to merge or consolidate a common interest community of the same form of ownership; and to appoint or remove any officer of the Association or any member of the Board during the period of Declarant Control.

1.1.34 "Special Assessments" means those Assessments levied by the Association pursuant to Section 5.4.

1.1.35 "Subdivision" means a parcel of land which has been shown on a final and recorded subdivision plat approved pursuant to, and in accordance with, the laws of the County of Arapahoe, State of Colorado, as the same may be amended from time to time.

## **ARTICLE 2**

### **DEVELOPMENT OF THE PROPERTY/ANNEXATION**

2.1 Subdivision and Development by Declarant. Declarant has subdivided the Property into Lots for single-family residential development including, Common Areas, Recreation Areas, or for other purposes for the benefit of the Property, in connection with the Map. The Property was developed pursuant to the Map, as it may be amended or modified from time to time, as a unified planned development community in which the development of, and restrictions upon, each portion thereof benefit each other portion and the whole thereof.

2.2 Annexation. Additional property may be annexed to the Property and subjected to the Declaration from time to time with the consent of 75% of the votes in the Association.

2.2.1 Upon the Recording of a Declaration of Annexation, the covenants, conditions, and restrictions contained in this Declaration shall apply to the added land in the same manner as if it had been originally subject to this Declaration; and thereafter, the rights, privileges, duties and liabilities of the Persons subject to this Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration. The Declaration of Annexation must comply with C.R.S. §§ 38-33.3-209 and 38-33.3-210 and must contain (i) a reference to this Declaration, which reference shall state the date of Recordation and the recording information related to this Declaration; (ii) a statement that the provisions of this Declaration shall apply to the added land as set forth herein; (iii) an adequate legal description of the added land; (iv) an amendment to the Map or, if such an amendment is not necessary, a new certification of the Map in accordance with C.R.S. § 38-33.3-209.

2.2.2 All provisions of this Declaration including, but not limited to, those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members of the Association, apply to annexed property (including, but not limited to, all Lots contained therein) immediately upon Recording an annexation document with respect thereto in accordance with this Section 2.2. Improvements which are constructed on any property annexed by Declarant shall be consistent, in terms of quality of construction, with Improvements constructed on the Property prior to such annexation. Portions of the annexed property are not to be deemed Recreation Areas or Common Area unless specifically so designated in the course of development or in a later Declaration of Annexation.

## **ARTICLE 3**

### **GENERAL RESTRICTIONS/PERMITTED USES**

3.1 Flexible Application of the Subsequent Covenants and Restrictions. All Lots within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

3.2 Authority. All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

(a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.

(b) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.

(c) The Board may establish penalties for the infraction of all rules and regulations, covenants and policies and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.

(d) All fines, fees, Default Assessments, and other charges due the Association are collectable as Assessments and secured by the Association's assessment lien.

3.3 Residential and Common Areas. All of the Property (excluding any Common Area) shall be improved and used solely for residential use for single family homes except that any Common Areas may be improved and used for active and passive recreational purposes for the primary benefit of the Owners and occupants of Lots.

3.4 Improvements and Use. No Lot shall be improved or used except as a dwelling or structure designed to accommodate a single family and occasional guests, plus a garage, fencing and such other Improvements as are necessary or customarily incident to a single-family residence.

3.5 Leasing and Occupancy. Owners shall have the right to lease or allow occupancy of a Lot subject to the restrictions of this Declaration, subject to restrictions of record and subject to the following.

(a) Any occupancy, lease or rental agreement including any sublease arrangement, however titled, shall be in writing and must be for a minimum of one (1) year.

(b) All lease or rental agreements shall provide that the lease or rental agreement is governed by and subject to this Declaration and all other governing documents of the Association including its Rules and Regulations, Policies and Bylaws.

(c) No Lot may be used as a Short-Term Rental, vacation rental, licensing, timeshare or other similar transient occupancy ("STR"). A STR is defined as the leasing or renting out of a Lot or any portion thereof for a short-term stay of between one (1) day and three-hundred sixty-four (364) days.

(d) Any occupancy, lease or rental is subject to the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation and the Rules and Regulations of the Association.

(e) Owners are required to provide occupants and tenants with copies of the current Declaration, Articles of Incorporation, Bylaws and any Rules and Regulations and Policies of the Association.

(f) A copy of the occupancy, lease or rental agreement shall be provided to the Association within 30 of days of commencement of the lease or tenancy.

(g) All occupancy, lease and rental agreements of Lots shall state that the failure of the occupant, tenant, lessee, renter or their guests to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the Rules and Regulations of the Association shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them. If the Association requests that an Owner evict the Owner's tenant or occupant based upon violation of any of the Governing Documents, and the Owner fails to commence such action within 30 days of the date of the Association's request and notice, the Association may commence eviction proceedings in the Owner's name and on the Owner's behalf. The Owner delegates and assigns to the Association, acting through the Board, the power and authority to evict the occupant or lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association commences such eviction, any costs, including but not limited to attorney fees and costs, shall constitute and be collectible as an Assessment and lien against the Lot.

(h) Leases and rentals shall be for or of the entire Lot.

(i) Owners who do not reside at the Lot shall provide to the Association in writing a current address and telephone number and must update such information within 15 days of every change thereto.

(j) The Association shall have the authority to adopt Rules and Regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

3.6 Unsightly Articles. No unsightly article shall be permitted to remain on any Lot or any other portion of the Property if it is visible from adjoining property or public or private thoroughfares.

3.7 Restrictions on Vehicles, Vehicular Parking, Storage and Repairs.

(a) Vehicles and trailers shall be parked only in the garages or in appropriate spaces or areas designated by the Board. Vehicles shall be subject to such reasonable Rules and Regulations as the Board may adopt.

(b) The following may not be parked or stored within the Community, unless such parking or storage is within a garage on a Lot, or unless authorized in writing by the Association or is otherwise exempted by Colorado law; oversized vehicles, trucks or pickup trucks over one ton, commercial vehicles, vehicles with commercial writing on their exteriors, trailers, camping

trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. The foregoing may be parked as a temporary expedience for loading or delivery of goods or services.

(c) No abandoned, unlicensed or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable, unlicensed or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Association.

(d) No motor vehicle may impede the safe and efficient use of driveways, garages and parking spaces within the Community by residents, obstruct emergency access to/from the Community or interfere with the reasonable needs of other residents within the Community.

(e) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of closed garages in the Community. This provision shall not be deemed to prevent washing and polishing of a vehicle, together with those activities normally incident and necessary to such washing and polishing, provided washing is done with a hose with a shut off valve to prevent waste of water. Minor repairs may be performed, provided they may be completed the day commenced, there is no damage (e.g., oil, residue) to paved areas, and all equipment and parts are removed upon completion of the work. No vehicles may be left unattended on jacks or jack stands.

(f) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

(g) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing hereunder. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges.

(h) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot, is obstructing the flow of traffic, is parked on any grassy area, is parked in a space which has been assigned as exclusively serving another Lot, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately.

(i) If a vehicle is towed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing activity. The Association's right to tow is in addition

to, and not in addition of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

3.8 Refuse, garbage and trash. All refuse, garbage and trash shall be kept at all times in a covered container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept stored or allowed to accumulate on any portion of the Property except within an enclosed structure or appropriately screened from view; provided, however, that normal household waste can be set out up to 24 hours before a scheduled garbage pick-up. Liquid propane, gas, oil and other exterior tanks shall be kept within an enclosed structure or permanently screened from view.

3.9 Landscaping Requirement. Lot(s) shall be suitably landscaped with grass, shrubs and trees all in accordance with design guidelines as the same may be established from time to time by the Architectural Review Committee and shall be approved by such Committee. Thereafter all grass, shrubs and trees shall be kept and maintained in an attractive, healthy, live and growing condition. All dead or diseased grass areas, shrubs and trees shall be promptly removed and replaced with suitable replacement landscaping.

3.10 Antennas/Satellite Dishes. "Permitted Antennas" are defined as:

(a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite;

(b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite;

(c) an antenna which is designed to receive broadcast television broadcast signals; or

(d) other antennas which are expressly permitted under applicable federal statutes or regulations.

In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on a Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules

regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Lot.

All costs associated with the installation or maintenance of any exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type by an Owner, including costs of repair, replacement, improvement and maintenance of the structure to which such exterior television or other antennae, microwave dish, satellite dish, satellite earth station or similar device of any type is affixed, erected and/or installed upon, shall be the sole responsibility of that Owner.

3.11 Insurance Rates. Nothing shall be done or kept on or at the Property which will increase the rate of insurance on any Association Property without the approval of the Board, nor shall anything be done or kept on or at the Property which would result in the cancellation of insurance on any Association Property or which would be in violation of any law.

3.12 No Further Subdividing. No Lot or Common Area shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof (including the Association) without the prior written approval of the Architectural Review Committee. Further, nothing contained herein shall be deemed to require the approval of the Architectural Review Committee for the transfer or sale of any Lot, including Improvements thereon, to more than one person to be held by them as tenants in common or joint tenants, or for the granting of any First Mortgage for the sale or transfer of any Lot or Local Common Area pursuant to the terms of any First Mortgage or by way of a deed in lieu of foreclosure thereof. No Owner shall have the right to partition or seek partition of the Common Area or any Lot.

3.13 Restriction on Signs, Flags and Advertising Devices

(a) Owners may display political signs only on property within the boundaries of the Lot or in the window and not on Common Elements or Limited Common Elements. Political signs may not be displayed earlier than forty-five (45) days before the day of an election and no later than seven (7) days after the election.

(b) Only one sign per office or ballot measure may displayed. The maximum size of any such sign shall be thirty-six (36) by forty-eight (48) inches.

(c) An Owner may display an American flag or service flag in compliance with Rules and Regulations that may be adopted by the Association and according to Colorado law.

(d) No other sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community unless approved in advance, in writing by the Board of Directors or as permitted in other provisions of this Article or the Rules and Regulations of the Association.

3.14 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any part of the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property or to its occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security and emergency devices used exclusively for security and emergency purposes) shall be located, used or placed on any such property without the prior written approval of the Board.

3.15 Repair of Buildings. No Improvement constructed upon any land within the Property shall be permitted to fall into disrepair, and each such Improvement shall be kept at all times in good condition and repair and adequately painted or otherwise finished by the Owner (including the Association) thereof.

3.16 Improvements and Alterations. There shall be no construction, excavation, or alteration which in any way changes the exterior appearance of any Improvement, or the removal of any Improvement without the prior approval of the Architectural Review Committee.

3.17 Violation of Restrictions. If any Owner or Developer or their respective family, guests, licensees, lessees, invitees, agents or employees violates these Restrictions, the Board may invoke any one or more of the following remedies: (i) impose a fine upon such Developer or Owner for each violation; (ii) cause the violation to be cured and charge the cost thereof to such Developer or Owner; (iii) obtain injunctive relief against the continuance of such violation; (iv) charge all administrative fees, regardless of how they are denominated, as well as reasonable attorney fees and costs incurred in enforcement of these restrictions as further set forth in the Covenant Enforcement Policy adopted by the Association; and/or (v) suspend the Owner's right to vote and/or to use any recreational amenity. Before invoking any such remedy, the Board shall give such Developer or Owner notice and an opportunity for a hearing.

3.18 Drainage. There shall be no interference with the established drainage patterns over any property within the Property unless adequate provision is made for proper drainage and approved by the Architectural Review Committee. In the event of any such interference where there has been no adequate provision made for proper drainage which has been approved by the Architectural Review Committee, the Developer or the Owner interfering with the established drainage patterns shall be liable for any damage resulting from such interference.

3.19 No Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Property 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 upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes, an exterior fire pit or within an interior fireplace.

3.20 No Temporary Structures. No temporary building, improvement or structure shall be placed upon the Property.



3.21 No Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth; provided, however, that the Association may, by appropriate written permit, grant, license, or easement agreement, allow the drilling of wells and the installation of infiltration galleries for the extraction of water.

3.22 Fencing. The Declarant constructed certain entryways, fences, fence pillars or walls on or within the Property. No Owner shall modify, repair, replace, paint or otherwise obstruct any such entryways, fence, fence pillars or walls without the prior written approval of the Architectural Review Committee. The design and location of all fences shall be subject to the approval of the Architectural Review Committee. Without limiting the generality of the foregoing, fencing materials shall be restricted to cedar or wrought iron unless otherwise approved by the Architectural Review Committee and in no event shall chain-link fences be permitted on the Property.

3.23 Animals. No animals, livestock, poultry or bees of any kind shall be raised, bred, kept or boarded in or on the Property; provided, however, that the Owner of each Lot may keep a reasonable number of dogs, cats, fish or other domestic animals which are bona fide household pets so long as such pet(s) is/are (i) not kept for any commercial purpose; (ii) kept under control at all times; and (iii) not kept in such number or in such manner as to create a nuisance. Notwithstanding anything to the contrary contained in the foregoing, the Board shall have, and is hereby granted, the right and authority to determine in its sole discretion that dogs, cats or other household pets 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, or that any Owner is otherwise in violation of this Section and to take such action or actions as it deems necessary to correct any such violation including the imposition of *fines*. It is expressly understood that any Owner's right to keep household pets is coupled with a responsibility for such Owner's pet(s) and accordingly, each Owner of a household pet is financially responsible and liable for any damage caused by such pet.

3.24 Marijuana. No person shall smoke marijuana on any Common Elements.

3.25 Home Occupations. Home occupations shall be allowed so long as such use is incidental and secondary to the use of the Lot and does not change the residential character thereof and complies with local zoning ordinances and regulations. Home occupations may include, but are not limited to, home offices or a studio for arts and crafts or photography. In no event shall external advertising, of any kind, be permitted. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment, including semi-trailers; (e) the use or rental of any structure on a Lot for any hotel, motel, Bed and Breakfast, restaurant, bar or other commercial purposes except for licensed home child care as permitted by the Act.

3.26 Prohibited Activities. No Owner or occupant of a Lot may engage in any activity or practice which, in the sole discretion of the Board, threatens the health and/or safety

of other Owners and occupants in the Community, including but not limited to hoarding, creating or allowing conditions conducive to rodents or other pests, engaging in criminal activities or any other conditions or actions that cause damage to persons or property within the Community.

3.27 Solar Panels. Solar panels must receive prior written approval from the Association and should be located in the location least visible from public streets and to neighboring properties.

## **ARTICLE 4 ASSOCIATION**

4.1 Organization. The Association is a non-profit Colorado corporation created for the purposes, charged with the duties, and invested with the powers prescribed by law, the Act, and/or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles, Bylaws nor any Rules promulgated by the Board shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In case of conflict between the Declaration and the Articles, Bylaws and/or Rules, this Declaration shall control.

### 4.2 Membership and Voting.

4.2.1 Generally. Every Owner shall be a Member of the Association and shall remain a Member for so long as that Person continues to be an Owner. The Association shall have only one class of Members and each Member shall be entitled to one vote for each Lot owned by such Member. Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot, to which the Membership is attributable. Except as expressly provided in this Article 4, no other voting rights are created by this Declaration.

4.2.2 Multiple Owners. When an Owner consists of more than one Person, while each such Person shall be a member of the Association, only one of such co-Owners shall be entitled to exercise the single vote to which the Lot is entitled. Fractional votes shall not be allowed. If only one of the co-Owners of a Lot is present at a meeting of the Association, that co-Owner shall be entitled to cast the single vote allocated to that Lot. If more than one of the co-Owners of a Lot are present, the single vote allocated to that Lot may be cast only in accordance with the agreement of a majority of the co-Owners of such Lot. If any one of the co-Owners of a Lot casts a vote allocated to that Lot without the protests being made promptly (i.e., before the end of the meeting of the Association at which such vote was cast) by any of the co-Owners of the Lot to the director presiding over such meeting, then it shall be conclusively presumed that the vote was cast in accordance with the agreement of a majority of the co-Owners of such Lot. No change in the membership of a Member shall be effective for voting purposes until the Board receives written notice of the change together with satisfactory evidence of the change.

4.2.3 Proxies. Votes allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. If a Lot is owned by more than one Person, each such co-Owner of the Lot may vote or register protest to the casting of votes by the other co-Owners of the Lot through a

duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates 11 months after its date unless it provides otherwise.

4.2.4 Association Owned Lots. No votes allocated to a Lot owned by the Association may be cast.

4.3 Board of Directors. The affairs of the Association shall be governed by a "Board of Directors" (sometimes referred to as the "Board") which may, by resolution, delegate any portion of its authority to an executive committee or an officer, executive manager or director for the Association. The qualifications and number of directors, the term of office of directors, the manner in which directors shall be elected and the manner in which directors shall be replaced upon removal or resignation shall be as set forth in the Bylaws.

4.4 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Memberships may and shall be amplified by provisions of the Articles and Bylaws of the Association. Such Articles and Bylaws may include any reasonable provisions with respect to corporate matters including provisions with respect to notices, record dates and quorums for meetings of directors and Members, but no such provisions may be inconsistent with any provision of this Declaration.

4.5 Duties and Powers of the Association. Subject to and in accordance with this Declaration, the Association shall have all of the rights and powers conferred upon it by law, the Act, this Declaration, the Articles and the Bylaws. Without limiting the generality of the foregoing, the Association shall have the following powers and shall perform each of the following duties for the benefit of the Members of the Association:

4.5.1 Assessments. To determine, levy and collect Assessments.

4.5.2 Association Property. Subject to the provisions of § 38-33.3-312, C.R.S. to accept, own, convey, lease, encumber, operate and maintain all Association Property (real and personal) which may have been conveyed to it by Declarant (or otherwise acquired by the Association), together with all Improvements of whatever kind and for whatever purpose which may be located in said areas.

4.5.3 Title to Property Upon Dissolution. In the event of dissolution of the Association, the Common Area shall, to the extent permitted by law and where reasonably possible, be conveyed or transferred to an appropriate governmental or quasi-governmental agency or agencies, or to a nonprofit corporation, association, trust or other organization, to be used for the common benefit of the Owners for similar purposes for which the Common Area was held by the Association. To the extent the foregoing is not possible, the Common Area shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed first for the payment of debts and obligations incurred by the Association and then to the Owners in an equitable manner determined by the Board (which determination will be conclusive) based upon each Owner's pro rata portion of the Property.

4.5.4 Repair and Maintenance of Association Property. To maintain in good repair and condition all lands, Improvements, and other Association Property owned, controlled or maintained by the Association.

4.5.5 Maintenance. To maintain the entrance, postal, parking and other Common Areas and Improvements thereon which were installed, or were otherwise accepted for maintenance by Declarant and, in addition, to maintain certain designated landscaped areas located along and within certain designated primary public rights-of-way and drainage and other easements located on or benefitting the Property.

4.5.6 Maintenance of Fencing. To repair, maintain and replace as necessary any fence or pillars which were installed, constructed or were otherwise accepted for maintenance by the Declarant on or within the Property which shall include the permanent monument and identification signage (the Association has the right of access to and utilization of utility easements for maintenance of these items).

4.5.7 Payment of Taxes. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by the Association, to the extent that such taxes and assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

4.5.8 Insurance. To obtain and maintain in effect policies of insurance adequate, in the opinion of the Board, in kind and amount, to comply with § 38-33.3-313, C.R.S. The Association may obtain insurance against other risks as it shall deem appropriate.

4.5.9 Rules. To make, establish and promulgate, and in its discretion to amend or repeal and reenact, such rules, not in contradiction of this Declaration, as it deems proper covering any and all aspects of its functions, including the use and occupancy of Association Property ("Rules"). Without limiting the generality of the foregoing, such Rules may set dues and fees and establish the regulations governing the operation of Association Property and/or Common Areas. Each Member shall be entitled to examine such Rules at any time during normal working hours at the principal office of the Association.

4.5.10 Architectural Review Committee. To appoint and remove members of the Architectural Review Committee as provided in Section 6.2 hereof, and to insure that at all reasonable times there is available a duly constituted and appointed Architectural Review Committee.

4.5.11 Enforcement. To enforce, on its own behalf and on behalf of all Owners, all of the covenants, conditions and restrictions set forth in this Declaration, under an irrevocable power of attorney (hereby granted) coupled with an interest as beneficiary of said covenants, conditions and restrictions, and to perform all other acts, whether or not anywhere expressly authorized, as may be reasonably necessary to enforce any of the provisions of the Restrictions.

4.5.12 Management Company. To retain the services of a professional management company to manage some or all of the affairs of the Association provided that (i) such company shall be licensed to do business in the State of Colorado, to the extent required by law; (ii) the term of any contract for such services shall not exceed 1 year and shall be terminable on 30 days written notice, with or without cause and without the payment of a termination fee.

4.5.13 Borrowing. Subject to the provisions of § 38-33.3-312, C.R.S. to borrow money and to incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, mortgages, pledges, hypothecations or other evidences of debt and securities therefor encumbering the Common Area, or portions thereof and/or other Association Property.

4.5.14 Easements. To grant easements, leases, licenses and concessions over the Common Area to serve the Property.

4.5.15 Assignment. To assign its right to future income, including the right to receive Assessments.

4.5.16 Other. To carry out all duties of the Association set forth in the Restrictions.

4.6 Non-Liability of Officials. To the fullest extent permitted by law, the Board of Directors, the Architectural Review Committee, or any other committees of the Association or any member thereof, nor any officers, directors, partners, or employees of the Association, shall be liable to any Owner, Developer, or to the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of Plans or Specifications (whether or not defective), course of action, act, inaction, omission, error, negligence, or the like made in good faith and which the Board or such committees or officers reasonably believed to be within the scope of their respective duties.

4.7 Indemnification. To the fullest extent permitted by law, every director, officer, committee member, partner and shareholder of the Association, including the Architectural Review Committee shall be and is hereby indemnified by the Association. Every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, or at the request of, the Association may, in the discretion of the Board, be indemnified by the Association. Any such indemnification shall be limited to all expenses and liabilities (including, without limitation, all attorneys' fees and court costs) reasonably incurred by or imposed upon such person in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association, or incurred in any settlement thereof, whether or not he is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred.

4.8 Non-Liability for Certain Changes and Amendments. Neither the Association, nor their successors or assigns shall be liable to, or subject to injunction by, any Member or Owner or to one another in the event that any change in zoning of the Property is sought or obtained, or in the event that any subdivision map amendment or change in density shall be sought and obtained

including, but not limited to, any change in the Map or in area or density among the various Lots shown on the Map.

4.9 Audit. The Association shall provide a financial statement (which may or may not be audited) for the immediately preceding fiscal year, free of charge to the party so requesting, to any First Mortgagee of a Lot, or any insurer or guarantor of such a First Mortgage, within a reasonable time after written request therefor by any such party.

4.10 Association Books and Records. The Association shall make available to Owners, First Mortgagees, and insurers or guarantors of any such First Mortgage, documents as required by the Act pursuant to the procedures set forth in the Act and any policies adopted by the Association.

4.11 Surplus Funds. Any surplus funds of the Association remaining after payment of, or provision for, expenses, costs, obligations and any prepayment of or provision for reserves shall not be credited to the Owners but shall, instead, be added to any reserve accounts maintained by the Association.

## **ARTICLE V ASSESSMENTS**

5.1 Assessments, Fines and Other Amounts. Each Lot, and each Lot Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Regular Assessments; insurance assessments (assessed in proportion to risk), if any; Default Assessments (described below), Special Assessments (described below), additional fees or charges by the managing agent, if any, including, but not limited to, administration and witness fees, postage, credit card convenience fees, demand letter fees; and such other assessments as imposed by the Association. Each Assessment shall be a separate, distinct and personal debt and obligation of the Owner against whose Lot the same is assessed. All Assessments shall be due and payable, with or without notice, in full without offset for any reason whatsoever. The obligation of each Owner to pay Assessments shall be entirely independent of any obligation of the Association to such Owner or any other Owner to such Owner. No Owner may be exempt from liability for payment of any Assessment by waiver of the use or enjoyment of any of the Common Areas or by abandonment of the Lot against which the Assessments are made.

(a) The Association shall levy an annual Regular Assessment and such other assessments as imposed by the Association, including fees, charges, late charges, attorney fees and costs, fines, interest, and any other fee or costs however denominated charged or incurred by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made. If any assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

(b) Such assessments, including fees, charges, late charges, lien fees, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Lot

Owner of such Lot at the time when the assessment or other charges became or fell due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them.

(c) No Lot Owner may become exempt from liability for payment of the Regular Assessments by delegation and/or waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Regular Assessments are made.

(d) All assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

## 5.2 Levy of Annual Assessments.

(a) The Regular Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year;

(b) The budget shall be adopted pursuant to §38-33.3-303(4)(a)(I), C.R.S. of the Act;

(c) Regular Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors with or without notice; and

(d) The omission or failure of the Board of Directors to levy the assessment for any period shall not be deemed a waiver, modification or a release of the Lot Owners from their obligation to pay.

5.3 Long-Term Reserve. In addition to the levy of the annual Regular Assessments provided above, the Board of Directors shall levy an assessment for contribution to the Long-Term Reserve based upon past and current reserve studies. A separate budget or statement of such assessments shall be adopted together with the annual Regular Assessment budget. The Reserve shall not be funded by Special Assessments.

5.4 Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area, including fixtures and personal property related thereto, or for any other purpose deemed necessary and appropriate by the Board of Directors; provided that any such assessment shall be adopted based upon a budget submitted to the Lot Owners as provided above.

5.5 Default Assessments. All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing

Documents shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least fifteen (15) days prior to the due date.

5.6 Effect of Non-Payment of Assessments.

(a) Late Fees and Interest. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within fifteen (15) days after the due date thereof, as established by the Board of Directors, shall bear interest at eighteen percent (18%) per annum from the due date, and the Association may assess a reasonable late charge thereon as determined from time to time by the Board of Directors.

(b) Acceleration. Failure to make payment within thirty (30) days of the due date thereof shall cause the total amount of such Lot Owner's Regular Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board.

(c) The Association may bring an action at law or in equity, or both, against any Lot Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against a Lot Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due.

(e) If a foreclosure action is filed to foreclose any assessment lien, and a Lot Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent the Lot or apply for the appointment of a receiver for the Lot without prior notice to the Lot Owner.

(f) The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same

5.7 Lien Priority.

(a) The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except:

(1) Liens and encumbrances recorded before the recordation of the Declaration.



(2) A first lien security interest on the Lot except as provided in §38-33.3-316, C.R.S.

(3) Liens for real estate taxes and other governmental assessments or charges against the Lot.

(b) This Section does not affect the priority of mechanics' or materialmen's liens.

(c) The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law.

(d) Sale or transfer of any Lot shall not affect the lien for assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture, shall only extinguish the lien of assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture, shall relieve any Lot from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

5.8 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Property, or any portion thereof for which the Association has a duty to insure, repair, maintain or replace is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If such expenses costs and fees incurred by the Association are not repaid to the Association within thirty (30) days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration. Such expenses, costs, and fees shall automatically become a Default Assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of this Article.

5.9 Application of Payments. All sums collected on delinquent accounts referred to an attorney shall be remitted to the Association's attorney until the account is brought current. All payments received on an account shall be applied in the following order:

- (a) attorney fees and costs;
- (b) association costs and expenses;
- (c) late fees;
- (d) assessment Lien fee;
- (e) interest;

- (f) fines (if applicable); and
- (g) assessments.

## **ARTICLE 6**

### **ARCHITECTURAL REVIEW COMMITTEE/EASEMENTS**

6.1 Members of Committee. The Architectural Review Committee shall consist always of either three members or five members, which members need not be Members of the Association. The Board may reduce the number of members of the Committee to three and increase it to five as often as it wishes. Each member of the Committee shall hold office until such time as he has resigned and his successor has been appointed or has been removed, as provided herein. Members of the Committee may be removed at any time without cause.

6.2 Appointment and Removal. The Board shall have the right to appoint and remove all members of the Committee, with or without cause.

6.3 Design Guidelines. The Architectural Review Committee shall have the power to and may make, establish and promulgate, and in its discretion amend, repeal and reenact rules and/or guidelines regarding anything relevant to its functions including, but not limited to, minimum design standards, minimum landscaping standards, procedure for the submission of Plans and Specifications for approval and fines or other reasonable penalties for violation of any provision of this Article.

6.4 Review of Proposed Construction. Whenever in this Declaration the approval of the Architectural Review Committee is required, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which in its sole discretion are relevant. Prior to commencement of any construction of any Improvement on the Property, the Plans and Specifications therefor shall be submitted to the Architectural Review Committee, and construction thereof may not commence unless and until the Committee has approved such Plans and Specifications in writing. The Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Committee. The Committee shall approve Plans and Specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to a respective residential area and/or the Property as a whole, and that the appearance of any structure affected thereby will be in aesthetic harmony with the surrounding structures. The Committee may condition its approval of Plans and Specifications on such changes therein as it deems appropriate and may require submission of additional Plans and Specifications or other information prior to approving or disapproving the material submitted. The Committee may require a reasonable fee to accompany each application for approval. The Committee may require such detail in Plans and Specifications submitted for its review and such other information as it deems proper. Until receipt

by the Committee of all required Plans and Specifications and other information, the Committee may postpone review of anything submitted for approval. Upon certified receipt and acceptance by the Committee of all required Plans and Specifications and other information, the Committee shall have thirty days in which to approve or disapprove such Plans and Specifications in writing. If the Committee fails to approve or disapprove properly submitted Plans and Specifications within such thirty-day period, the submitted Plans and Specifications shall be deemed to have been disapproved.

6.5 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing designate one of its members to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 6.10. In the absence of such designation, the vote of the majority of all of the members of the Committee, or the written consent of a majority of all of the members of the Committee taken without a meeting, shall constitute an act of the Committee.

6.6 No Waiver of Future Approvals. The approval or consent of the Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans or Specifications or other matter whatever subsequently or additionally submitted for approval or consent by the same or a different Person.

6.7 Compensation of Members. The members of the Committee shall not be entitled to compensation from the Association for services rendered but may be reimbursed for actual expenses incurred on behalf of and for the benefit of the Association

6.8 Inspection of Work. Inspection of completed work and work in progress, as well as correction of defects in such work, shall be performed in accordance with rules established, from time to time, by the Architectural Review Committee concerning such matters.

6.9 Non-Liability of Committee Members. Neither the Committee nor any member thereof nor the Board nor any member thereof shall be liable to the Association or to any Owner or to any other Person for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Committee or its member or the Board or its member, as the case may be. Except insofar as its duties may be extended with respect to a particular area by a Declaration filed by Declarant or by Declarant and a Developer, as the case may be, the Committee shall review and approve or disapprove all Plans and Specifications submitted to it for any proposed improvement, including the construction, alteration or addition thereof or thereto, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the surrounding residential area and the Property generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building, zoning or other codes.

6.10 Variances. Subject to Federal, State and local laws, ordinances, rules and regulations, the Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any design guidelines established by the Committee including restrictions upon height, hulk, size, shape, floor area, land area, placement of structures, set-backs, building envelopes, colors, materials, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental consideration may, in its sole and absolute discretion, warrant. Such variances must be evidenced in writing and must be signed by at least a majority of all of the members of the Committee. If such a variance is granted, no violation of the covenants, conditions or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of this variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the property and particular provision and in the particular instance covered by the variance. It is expressly understood that any variance of the type described in this Section relates only to the architectural provisions of this Declaration and/or the design guidelines, as applicable, and does not relate to any Federal, State and/or local laws, ordinances, rules and/or regulations concerning any of the matters described above.

6.11 Easement for Encroachments. If any portion of the Improvements located on a Lot or the Common Area encroaches upon a Lot or the Common Area, as applicable, including any encroachments arising or resulting from the repair or reconstruction of such an Improvement, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such encroachment. The easement does not relieve an Owner of liability in case of willful misconduct nor relieve Declarant or any other person of liability for failure to adhere to the Map.

6.12 Maintenance Easement. An easement is hereby granted to the Association, its officers, agents, employees, and assigns upon, across, over, in, and under the Common Area and a right to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which it is obligated to permitted to perform pursuant to this Declaration.

6.13 Utilities. There is hereby created a blanket easement upon, across, over, and under the Common Area for utilities and the installation, replacement, repair, and maintenance of utilities including, but not limited to, water, sewer, gas, telephones, electricity and cable television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment, appurtenances on the Property and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, and television wires, 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, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over, or under any part or all of the Common Area without restricting or nullifying the terms hereof; provided, however, that such right and authority shall cease and terminate upon conveyance by Declarant of the last Lot to the first Owner thereof (other than Declarant). The easement provided for in this Section shall in no way affect, avoid, extinguish, or modify any other recorded easement(s) on the Property.

6.14 Easements Deemed Created. All conveyances of portions of the Property (including Lots) hereafter made shall be construed to grant and reserve the easements contained in this Article 6, even though no specific reference to such easements or to this Article 6 appears in the instrument of such conveyance.

6.15 Remedies. The Association or an Owner may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for such violation, including reasonable attorney fees and costs incurred in enforcing these covenants, or to restrain such violation or attempted violation. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association may enforce all provisions of this Declaration and all other Governing Documents and may impose sanctions for violations including, without limitation:

- (a) Imposing reasonable monetary fines, after notice and opportunity for hearing, which fine becomes an assessment and lien on the Lot;
- (b) Suspending the right to vote or use the Common Elements;
- (c) Exercising self-help or taking action to abate any such violation;
- (d) Requiring the Owner at the Owner's own expense to remove any Improvement in violation of the Governing Documents and to restore the Lot to its previous condition. Upon failure to do so, the Association shall have the right to enter the property and remove the violation which shall not be deemed a trespass, and charge the Owner with all costs incurred which shall constitute an assessment under this Declaration;
- (e) Bring suit at law or in equity, including one for judicial foreclosure of the property and/or appointment of a receiver;
- (f) All remedies shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recovery of all attorney fees and costs; and,
- (g) If an Owner is delinquent in the payment of any assessment, the Association may require reimbursement for attorney fees and costs, which become assessments, without the necessity of commencing a legal proceeding.

## **ARTICLE 7 AMENDMENT**

7.1 Amendment. Any amendment to this Declaration that would terminate the Declaration shall require the affirmative vote or written consent of the Members to whom at least 75% of the votes in the Association. Further, any termination of this Declaration and the planned community created hereby, must be in accordance with C.R.S. § 38-33.3-218. Except as provided in the foregoing, and subject to Section 7.2, this Declaration may be amended by the affirmative

vote or written consent of the Members to whom at least 67% of the votes in the Association are allocated.

7.1.1 An amendment to this Declaration shall be effective only upon the occurrence of all of the following events:

7.1.1.1 The amendment shall have been reduced to a writing, which writing shall have been approved (by an affirmative vote or written consent) by the applicable required percentage of Members; and

7.1.1.2 A written certificate, executed and acknowledged by the president or any vice president of the Association, shall be attached to the written amendment which shall state that such amendment was approved by the applicable required percentage of Members; or

7.1.1.3 The District Court of Arapahoe County approved the amendment pursuant to §38-33.3-217, C.R.S.; and

7.1.1.4 The approved written amendment described in Section 7.1.1, and including the certificate described in Section 7.1.1.2 shall be Recorded in the Records.

7.1.2 It will be a presumption subsequent to the Recording of an Amendment to this Declaration pursuant to Section 7.1.1.2 that all votes and consents required to pass the same pursuant to this Declaration were duly obtained (at a duly-called meeting of the Association, in the case of votes) or was approved by the District Court of Arapahoe County, Colorado pursuant to §38-33.3-217, C.R.S. Such presumption may be rebutted by an action commenced within one year from the date the amendment is recorded; in the absence of any such action, such presumption shall thereafter become conclusive.

7.1.3 Except to the extent expressly permitted or required by the Act, no amendment made to this Declaration may create or increase Special Declarant Rights, increase the number of Lots, or change the boundaries of any Lot or the allocated interests of a Lot, or the uses to which any Lot is restricted, in the absence of approval by the affirmative vote of at least 67% of the Owners.

7.2 Expenses. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of the Association; provided, however, that if the particular amendment is required as a result of the Declarant's exercise of its Special Declarant Rights, then all such expenses shall be the sole responsibility of the Declarant.

## **ARTICLE 8 MAINTENANCE**

8.1 Association Maintenance Responsibilities. The Association will provide for the Maintenance and Repair of Common Area and the Improvements located thereon. The Association shall have the right to recover costs from an Owner for Repair and Maintenance work which is required due to damage to the Common Area caused or permitted by an Owner or such Owner's Guest. The Association may collect such costs as Default Assessments.

8.2 Owner Maintenance of Lots. Each Owner shall be responsible for the Maintenance and Repair of such Owner's Lot, the Residence and any outbuildings, the Limited Common Areas appurtenant to the Owner's Lot, if any, and antennas/dishes and other Improvements installed by an Owner.

8.3 Authority. The Board shall have the authority to develop rules and regulations for the purpose of defining when exterior Maintenance and Repair of any Lot or structure within the Community is needed and what constitutes an unsightly condition which may be amended or expanded from time to time.

8.4 Owner Failure to Maintain. In the event that any Owner fails to perform its Maintenance and Repair obligations in a manner satisfactory to the Association, the Board shall notify such Owner of such failure or that an unsightly condition exists which represents a violation of the Declaration. In such notice, the Board shall direct corrective action, to be performed by the Owner within 10 days after the date of the notice, or, at the discretion of the Board, a timetable for corrective action to be performed by the Owner as directed by the Board. If the Owner fails to comply with the Board's directives, the Association may pursue its remedies.

## **ARTICLE 9 INSURANCE**

9.1 Authority to Purchase/General Requirements. The Association shall maintain, to the extent reasonably available:

(a) Property insurance on the insurable Improvements located on the Common Area, if any, and property insurance on the insurable Improvements located on the Common Area, if any. Such insurance shall be written on the Special Extended Coverage policy with extended coverage for vandalism, malicious mischief, windstorm, debris removal, cost of demolition and water damage endorsements, and such other insurance as the Board may deem necessary or prudent from time to time for the risks associated with the Common Area. The total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

(b) Commercial general liability insurance against claims and liabilities arising in connection with the operation or maintenance and repair of the Common Area in an amount

deemed sufficient in the judgment of the Board, insuring the Board, the Association, the Managing Agent, and their respective employees, agents, and all persons acting as agents. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) Fidelity insurance in an amount not less than the aggregate of three months' current Annual Assessments plus reserves as calculated from the current budget of the Association.

(d) Directors and Officers Errors and Omissions Liability Insurance.

9.2 Insurance No Longer Available. If the insurance described above is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners. The Association in any event may carry any other insurance it considers appropriate, including insurance on Lots it is not obligated to insure, to protect the Association or the Owners.

9.3 Policy Requirements. Insurance policies must provide that:

(a) Each Owner is an insured Person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association;

(b) The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

(c) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

9.4 Loss Adjustment. Any loss covered by the property insurance policy described in above 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 holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and lienholders as their interests may appear. Subject to the provisions below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated.

9.5 Policies and Procedures. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for



deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess a Default Assessment against a negligent Owner causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Lot Owner a pro rata share of any deductible paid by the Association.

THE INSURANCE POLICIES ISSUED TO THE ASSOCIATION WILL NOT COVER THE LOTS, THE RESIDENCES AND OTHER IMPROVEMENTS ON THE LOTS, AND THE CONTENTS OF THE RESIDENCES AND OTHER IMPROVEMENTS. EACH OWNER IS ADVISED TO CARRY INSURANCE TO PROTECT HIS OR HER SEPARATE INTERESTS.

9.6 Certificates of Insurance. An insurer that has issued an insurance policy for the insurance described above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Lot Owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and each Lot Owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

9.7 Obligation to Repair. Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (i) The Community is terminated, in which case Section 38-33.3-218 of the Act applies;
- (ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or
- (iii) Seventy-five percent (75%) of the Lot Owners vote not to rebuild.

9.8 Cost Allocation. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. Such excess cost shall be assessed against all Owners in the Community in the same proportion as the annual Regular Assessment and in the manner prescribed in Article 5. Further Assessments may be made in a like manner if the amounts collected prove insufficient to complete the repair and/or reconstruction. If the entire Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Area must be used to restore the damaged area to a condition compatible with the remainder of the Community, and, the remainder of the proceeds must be distributed to all the Lot Owners or lienholders, as their interests may appear in proportion to the Common Expense liabilities of all the Lots.

9.9 Rebuilding Following Uninsured Casualty. In the event of an uninsured loss, the Common Area shall be repaired and/or reconstructed unless the Community has been terminated or seventy-five percent (75%) of the Owners shall have voted not to repair and/or reconstruct the damaged property. The cost to repair and/or reconstruct the Common Area shall be assessed

against all Owners in the Community in the same proportion as the annual Regular Assessment for Common Expenses and in the manner prescribed in Article 5. Further Assessments may be made in a like manner if the amounts collected prove insufficient to complete the repair and/or reconstruction. In the event amounts collected are in excess of the amounts required for such repair and/or reconstruction, the excess shall be returned to the Owners or their First Mortgagees by the Association in the same proportion as the Annual Assessment was levied.

## **ARTICLE 10 MISCELLANEOUS**

10.1 Term. This Declaration, including all of the covenants, conditions and restrictions contained herein, shall run with and bind the Property up to and including the 25th anniversary of the date of Recording of this Declaration, unless amended as herein provided. After such 25th anniversary, this Declaration, including all covenants, conditions and restrictions contained herein shall be automatically extended for successive periods of ten years each, unless amended and extinguished by a written instrument approved by the Members to whom at least seventy-five percent (75%) of the votes in the Association are allocated and recorded in the Records.

10.2 Notices. Any notice permitted or required to be given by the Declaration shall be in writing and may be delivered personally, by electronic mail if the homeowner has provided it to the Association for this purpose, or by U.S. first class mail, postage prepaid. The Owner(s) of each Lot shall have one and the same mailing address to be used by the Association for the mailing of monthly statements, notices, demands, and all other communications. Owners may at any time, and from time to time, change their mailing address by notice, in writing, to the property manager at the Association's then-current principal business office as listed on the Colorado Secretary of State's website. In the event that more than one person is an owner of an interest in any Lot, such notice of change of address must be signed by all persons having an interest in said Lot. Notice shall be deemed delivered when given if made personally or when mailed.

10.3 Severability. In the event that any portion of this Declaration shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

### 10.4 Condemnation.

10.4.1 In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Area, any part thereof or any interest therein, with a value (including loss of value to the balance of the Common Area and improvements thereof), as reasonably determined by the Association in excess of Ten Thousand Dollars (\$10,000), the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Area or improvement thereon sought to be so condemned, to all Members, and to the Declarant. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements, and agreements with a condemning authority for acquisition of the Common Area or part thereof, but the

Association shall not enter into any such proceedings, settlement, or agreements, pursuant to which the Common Area or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein, is relinquished, without giving all Members and Declarant at least 15 days' prior written notice thereof.

10.4.2 In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part of all of the Common Area, the award made for such taking, if such award is sufficient to repair and restore the Common Area, shall be applied by the Association to such repair and restoration. If such award - is insufficient to repair and restore the Common Area, or if the full amount of such award is not expended to repair or restore the Common Area, the Association shall disburse the net proceeds of such award to the Owners, the Owner of each Lot receiving one (1) equal share, provided that the Association shall first pay out of the share of each Owner the amount of any unpaid liens or encumbrances on his Lot in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to the Property shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage in the case of a distribution to an owner of insurance proceeds or condemnation award for losses to or taking of Lots, Common Area, or any combination thereof.

10.4.3 If a Lot is acquired by eminent domain or part of a Lot is acquired by eminent domain leaving the Lot Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must include compensation to the Owner for that Lot and its allocated interests whether or not any Common Areas are acquired. Upon acquisition, unless the decree otherwise provides, that Lot's allocated interest are automatically reallocated to the remaining Lots in proportion to the respective allocated interests of those Lots before the taking. Any remnant of a Lot remaining after part of a Lot is taken under this Section 10.4.3 is thereafter a Common Area.

10.4.4 Except as provided in Section 10.4.3, if part of a Lot is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Lot whether or not any Common Areas are acquired. Upon acquisition, unless the decree otherwise provides that Lots allocated interests shall not be modified; and

10.4.5 If part of the Common Areas is acquired by eminent domain, that portion of any award attributable to the Common Areas taken must be paid to the Association. For the purposes of acquisition of a part of the Common Areas, service of process on the Association shall constitute sufficient notice to all Owners, and service of process on each individual Owner shall not be necessary.

10.4.6 The court decree shall be recorded in every county in which any portion of the Property is located.

10.4.7 The reallocations of allocated interests pursuant to this Section shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

10.5 Governing Law. This Declaration shall be governed by, and construed under, the laws of the State of Colorado in existence as of the date of Recording of this Declaration in the Records.

10.6 Exhibits. All exhibits and riders attached hereto shall be deemed incorporated herein by this reference.

10.7 Development Rights and Special Declarant Rights. The Declarant expressly reserves the Development Rights and the other Special Declarant Rights for the maximum time limit allowed by law. Unless sooner terminated by a recorded instrument signed by the Declarant, any Development Right or Special Declarant Right may be exercised by the Declarant for the period of time specified in the Act. The Declarant shall exercise such Development Rights and Special Declarant Rights in accordance with the provisions of the Act including, without limitation, §38-33.3-210, C.R.S.

10.8 Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association, acting through the Board, may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot.

(ii) suspending the Owner's right to vote both as a Member and as a director or officer of the Board of Directors;

(iii) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Lot and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass;

(v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply

with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying Default Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation and/or to recover monetary damages.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Lot.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case:

(i) the Association's legal position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) that it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

10.9 Attorney Fees. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any provision of the Governing Documents, the Association may require reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner or an Owner's family member, guest, tenant, invitee or licensee, shall be charged as an Assessment and shall constitute a lien against the Lot.

10.10 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

10.11 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Lots and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

10.12 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

10.13 Conflict of Provisions. In case of conflict between this Declaration and the Articles or Bylaws, this Declaration shall control. In the case of conflict between the Articles and Bylaws, the Articles shall control.

10.14 Challenge to this Amendment. All challenges to the validity of the amendments must be made within one (1) year after the date of recording of this document. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

#### **CERTIFICATION:**

The undersigned, being the President of the Board of Directors of The Enclave at Meadow Hills Homeowners Association, Inc., a Colorado nonprofit corporation, certifies that Amended and Restated Declaration was either adopted by the requisite number of owners and first mortgagees, or was approved by Order of the Arapahoe County District Court pursuant to §38-33.3-217, C.R.S. and in witness thereof, the undersigned has subscribed his/her name.

**THE ENCLAVE AT MEADOW HILLS  
HOMEOWNERS ASSOCIATION, INC.,**  
a Colorado non-profit corporation

By: \_\_\_\_\_  
Its: President

**EXHIBIT A**

Legal Description of the Property  
(Initially)

Lots 6 through 14, inclusively, Block 1;  
Lots 10 through 13, inclusively, Block 2;  
Lots 2 through 7, Lots 15 through 18, Block 3;  
According to the plat of Meadow Hills Country Club  
Subdivision Filing No. 12, recorded in the records of  
Arapahoe County, Colorado

**EXHIBIT B**

Legal Description of Additional Lands  
(Initially)

Lots 1 through 5 and Lots 15 through 21, Block 1;  
Lots 1 through 9 and Lot 14, Block 2;  
Lots 1 and Lots 8 through 14, Block 3;  
According to the plat of Meadow Hills Country Club  
Subdivision Filing No. 2, recorded in the records of  
Arapahoe County, Colorado