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DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
CARDIFF GLEN II OWNERS ASSOCIATION, INC.

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OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
CARDIFF GLEN II OWNERS ASSOCIATION, INC.

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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
CARDIFF GLEN II OWNERS ASSOCIATION, INC.**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CARDIFF GLEN II OWNERS ASSOCIATION, INC. ("Declaration") is made and entered into by VILLAGE HOMES OF COLORADO, INC, a Colorado corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property situated in the County of Garfield, State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, the Declarant desires to subject and place upon the property described on the attached Exhibit A certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth herein; and

WHEREAS, a common interest community may be created pursuant to the Act (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded.

NOW, THEREFORE, Declarant hereby declares that a plat which includes the property described on the attached Exhibit A has been recorded and that all of the real property described on the attached Exhibit A shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein.

**ARTICLE 1.     DEFINITIONS**

**Section 1.1.     *Act.***

"Act" means the Colorado Common Interest Ownership Act, C.R.S. §38.33.3-101, et seq., as amended.

**Section 1.2.     *Active Area***

"Active Area" means the area of each SFD Lot which is provided for the general use and enjoyment of the Owner of such SFD Lot and on which (or on a portion of which) may now or hereafter be located landscaping, a deck, patio, hot tub, barbecue, chair(s), table(s), and/or other Improvements, as may be determined from time to time by the Owner of such SFD Lot with Design Review Committee approval. The Active Area of each SFD Lot shall generally and approximately consist of that portion of the SFD Lot which lies between the side property line which is approximately five feet (5') from the dwelling unit on such SFD Lot and the nearest exterior side

wall of the dwelling unit on such SFD Lot, which side wall runs from the front most corner of such dwelling unit to what would be a point on the rear property line of the SFD Lot if such side wall were extended to such rear property line, and is adjacent to a burdened SFD Lot (as shown on the attached Exhibit E) when the SFD Lot on which the Active Area is located in the benefited SFD Lot (as shown on the attached Exhibit E).

**Section 1.3.      *Agencies.***

"Agencies" means the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development, including the Federal Housing Administration (HUD), the Veterans Administration (VA), or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

**Section 1.4.      *Allocated Interests.***

"Allocated Interests" means the share of Assessments but not Service Charges, allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Community from time to time.

**Section 1.5.      *Annexable Area.***

"Annexable Area" means the property described on Exhibit D attached hereto and incorporated herein by this reference, plus such additional real estate from such locations as the Declarant hereby reserves the right to elect in its sole discretion in an amount not to exceed the maximum permitted pursuant to the Act.

**Section 1.6.      *Assessment.***

"Assessment" means annual Assessments and special Assessments, which are provided for in this Declaration. For purposes of Sections 4.1, 4.2, 4.9 through 4.16, inclusive, and 15.6 of this Declaration, "Assessment" means annual Assessments, special Assessments, and late charges, fines, fees, interest, costs, expenses, reasonable attorneys' fees, Service Charges, and any other amounts, which are provided for in this Declaration.

**Section 1.7.      *Association.***

"Association" means the Cardiff Glen II Owners Association, Inc., its successors and assigns, a community association as provided in the Act.

**Section 1.8.      *Common Elements.***

"Common Elements" means any property owned or leased by the Association, other than a Lot, which exist for the common use of more than one of the Owners. The Common Elements at the time of recordation of this Declaration are described on Exhibit B attached hereto and incorporated herein by this reference.

**Section 1.9.        *Community.***

"Community" means the real estate and Improvements described on the attached Exhibit A, as supplemented and amended from time to time, and with respect to which a Person, by virtue of such Person's ownership of a Lot, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in this Declaration. The Community is a planned community under the Act. The name of the Community is Cardiff Glen II Owners Association, Inc.

**Section 1.10.      *Declarant.***

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

**Section 1.11.      *Declaration.***

"Declaration" means this Declaration of Covenants, Conditions and Restrictions of Cardiff Glen II Owners Association, Inc. and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to this instrument and also including, but not limited to, maps and plats.

**Section 1.12.      *Design Review Committee.***

"Design Review Committee" or "Committee" means the committee which is appointed as provided in this Declaration.

**Section 1.13.      *Development Rights.***

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

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

The Declarant may exercise its Development Rights in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any Development Rights. The Declarant's rights to exercise Development Rights shall terminate automatically as provided in Section 1.28 of this Declaration (Special Declarant Rights).

**Section 1.14.      *Easement Premises.***

"Easement Premises" means that portion of any Passive Area (as hereinafter defined) that is



granted to or reserved for the perpetual, exclusive use of the adjacent SFD Lot, in accordance with and subject to the provisions of Article 12 hereof. An Easement Premises will generally consist of the Passive Area of the SFD Lot on which the Easement Premises is located and will be next to the Active Area of the adjacent SFD Lot. Those SFD Lots on which an Easement Premises is planned to be located and those SFD Lots which are planned to benefit from such Easement Premises are listed on Exhibit E attached hereto and incorporated herein by this reference and are further identified on the map shown on Exhibit F attached hereto and incorporated herein by this reference. However, the attached Exhibit E and the attached Exhibit F are subject to change as provided in Article 13 hereof.

**Section 1.15.      *Executive Board or Board.***

"Executive Board" or "Board" means the body, regardless of name, designated in this Declaration, the Articles of Incorporation and the Bylaws of the Association to act on behalf of the Association. The Executive Board may appoint one or more committees as it deems appropriate, from time to time, in carrying out any of its purposes. Each committee of the Executive Board serves at the pleasure of the Executive Board, has only such authority as may be given to it by the Executive Board from time to time, serves only in an advisory capacity to the Executive Board, and no member of a committee is an officer of the Association by virtue of service on such committee; all actions and writings of each such committee are subject to review and approval by the Executive Board.

**Section 1.16.      *Improvements.***

"Improvements" means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type and kind, and all landscaping features, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, gardens, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball backboards and hoops, whether fixed or movable, signs, exterior tanks, utilities facilities, and exterior air conditioning, cooling, heating and water softening equipment, if any.

**Section 1.17.      *Initially Unoccupied Lots.***

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

**Section 1.18.      *Lot.***

"Lot," for purposes of this Declaration, means each platted lot that is now or hereafter included in the real property described on the attached Exhibit A, as the same may be subdivided or replatted from time to time, as well as any other platted lots now or hereafter included in any real property annexed to this Declaration, with the exception of the Common Elements and any publicly dedicated property. "Lot" includes both SFD Lots (as hereinafter defined) and TH Lots (as hereinafter defined). Each Lot shall constitute a "unit" under the Act, and it shall not be necessary to use the term "unit" as a part of a legally sufficient description of a Lot.



**Section 1.19.      *Lots that May Be Included.***

"Lots that May Be Included" means 135 (one hundred and thirty five) Lots, which shall be the maximum number of Lots that may be subject to this Declaration, including the Lots within the property described on the attached Exhibit A and those Lots which may be added if all of the Annexable Area is annexed to this Declaration. However, the aforesaid number of Lots that May Be Included is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in or constructed as part of the Community.

**Section 1.20.      *Member.***

"Member" means all Owners of a Lot collectively or, following termination of the Community, all former Owners entitled to distributions of proceeds under the Act, or their heirs, personal representatives, successors or assigns. The Association shall have one (1) class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot shall have one (1) membership in the Association and there is only one (1) Member per Lot, even if the Lot is owned by multiple Owners.

**Section 1.21.      *Owner.***

"Owner" means each fee simple title holder of a Lot, including without limitation, the Declarant or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. There may be more than one (1) Owner of a Lot.

**Section 1.22.      *Passive Area.***

"Passive Area" means the area of each SFD Lot which is not intended for the general use and enjoyment of the Owner of such SFD Lot, and such Owner's family members, tenants, guests and invitees, if such Passive Area is part of an Easement Premises subject to the easement(s) provided for in Article 12 hereof. The Passive Area of each SFD Lot shall generally and approximately consist of that portion of the SFD Lot which lies between the side property line which is approximately five feet (5') from the dwelling unit on such SFD Lot to the nearest exterior side wall of the dwelling unit on such SFD Lot, and which side wall runs from the front most corner of such dwelling unit to what would be a point on the rear property line of such SFD Lot if such side wall were extended to such rear property line, and is adjacent to a benefited SFD Lot (as shown on the attached Exhibit E) when the SFD Lot on which the Passive Area is located is the burdened SFD Lot (as shown on the attached Exhibit E).

**Section 1.23.      *Period of Declarant Control.***

"Period of Declarant Control" means a length of time expiring seven (7) years after initial recording of this Declaration in the office of the Clerk and Recorder of the County in which the property described on the attached Exhibit A is located. However, the Period of Declarant Control shall terminate earlier, upon the first of the following events to occur, if any, if any of the following occur within the time period that is specified in the first sentence of this Section: sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant; two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or two (2) years after any right to add new Lots to the Declaration was last

exercised.

**Section 1.24.      *Person.***

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

**Section 1.25.      *Security Interest.***

"Security Interest" means an interest in real estate or personal property created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.12 of this Declaration (Certificate of Status of Assessments), and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.3 of this Declaration (General Provisions of Insurance Policies), "Security Interest" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of the County in which the property described on the attached Exhibit A (as supplemented and amended from time to time) is located show the Administrator as having the record title to the Lot.

**Section 1.26.      *Security Interest Holder.***

"Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Section 4.12 of this Declaration (Certificate of Status of Assessments), and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.3 of this Declaration (General Provisions of Insurance Policies), the Administrator of Veteran's Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records in the office of the Clerk and Recorder of the County in which the property described on the attached Exhibit A (as supplemented and amended from time to time) is located show the said Administrator as having the record title to the Lot, or any successor to the interest of any such Person under such Security Interest.

**Section 1.27.      *SFD Lots.***

"SFD Lots" means those lots which are now or hereafter subjected to this Declaration and which are now or hereafter listed on Exhibit G attached hereto and incorporated herein by this reference. However, the Declarant may at any time add one or more Lots to Exhibit G and/or remove one or more Lots from Exhibit G (as to Lots then owned by the Declarant).

**Section 1.28.      *Special Declarant Rights.***

"Special Declarant Rights" means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, and signs advertising the Community and sale of Lots; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to merge or consolidate a Community of the same form of ownership; or to appoint or remove any officer of the Association or any Executive Board member during any Period of Declarant Control. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically at such time as the Declarant no longer owns any portion of the Property described on the attached Exhibits A and D.

**Section 1.29.      *TH Lots***

"TH Lots" means those Lots which are now or hereafter subjected to this Declaration and which are now or hereafter listed on Exhibit H attached hereto and incorporated herein by this reference. However, the Declarant may at any time add one or more Lots to Exhibit G and/or remove one or more Lots from Exhibit G (as to Lots then owned by the Declarant).

**ARTICLE 2.      MEMBERSHIP AND VOTING RIGHTS**

**Section 2.1.      *Association.***

The Association has been or will be formed as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration, its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Association shall have an Executive Board to manage its affairs; except as hereinafter provided, the Executive Board shall be elected by the Members.

**Section 2.2.      *Executive Board.***

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

**Section 2.3.      *Voting Rights.***

Each Member shall be entitled to one (1) vote for each Lot owned, except that no vote allocated to a Lot owned by the Association may be cast. The total number of votes that may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association.

### ARTICLE 3. ASSOCIATION

#### Section 3.1. *Authority of Executive Board.*

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

#### Section 3.2. *Election of Part of the Executive Board During the Period of Declarant Control.*

Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May Be Included to Owners other than the Declarant, at least one (1) director and not less than twenty-five percent (25%) of the directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Executive Board. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that May Be Included to Owners other than the Declarant, not less than thirty-three and one-third percent (33 1/3%) of the directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Executive Board.

#### Section 3.3. *Authority of Declarant During Period of Declarant Control.*

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

#### Section 3.4. *Termination of Period of Declarant Control.*

After termination of the Period of Declarant Control, the Members shall elect an Executive Board, at least a majority of whom must be Owners other than the Declarant or designated representative of Owners other than the Declarant. The Executive Board shall elect the officers.

#### Section 3.5. *Delivery of Property by Declarant.*

After the Members other than the Declarant elect a majority of the Executive Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, if and to the extent required by the Act.

#### Section 3.6. *Budget.*

3.6.1. Within ninety (90) days after adoption of any proposed budget for the Community, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the Association budget to all the Members and shall set a date for a



meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Executive Board shall give notice to the Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Executive Board does not require approval from the Owners, but such budget may be vetoed by the Owners at the noticed meeting by sixty-seven percent (67%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Executive Board is not vetoed by the Owners.

3.6.2. The Association budget that is provided for in Section 3.6.1, above, may segregate all line items, if any, for SFD Lot Service Charges and all line items for TH Lot Service Charges, or one or more separate budgets may be prepared in the discretion of the Executive Board from time to time. Each Member owning an SFD Lot shall, pursuant to subsection 3.6.1 hereof, have the right to vote to veto all line item SFD Lot Service Charges, if any, as defined in Section 4.8.1 hereof. Each Member owning a TH Lot shall, pursuant to subsection 3.6.1 hereof, have the right to vote to veto all line item TH Lot Service Charges, if any, as defined in Section 4.8.2 hereof.

#### **Section 3.7.      *Association Books and Records.***

The Association shall make available to Owners, prospective purchasers, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations, books, records and financial statements of the Association, except that: the Executive Board may at any time(s) determine that items or parts of items are confidential and should not be made available – e.g., to protect the privacy or confidentiality of Owners, complainants or applicants; and the Owners accessing documents shall pay all costs associated therewith. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

#### **Section 3.8.      *Cooperation with Other Community Associations and/or any Districts.***

The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community association(s) and/or any district(s), to share the costs and/or responsibility for any maintenance, repair, replacement, or other matters, to perform maintenance, repair or replacement for any Person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers, or others who may perform services for the Association, any other community association(s) and/or any district(s), or to otherwise cooperate with any other community association(s) and/or any district(s) in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Executive Board in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association, any other community association(s) and/or any district(s), as the Executive Board may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community association(s) and/or any district(s) to collect Assessments, other charges, or other amounts which may be due to the Association, any other community association(s) and/or any district(s) and to permit the Association, any other community association(s) and/or any district(s) to

collect Assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association, any other community association(s) and/or any district(s).

**Section 3.9.        *Rules and Regulations.***

Rules and regulations affecting, concerning and governing the Lots, Common Elements, and/or this Community, may be adopted, amended, repealed and enforced from time to time by the Executive Board, and the Executive Board may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations. The rules and regulations may state procedural requirements, interpretations and applications of the provisions of this Declaration, including without limitation, blanket requirements, blanket interpretations, and blanket applications. Any rules and regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration and all provisions thereof.

**Section 3.10.       *Management Agreements and Other Contracts.***

Any agreement for professional management of the Association's business or other contract providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days prior written notice; provided, however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the Period of Declarant Control shall be subject to review and approval by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one or more Security Interests (and HUD or VA requires such approval).

**Section 3.11.       *Merger.***

The Declarant hereby reserves the right to merge the Association with one or more other common interest communities without the approval of any Member or any other Person. This right shall terminate automatically as provided in Section 1.28 of this Declaration (Special Declarant Rights).

**Section 3.12.       *Authenticated Electronic Representation.***

Notwithstanding anything to the contrary contained in this Declaration, the Articles of Incorporation or Bylaws of the Association, to the extent permitted by applicable law, the Association may use technology or electronic representation in completing its duties and responsibilities. In this regard, any reference in this Declaration to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent permitted by applicable law, the provisions of this Declaration shall be deemed to include provisions which permit such authenticated electronic activity.

**Section 3.13.       *Raw Water Irrigation System.***

A system of pipes is planned to be installed in order to deliver raw water to be supplied by



the City of Glenwood Springs, Colorado, for the irrigation of Lots and Common Elements ("Raw Water System"). The Raw Water System is referenced in the Joint Use and Cost Sharing Agreement that is referenced in Section 10.14 of this Declaration. The Raw Water System, up to and including the meters on Lots, but excluding any other Improvements to deliver raw water from any such meter, will be Common Elements owned by the Association, and will be maintained by the Association as a common expense of all the Owners. When raw water is available through the raw water irrigation system, it is anticipated that the Association will use only raw water to irrigate the Common Elements and that each Owner will use only raw water for all uses outside of any dwelling unit or other structure. The Association shall develop a fair and equitable system for apportioning the cost of raw water use among the Owners, which each Owner shall be obligated to pay to the Association and such charges shall be subject to all of the rights and obligations contained in Article 4 of this Declaration (Assessments), except that such charges need not be assessed equally to all of the Lots as Assessments. The Declarant shall not have any obligation to provide raw water for the raw water irrigation system, and Declarant makes no guarantees regarding the supply of raw water by others, including the City of Glenwood Springs, Colorado.

#### **ARTICLE 4. ASSESSMENTS**

##### **Section 4.1. *Personal Obligation for Assessments.***

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

##### **Section 4.2. *Purpose of Assessments.***

The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Lots, to pay Association expenditures, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law; provided, however, that such Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital Improvements.

##### **Section 4.3. *Initial Annual Assessment.***

Until the effective date of an Association budget that is adopted by the Executive Board and not vetoed by the Owners, as provided above, the amount of the annual Assessment against each Lot shall not exceed one hundred and thirty five dollars (\$135.00) per Lot per month, fifteen hundred dollars (\$1,500.00) per Lot per annum, exclusive of any amounts due to any other community association(s), any district(s) and/or any other Person or entity and exclusive of any amounts for

Service Charges. However, the rate of Assessments paid by the Initially Unoccupied Lots shall be less than that paid by other Lots, as provided in the next Section.

**Section 4.4.      *Rate of Assessment.***

4.4.1. Annual and special Assessments shall be sufficient to meet the expected needs of the Association and shall be apportioned among the Lots in accordance with their Allocated Interests. Notwithstanding the foregoing, however, the amount of the annual Assessments and special Assessments against the Initially Unoccupied Lots shall be set at a lower rate than that charged against other Lots, because the Initially Unoccupied Lots receive and benefit from fewer services funded by such Assessments than the other Lots. Colorado Revised Statutes §38-33.3-315(3)(b) states that "Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited." Based on this provision, the Initially Unoccupied Lots shall pay Assessments at the rate of fifty percent (50%) of any annual Assessment or special Assessment charged to Lots other than the Initially Unoccupied Lots. The annual Assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis.

4.4.2. The Declarant may in its discretion, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall constitute an advance against Assessments then or thereafter due from the Declarant; provided, however, that any such advances which have not been credited against Assessments due from the Declarant as of termination of the Period of Declarant Control shall then be repaid by the Association to the Declarant, without interest, to the extent that the Association has funds in excess of its working capital funds, reserve funds, and operating expenses to date for the calendar year in which the Period of Declarant Control terminates; and provided further, however, that any of such advances which are not repaid to the Declarant shall continue to constitute advances against Assessments then or thereafter due from the Declarant until automatic termination of the Special Declarant Rights as provided in Section 1.28 of this Declaration (Special Declarant Rights). If the Declarant elects in its discretion to pay any amounts as provided in this subsection, Declarant shall not, under any circumstances, be obligated to continue payment or funding of any such amount(s) in the future.

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

Annual Assessments shall commence at such time as the Executive Board may determine in its discretion. After any annual Assessment has been made by the Association, annual Assessments shall not be greater than the amount set forth in Section 4.3 of this Declaration (Initial Annual Assessment), and thereafter shall be based on a budget adopted by the Executive Board and not vetoed by the Owners as provided in this Declaration. A budget shall be so adopted by the Executive Board no less frequently than annually. The annual Assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Executive Board determines in its discretion from time to time, provided that the first annual Assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

**Section 4.6.      *Special Assessments.***

In addition to the annual Assessments authorized in this Article, the Executive Board may levy, in any fiscal year, with the approval of the votes of sixty-seven percent (67%) of a quorum of Association votes, as provided in Section 4.7 hereof, at a meeting duly called for this purpose, a special Assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, repair or replacement of a capital Improvement upon any portion of real property for which the Association has repair and/or replacement obligations, including fixtures and personal property related thereto, or for repair or replacement of any damaged or destroyed Improvements or for the funding of any expense or deficit of the Association. Any such special Assessment shall be set against each Lot in accordance with the Allocated Interests set forth in this Declaration, except that the rate of special Assessments against the Initially Unoccupied Lots shall be set as provided in Section 4.4.1 of this Declaration. A meeting of the Members called for the purpose of considering the establishment of a special Assessment shall be held in conformance with Section 4.7 of this Declaration (Notice and Quorum for Any Special Assessments). Notwithstanding the foregoing, special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital Improvements.

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

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

**Section 4.8.      *Service Charges.***

In addition to the annual Assessments provided for above, the Association shall apportion to and collect from each Lot an amount which, with all other Service Charges (as hereinafter defined) for such period and Assessments which the Board may elect to apply to Service Charges, is sufficient to pay or reimburse the Association for all Service Charges for such period; provided, that the Association may elect to assess any or all of the Service Charges as part of the Assessments. Non-payment of any Service Charges shall be subject to enforcement and collection by the Association in the same manner as Assessments. In the event that any of the Service Charges are billed directly to an Owner, each Owner shall pay the same on or before the due date thereof.

4.8.1.      The "SFD Lot Service Charges" shall be the amounts payable or paid by the Association for any services which serve the SFD Lots but do not serve the Community generally or do not serve both SFD Lots and TH Lots. The SFD Lot Service Charges allocated to each SFD Lot, and which shall be payable by the Owner of each SFD Lot, shall be the total amount of such SFD Lot Service Charges for the specified period multiplied by a fraction, the numerator of which is one (1) and the denominator of which is the total number of SFD Lots in the Community at such time.

4.8.2. The "TH Lot Service Charges" shall be the amounts payable or paid by the Association for maintenance, repair and replacement of the residences now or hereafter located on TH Lots, reserves for maintenance, repair and replacement of the residences now or hereafter located on TH Lots, blanket insurance coverage on the structure(s) located on TH Lots (if the Association elects to provide such coverage) and any other services which serve the TH Lots but do not serve the Community generally or do not serve both SFD Lots and TH Lots. The TH Lot Service Charges allocated to each TH Lot, and which shall be payable by the Owner of each TH Lot, shall be the total amount of such TH Lot Service Charges for the specified period multiplied by a fraction, the numerator of which is one (1) and the denominator of which is the total number of TH Lots in the Community at such time. The SFD Lot Service Charges and the TH Lot Service Charges are sometimes collectively referred to as the "Service Charges."

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

The Association may, at any time from time to time, provide services to less than all of the Lot(s) in the Community. If such services are not funded by the Association's annual or special Assessments, then such services shall be provided, if at all, pursuant to a written document that includes a statement and terms for payment of the costs, fees and expenses for such services. Services which may be provided by the Association pursuant to this Section (and which are not to be provided to all of the Lots) may include, without limitation, (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of Improvements or property owned by such Owner(s); (b) the provision of any services or functions to or for such Lot(s), including without limitation landscaping maintenance, repair and upkeep; (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (e) the procurement of insurance for Owners.

**Section 4.10. *Lien for Assessments.***

4.10.1. The Association has a statutory lien on a Lot for Assessments levied against that Lot or the Owner(s) thereof, including for fines imposed against the Lot's Owner(s). The terms, provisions and policies for fines, including without limitation, the amount(s), due date(s) and levying thereof, may be established by the Executive Board, at any time from time to time, by resolution or other action of the Board. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

4.10.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required. However, the Executive Board or managing agent of the Association may prepare, and record in the county in which the applicable Lot is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the Assessments for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.



**Section 4.11. *Priority of Association Lien.***

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

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

4.11.1.2. A Security Interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the Assessment due to the Association became delinquent; and

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

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

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

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

**Section 4.12. *Certificate of Status of Assessments.***

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

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

Any Assessment not paid within fifteen (15) days after the due date thereof may bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Executive Board, and the Executive Board may assess thereon a monthly late charge in such amount as may be determined, from time to time, by the Executive Board. The Association may bring an action at law against the Owner(s) personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained, including, without limitation in a foreclosure action, such judgment or decree shall include a reasonable attorney's fee to be fixed by the court, together with the costs of the action, and may include interest and late charges, as above provided. No Owner may be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Elements or by

abandonment of the Lot against which the Assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

**Section 4.14.      *Surplus Funds.***

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

**Section 4.15.      *Working Capital Fund.***

The Association shall require the first Owner (other than Declarant) of any Lot who purchases that Lot from Declarant to make a non-refundable contribution to the Association in an amount equal to two (2) times the then current monthly installment of the annual Assessment (regardless of whether or not annual Assessments have commenced as provided in Section 4.5 of this Declaration (Date of Commencement of Annual Assessment)). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Lot and shall be maintained for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the sale of his Lot, an Owner shall be entitled to reimbursement at closing (in the form of a credit on the closing settlement statement) from the purchaser of such Lot (but not from the Association) for the portion of the aforesaid contribution to working capital fund which has not been used by the Association at the time of conveyance of the Lot by such Owner.

**Section 4.16.      *Other Charges.***

The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such reasonable amounts(s) as the Executive Board may determine in its discretion at any time from time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; return check charges; charges for telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s).

**Section 4.17.      *Charges for Misconduct.***

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

**ARTICLE 5.      DESIGN REVIEW COMMITTEE**

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

5.1.1.      The Design Review Committee shall consist of three (3) or more persons appointed by the Executive Board as provided below; provided, however, that until



automatic termination of the Declarant Rights as provided in Section 1.28 of this Declaration (Special Declarant Rights), the Declarant has the right to appoint the Design Review Committee. The power to "appoint" the Design Review Committee, as provided herein, shall include without limitation the power to: constitute the initial membership of the Design Review Committee; appoint member(s) to the Design Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Design Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the appointor. The terms of office of all then-current members of the Committee who were appointed by the Declarant shall automatically terminate at such time as the Declarant's power to appoint members of the Committee expires.

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

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

Except as provided in Section 5.8 (Variance) and Section 5.12 (Declarant's Exemption) of this Declaration, no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee), shall have been first submitted to and approved by the Design Review Committee.

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

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

5.2.3. In addition to the approvals provided for in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and

issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the City of Glenwood Springs, Colorado, if required, shall be a precondition to commencement of any construction or alteration of, addition to or change in any Improvement.

**Section 5.3.        *Procedures.***

The Design Review Committee shall decide each request for approval within thirty (30) days after the complete submission of the plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the Design Review Committee fails to decide any request within thirty (30) days after the complete submission of the plans, specifications, materials and other information with respect thereto, then the request for approval shall be deemed to have been denied by the Committee.

**Section 5.4.        *Vote and Appeal.***

A majority vote of the Design Review Committee is required to approve a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Design Review Committee decides a request for approval, then any Owner shall have the right to an appeal of such decision to the full Committee, upon a request therefor submitted to the Committee within thirty (30) days after such decision by the Committee's representative. Subsequent to conveyance by the Declarant of all of the property described on the attached Exhibits A and D, any Owner shall have the right to appeal a Design Review Committee decision to the Executive Board, upon a written request therefor submitted to the Executive Board within thirty (30) days after such decision by the Design Review Committee.

**Section 5.5.        *Prosecution of Work After Approval.***

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

**Section 5.6.        *Inspection of Work.***

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

**Section 5.7.      *Standards/Guidelines.***

Except as provided in the last sentence of this Section, the Design Review Committee, with the advice of the Executive Board, has the authority, at any time from time to time, to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce architectural standards, guidelines, rules and regulations to interpret and implement the provisions of this Declaration. Without limiting the generality of the foregoing, such provisions may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the Committee, may state procedural requirements, or may specify acceptable Improvement(s) that may be installed without the prior approval of the Committee. In addition, such provisions may provide for blanket approvals, interpretations or restrictions on Improvements. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval. All Improvements proposed to be constructed, and any guidelines that are adopted, shall be done and used in accordance with this Declaration. After termination of the Declarant's right to appoint the members of the Design Review Committee, as provided in Section 5.1 of this Declaration (Composition of Committee; Authority of Representative), any new architectural standards, guidelines, rules and regulations or any modifications to existing architectural standards, guidelines, rules and regulations proposed by the Committee, shall not be effective until the same has been approved by the Executive Board.

**Section 5.8.      *Variance.***

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

**Section 5.9.      *Waivers; No Precedent.***

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

**Section 5.10.     *Records.***

The Design Review Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon for such period of time as may be determined by the

Executive Board from time to time, and such records shall be available to Members for inspection at reasonable hours of the business day.

**Section 5.11.      *Liability.***

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

**Section 5.12.      *Declarant's Exemption.***

Notwithstanding anything to the contrary, the Declarant shall be exempt from the provisions of this Article (including without limitation, architectural and design requirements, architectural and design restrictions, and architectural and design guidelines), except for the requirements to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 5.2.3 hereof).

**ARTICLE 6.      INSURANCE**

**Section 6.1.      *Insurance.***

The Association shall maintain insurance in connection with the Common Elements. The Association shall maintain insurance as required by applicable law or applicable regulation, including the Act, which insurance shall include, without limitation, property insurance and commercial general liability insurance. In addition, the Association may maintain insurance against such other risks as the Executive Board may elect from time to time, including, but not limited to, fidelity coverage, personal liability insurance to protect directors or officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors or officers on behalf of the Association, worker's compensation insurance, and may maintain insurance on such other property and/or against such other risks as the Executive Board may elect in its discretion from time to time.

**Section 6.2.      *Insurance on the Structures on Lots.***

The Board or its agent shall obtain and maintain, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, a policy of property insurance covering the structure(s) located on each TH Lot, except for land, excavations, foundations and other matters normally excluded from property policies, in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the insurance policy. Said policy may include, without limitation, at the discretion of the Executive Board, coverage on standard interior surface finishes (such as standard floor and wall coverings) and



any fixtures and equipment (such as toilets, sinks, faucets, bathtubs, cabinets, utility meters, meter boxes and air conditioning compressors). Said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, an "Inflation Guard Endorsement," an "Agreed Amount Endorsement," and may include other endorsement(s) as deemed appropriate by the Board from time to time. Such insurance shall afford protection against at least the following:

6.2.1. loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

6.2.2. such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "All Risk" endorsement, where such is available.

### **Section 6.3.      *General Provisions of Insurance Policies.***

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

### **Section 6.4.      *Deductibles.***

The Association may adopt and establish written non-discriminatory policies and procedures relating to the responsibility for deductibles. Any loss or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association, may be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, may be apportioned among the Persons sharing in a joint duty of repair and maintenance, may be partly or wholly borne by the Association, and/or may be shared by any such Person(s) and the Association, all at the election of the Executive Board. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question and the Association may collect the amounts from said Owner(s) in the same manner as any Assessment.

**Section 6.5.      *Payment of Insurance Proceeds.***

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

**Section 6.6.      *Association Insurance as Primary Coverage.***

If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any Assessment. Any such Owner's policy shall also contain waivers of subrogation.

**Section 6.7.      *Acceptable Insurance Companies.***

Each insurance policy purchased by the Association must be written by an insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

**Section 6.8.      *Insurance to be Maintained by Owners.***

Any insurance policy issued to the Association does not eliminate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Owner's Lot and the Improvements thereon, unless carried by the Association, as well as on all the furnishings and personal property belonging to an Owner, and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot. Owners shall also be responsible for obtaining any policies of title insurance required in connection with any sale of a Lot other than the purchase by the initial Owner(s) from the Declarant. In the event the homeowner's insurance policies held by Owners of different Lots or held by an Owner and the Association and which are underwritten by different insurers, the Owner(s) of each such Lot shall be responsible for ensuring that such Owner's insurer agrees, in the event damage occurs to the covered property, to facilitate payment of the insurance proceeds when two or more insurers are involved so that the insurer will pay (a) all



undisputed proceeds and (b) all disputed proceeds (subject to the right of such insurer to recover from the other insurer(s) any such sums for which the other insurer(s) are found to be liable).

## **ARTICLE 7. DAMAGE OR DESTRUCTION**

### **Section 7.1. *Damage or Destruction.***

7.1.1. Any portion of the Community for which casualty insurance is required to be carried by the Association under this Declaration and which is damaged or destroyed, must be repaired or replaced promptly by the Association unless:

7.1.1.1. The Community is terminated;

7.1.1.2. Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

7.1.1.3. The Members casting sixty-seven percent (67%) of the Association votes, in person or by proxy, including every Member whose residence will not be rebuilt, vote not to rebuild; or

7.1.1.4. Prior to conveyance of any Lot to a Person other than the Declarant, a Security Interest Holder of a Security Interest on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

7.1.2. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests.

### **Section 7.2. *Lots.***

Except as provided in Section 7.1 of this Declaration (Damage or Destruction), any damage to or destruction of any structure located on a Lot shall be promptly repaired and replaced by the Owner thereof. "Repaired and replaced," as used in this Section, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. If the Owner(s) of a Lot do not commence repair or replacement activities within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Design Review Committee, then the Association may, in its reasonable discretion, after providing the notice required in Section 8.3 of this Declaration (Association's Right to Repair, Maintain and Replace) enter upon the Lot and complete such repair or replacement. Except as provided in Section 8.5 of this Declaration (Acts or Omissions), the cost of such repair or replacement shall be the personal obligation of the Owner(s) of the Lot on which such work was performed, and shall be subject to the terms and provisions of Article 4 of this Declaration (Assessments). If the Members vote not to rebuild any Lot, that Lot's Allocated Interests are automatically reallocated as if the Lot had been condemned as provided in Section 16.13 of this Declaration (Eminent Domain), and the Association



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promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

## ARTICLE 8. EXTERIOR MAINTENANCE

### Section 8.1. *General.*

8.1.1. Maintenance, repair and replacement of the Common Elements, Improvements located thereon, and of any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association unless such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair and replacement or unless such maintenance, repair and replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. The foregoing shall include, without limitation, alleys and all Improvements therein and fences on or adjacent to alleys. The Association shall also provide maintenance, repair and replacement of the landscaping on the front yards of each Lot installed by the Declarant and landscaping on publicly dedicated rights of way that are adjacent to Common Elements or Lots; such maintenance, repair and replacement shall include, without limitation, mowing and watering, pulling of weeds from mulch or rock areas, and pruning of shrubs and trees. Finally, the Association may provide such other maintenance, repair and replacement as the Executive Board deems appropriate from time to time including without limitation, publicly-dedicated property and Improvements located thereon. The costs, expenses, fees, and other amounts to be expended for the maintenance, repair and replacement that is provided for in this subsection shall, subject to Section 8.5 of this Declaration (Acts or Omissions), be collected by the Association as Assessments as provided in Article 4 of this Declaration (Assessments) and not as Service Charges.

8.1.2. With respect to the dwelling units on the TH Lots, the Association shall maintain, repair and replace the exteriors of such dwelling units, as follows (to the extent that such are applicable): paint or stain, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces; railings around any decks, and any fences (and gates) around patios; provided, however, that such exterior maintenance, repair and replacement shall not include exterior doors or garage doors, except painting or staining, and shall also not include sidewalks, foundations, patios, porches, decks, air-conditioning compressors, exterior light fixtures attached to a structure, windows or window screens, or glass surfaces. The costs, expenses, fees and other amounts for the items that are provided for in this subsection shall, subject to Section 8.5 of this Declaration (Acts or Omissions), be TH Lot Service Charges (rather than Assessments), but shall be subject to lien rights, late charges, default interest, and all other collection provisions of Article 4 of this Declaration (Assessments).

8.1.3. The extent, degree and timing of snow removal and of maintenance, repair and replacement shall be determined, from time to time, by the Executive Board in its sole discretion.

8.1.4. Except as provided in subsections 8.1.1, 8.1.2 and 8.1.3 above, the maintenance, repair and replacement of each Lot, and the Improvements thereon, shall be

performed by the Owner(s) thereof at such Owner's sole cost and expense. However, the foregoing is subject to the provisions of Section 8.5 of this Declaration (Acts or Omissions).

**Section 8.2.      *Changed or Added Improvements.***

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

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

In the event any Owner(s) shall fail to perform his maintenance, repair and/or replacement obligations in a manner satisfactory to the Executive Board, the Association may, if said failure continues for a fifteen (15) day period after written notice to said Owners(s) by the Board, enter upon said Lot subsequent to the expiration of said fifteen (15) day time period to perform any or all of such maintenance, repair or replacement. Notwithstanding the foregoing, no notice shall be required in emergency situations. The cost of such maintenance, repair and/or replacement shall be the personal obligation of the Owner(s) of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to Assessments as provided in Article 4 of this Declaration (Assessments), including, without limitation, interest, late charges and lien rights.

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

8.4.1.      Each Owner agrees, for himself and his successors and assigns, that he will not in any way interfere with or obstruct the established drainage pattern over any real property from adjoining or other real property. In the event that any Person wishes to change the established drainage over any property in the Community, then such Person shall submit a plan to the Design Review Committee for its review and approval in accordance with Article 5 of this Declaration (Design Review Committee) and any such change shall also be made in accordance with all laws, regulations and resolutions of any applicable governmental entities. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading by the Declarant is completed.

8.4.2.      The occupant of any Lot, including the Owner thereof, should not plant flower beds (especially annuals), vegetable gardens and other landscaping which requires regular watering, within five (5) feet of the foundation of the dwelling unit or any slab on the Lot. If evergreen shrubbery is located within five (5) feet of any foundation wall or slab, then the Owner of the Lot should water such shrubbery by "controlled hand-watering," and should avoid excessive watering. Further, piping and heads for sprinkler systems should not be installed within five (5) feet of foundation walls and slabs.

**Section 8.5.        *Acts or Omissions.***

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

**Section 8.6.        *Landscaping Warranties, Turnover of Landscaping.***

8.6.1.        As part of completion of the Community, the Declarant is having initial landscaping installed on the Common Elements and Lots. Such landscaping will be installed by a landscaping installer who will, incidental to such installation, issue separate written warranties to the Declarant on the landscaping installed by such installer ("Landscape Warranty"). The Declarant is not providing a separate warranty on landscaping. Except as provided in subsection 8.6.2 below, any claim under any Landscape Warranty will be handled by the Association to the Declarant, and any questions or concerns regarding the landscaping materials, installation, or any other matters related to landscaping will be raised by an Owner or other Person with the Association, and the Association will take up such issue(s) with the Declarant.

8.6.2.        Upon or immediately following installation of landscaping on any Common Elements and Lots, a walk-through shall be conducted of such landscaping by the Declarant, the Executive Board (or by a committee, such as a landscape committee, designated by the Board), the managing agent of the Association, and perhaps the landscape installer. The purpose of the walk-through will be to determine the acceptability of such landscaping to the Association, to note any deficiencies or concerns that must be remedied by the landscape installer under the applicable Landscape Warranty, and to confirm the ending date of the one (1) year Landscape Warranty provided by the landscape installer on such landscaping. A punch list of matters or concerns to be remedied by the landscape installer will be prepared at such walk-through for delivery to the Declarant. Except as provided in such punch list, the inspected landscaping will be deemed to have been accepted by the Association subject to the Landscape Warranty on such landscaping.

**ARTICLE 9.        EASEMENTS**

**Section 9.1.        *Easements.***

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



**Section 9.2.      *Access Easement.***

Each Owner hereby grants to the Association and the other Owners, and to their agents and employees and contractors, a right and easement on, over, across and through such Owner's Lot for maintenance, repair and replacement as provided in this Declaration, including without limitation as provided in Article 8 of this Declaration (Exterior Maintenance), and to the Association for and incidental to enforcement of any term or provision of this Declaration, the Articles of Incorporation, Bylaws, guidelines or rules and regulations of the Association. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance; and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner(s) or occupant(s) of each affected Lot shall be warned of impending emergency entry as early as is reasonably possible. The interior of any dwelling unit shall not be subject to the easements provided for in this Section.

**Section 9.3.      *Utilities Easement.***

The Declarant hereby reserves a blanket easement upon, across, over and under the Common Elements for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, 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 Elements without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.28 of this Declaration (Special Declarant Rights), at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

**Section 9.4.      *Easement for Encroachments.***

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

**Section 9.5.      *Drainage Easement.***

In addition to those easements shown on the plat(s) of the Community, Declarant hereby reserves, to itself and to the Association, easements for drainage and drainage facilities across the five (5) rear and five (5) side feet of each Lot; provided, however, that if a residence or garage is located on any of the areas described in this sentence, then such easement shall be reduced in width



to the width of the distance from the nearest Lot line of such Lot to the nearest exterior wall of the residence or garage on such Lot. No Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon each five foot rear and side yard drainage easements, at any time, to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.28 of this Declaration (Special Declarant Rights), at which time said reserved right shall vest solely in the Association.

**Section 9.6.      *Easement for Unannexed Property.***

The Declarant hereby reserves, for the use and benefit of the Annexable Area, a non-exclusive, perpetual easement and right of way on, over, across and under the Common Elements for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement and use of any utilities Improvements that may now or hereafter serve the Annexable Area or any portion thereof (herein collectively the "Annexable Area Easement"). By virtue of this Annexable Area Easement, the Declarant generally intends to provide for utilities services to those portion(s) of the Annexable Area which have not been included, from time to time, in the Community pursuant to Section 16.4 of this Declaration (Annexation; Withdrawal). Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as both of the following have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration pursuant to the aforesaid Section; and expiration of the Declarant's right to withdraw such portion of the Annexable Area from this Declaration.

**ARTICLE 10.    RESTRICTIONS**

**Section 10.1.      *General Plan.***

It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Community or portion(s) thereof. The use of individual Lots may also be subject to lease terms or other restrictions more restrictive than this Article, which restrictions may be adopted by the Owner of such Lot.

**Section 10.2.      *Restrictions Imposed.***

This Community is subject to the recorded easements, licenses, and other matters listed on Exhibit D attached hereto and incorporated herein by this reference, as well as all provisions of the recorded documents. In addition, the Declarant declares that all of the Lots shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.



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

Subject to Section 16.7 of this Declaration (Declarant's Use), Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, the Owners or tenants of Lots may conduct business activities within their homes provided that all of the following conditions are satisfied:

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

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

10.3.3.      The business does not result in an undue volume of traffic or parking within the Community, which determination shall be made by the Executive Board in its sole discretion from time to time;

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

10.3.5.      The business conforms to any rules and regulations that may be imposed by the Executive Board from time to time on a uniform basis to protect the peace, tranquility and quality of the Community.

**Section 10.4.      *Household Pets.***

No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose and are not kept in such number or manner as to create a nuisance to any resident of the Lots. The Association shall have, and is hereby given, the right and authority to: set a size or poundage limit on pets; regulate the type(s) of pets that are permitted to be kept; determine in its sole discretion that dog(s), cat(s) or other household pet(s) are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to pets; or determine that an Owner is otherwise in violation of the provisions of this Section, and to take such action(s) as it may deem appropriate to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in Article 4 of this Declaration (Assessments).

**Section 10.5.      *Temporary Structures; Unsightly Conditions.***

Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage shed, or outbuilding shall be placed or erected upon



any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by the Declarant or a Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Lot as to be visible from a street or from any other Lot.

**Section 10.6.      *Miscellaneous Improvements.***

10.6.1.      No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House," "For Rent," or security sign of not more than five (5) square feet in the aggregate. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant in connection with the sale or rental of the Lot(s), or otherwise in connection with development and construction, shall be permissible.

10.6.2.      No clotheslines, chain-linked dog runs, drying yards, service yards, wood piles or storage areas shall be so located on any Lot as to be visible from a street, from the ground level of any other Lot or from the Common Elements.

10.6.3.      No type of refrigerating, cooling or heating apparatus shall be permitted on a roof and no such apparatus shall be permitted elsewhere on a Lot, except when approved by the Design Review Committee. Without limiting the foregoing, conventional air conditioning units located on the ground of a Lot are permissible when approved in accordance with the preceding sentence.

10.6.4.      Except as may otherwise be permitted by the Design Review Committee, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot, except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its sales or construction upon the Lots; and provided further, however, that the requirements of this subsection shall not apply to those "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended from time to time. As to "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended, the Association shall be empowered to adopt rules and regulations governing the types of "antenna" (including certain satellite dishes) that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996 and/or applicable regulations, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

10.6.5.      No fences shall be permitted unless first approved in writing by the Design Review Committee, except such fences as may be constructed, installed or located by the Declarant in its development or construction of Improvements in the Community.

10.6.6.      Vegetable gardens may be grown only in the rear yard of a Lot.

10.6.7. No wind generators shall be constructed, installed, erected or maintained on any Lot.

**Section 10.7. *Vehicular Parking, Storage and Repairs.***

10.7.1. No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (larger than 1 ton), motor home, snowmobile, jet ski, all terrain vehicle, self-contained motorized recreational vehicle, or other type of commercial or recreational vehicle or equipment, may be parked or stored on a Lot, or parked or stored elsewhere in such a manner as to be visible from the ground level of any Lot, unless such parking or storage is entirely within the garage area of any Lot or will be suitably screened from view by a fence in accordance with the requirements and prior approval of the Design Review Committee, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles which are necessary for construction or for the maintenance of any portion of the Community or any Improvements located thereon. For the purposes of this Section, "temporary expedient" shall mean a period of time not to exceed forty-eight (48) hours or such lesser or greater time period as the Executive Board may determine from time to time in its sole discretion.

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

10.7.3. No parking will be permitted on any alley in the Community.

10.7.4. In the event the Association shall determine that a vehicle is parked or stored in violation of subsections 10.7.1, 10.7.2 or 10.7.3 of this Section, then a written notice of such violation describing said vehicle shall be delivered personally (including delivery by telefax) or by certified mail, first class postage prepaid, return receipt requested to the Owner of the Lot, and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, a written notice that the vehicle will be towed shall be delivered personally to the owner of such vehicle (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained) and the Association shall have the right to remove the vehicle at the sole expense of the owner of such vehicle in accordance with the terms of the tow notice.

10.7.5. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within completely enclosed structure(s) which screen the sight and sound of the activity from the private drives, street





and from adjoining property. The foregoing restriction shall not be deemed to prevent, on a Lot, washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

**Section 10.8.      *Nuisances.***

No nuisance shall be permitted in the Community nor any use, activity or practice which is a source of annoyance or embarrassment to, or which offends or disturbs the occupant of any Lot or which interferes with the peaceful enjoyment or possession and proper use of any Lot, or any portion thereof. As used herein, the term "nuisance" shall include each violation of this Declaration, the Articles of Incorporation, Bylaws, rules, regulations, standards and/or guidelines of the Association or the Design Review Committee, but shall not include any activities of Declarant which are reasonably necessary to the development and construction of, and sales activities in, the Community. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of the Community or any portion thereof. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed.

**Section 10.9.      *No Hazardous Activities; No Hazardous Materials or Chemicals.***

No activities shall be conducted on any Lot, or within Improvements constructed on any Lot, 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 any Lot and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace, or except such campfires or picnic fires on property which may be designated for such use by the Association. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

**Section 10.10.     *No Annoying Lights, Sounds or Odors.***

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

**Section 10.11.     *Restrictions on Trash and Materials.***

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside a structure on any Lot nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup. Further,

no trash or materials shall be permitted to accumulate in such a manner as to be visible from any Lot. All equipment for the storage or disposal of trash shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. In addition, the Association may, at the election of the Executive Board, provide trash removal services for any portions of the Community. The scope of trash removal services that may be provided by the Association shall be determined by the Executive Board in its sole discretion (e.g., the Board may elect to provide and pay for all regularly scheduled trash pickups, but require each Owner to be responsible for scheduling, and paying for, any extraordinary trash pick-ups and/or recycling services).

**Section 10.12.     *Lots to Be Maintained.***

Subject to Section 10.5 of this Declaration (Temporary Structures; Unsightly Conditions), each Lot shall at all times be kept in a clean, sightly and wholesome condition by the Owner of the Lot. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Lot except as necessary during the period of construction or as provided in Section 10.11 of this Declaration (Restrictions on Trash and Materials).

**Section 10.13.     *Leases.***

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

10.13.1. All leases shall be in writing, and notice of the lease, including the name of the tenant(s) and the duration of the lease, shall be delivered to the Executive Board or the Association's managing agent, if any, within thirty (30) days after such lease has been signed by the lessor and the lessee; and

10.13.2. All leases shall provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, Bylaws and rules and regulations of the Association; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease; and

10.13.3. All leases shall be for a term of no less than one (1) year.

**Section 10.14.     *Occupancy of Single-Family Dwellings.***

Only one single-family dwelling may be constructed on each Lot. Each single-family dwelling may only be occupied by a single family as provided in the next sentence. A "single family" is any number of persons living together as a single dwelling unit who are related by blood, marriage, or adoption, but excludes any group of more than four individuals who are not all related by blood, marriage, or adoption.

**Section 10.15.     *Landscaping of Lots.***

Every Lot shall be landscaped by the first Owner thereof (other than Declarant), with the prior, written approval of the Design Review Committee, within six (6) months after acquisition of

such Lot by the first Owner thereof from the Declarant, or such longer periods as may be permitted by the Design Review Committee in writing. The landscaping of each Lot shall be maintained by the Owner thereof in a neat, attractive, sightly and well kept condition, which shall include lawns mowed, hedges trimmed, adequate watering, replacement of dead, diseased or unsightly materials, removal of weeds and debris and appropriate pruning of plant materials. If any Owner of a Lot fails or refuses to install or maintain landscaping, as hereinabove provided, then the Association may, at the direction of the Executive Board, enter upon such Lot and install or maintain landscaping on such Lot and the Owner thereof shall be obligated to pay for the same, in accordance with and subject to the provisions of Section 8.3 hereof.

**Section 10.16.     *Restrictions on Mining or Drilling.***

No property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth. No derrick or other structure designed for exploration for oil or natural gas shall be erected, maintained or permitted in the Community.

**Section 10.17.     *Joint Use and Cost Sharing Agreement.***

The Declarant is party to a certain Joint Use and Cost Sharing Agreement, recorded on April 20, 2004, in Book 1579, at Page 431, as Reception No. 650496, in the office of the Clerk and Recorder of Garfield County, Colorado ("Joint Use and Cost Sharing Agreement"). The Joint Use and Cost Sharing Agreement runs with the Community and certain other property and in general provides for joint use of, and cost sharing with respect to, certain parcels of real property, and Improvements thereon, and includes rights and obligations that are applicable to Owners and the Association. Some of the parcels which are subject to the Joint Use and Cost Sharing Agreement may be or become Common Elements. Owners and other Persons with a tenancy or other interest in any property that is part of the Community should review the Joint Use and Cost Sharing Agreement to determine the rights and obligations that may be applicable to them and are provided for in such document.

**ARTICLE 11.     PARTY WALLS ON TH LOTS**

**Section 11.1.     *Definition.***

For purposes of this Article, "Party Wall" means: any wall which is part of the original construction of the structures located on TH Lots as such wall(s) may be repaired or reconstructed from time to time, is placed on or immediately adjacent to a TH Lot's lot line, and separates two (2) or more structures as a common wall; and any monolithic slab located on two (2) or more TH Lots. Without limiting the generality of the foregoing, "Party Wall" includes any two walls which meet the foregoing criteria and which are separated by a small amount of air space.

**Section 11.2.     *General Rules of Law to Apply.***

To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 11.3.      *Sharing of Repair and Maintenance.***

The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Members of the two TH Lots on either side of the Party Wall, except as otherwise provided in this Declaration; provided, however, that the cost of repair and replacement of the finished surface of a Party Wall that is located within a residence shall be at the sole cost and expense of the Owner of the TH Lot on which such residence is located.

**Section 11.4.      *Destruction by Fire or Other Casualty.***

If a Party Wall is destroyed or damaged by fire or other casualty, any Owner of a TH Lot on which such Party Wall is or was located may restore it. Except as otherwise provided in this Declaration, the Members of the TH Lots that share such Party Wall shall share equally the costs and expenses of such restoration. Without limiting the generality of the foregoing, any Member may call for a larger contribution from one or more others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 11.5.      *Repair to Monolithis Slabs and Monolithis Foundations.***

If any monolithis slab requires repair, the entire monolithis foundation shall be involved in the repair process. The Owners and occupants of each of the Lots on which such monolithis foundation is located shall cooperate regarding repairs to such foundation.

**Section 11.6.      *Weatherproofing.***

Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 11.7.      *Right to Contribution Runs with Land.***

The right of any Member to contribution from any other Member under this Article shall be appurtenant to and run with the land and shall pass to such Member's successors in title to the TH Lot to which such Member's membership pertains.

**Section 11.8.      *Rights of Owners.***

The Owners of each TH Lot with a Party Wall shall have the following rights:

11.8.1.      A perpetual and reciprocal easement in and to that part of the adjacent TH Lot on which such Party Wall is located, for Party Wall purposes only, including mutual support, maintenance, repair and inspection. For the purposes of repairing or maintaining a Party Wall, the Owners of each TH Lot with a Party Wall are granted the right to enter onto the adjacent TH Lot which has the same Party Wall and to go inside any residence or other Improvements thereon to do work necessary in the exercise of rights provided herein at all reasonable times after reasonable notice to the occupants of such adjacent TH Lot, or immediately in the event of an emergency.



11.8.2. After reasonable notice to the occupants of the adjacent TH Lot on which a Party Wall is located, the Owner of a TH Lot which has such Party Wall thereon shall have the right to break through an appurtenant Party Wall for the purposes of repairing or restoring sewer, water, or other utilities located within such Party Wall, subject to the obligation to restore such Party Wall to its previous structural condition at the sole cost and expense of the Owner who effectuates such breakage.

**Section 11.9.      *Arbitration.***

In the event of any dispute arising concerning a Party Wall, under the provisions of this Article, such dispute shall be resolved as follows unless such dispute is subject to Article 15 of this Declaration (Dispute Resolution): each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party fail or refuse to appoint an arbitrator within ten (10) days after written request therefor by the Member with whom such party shares a Party Wall, the Board shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorneys' fees.

**ARTICLE 12.      PROPERTY RIGHTS IN THE COMMON ELEMENTS**

**Section 12.1.      *Owners' Easements of Enjoyment.***

Subject to this Declaration and the Use Easements referenced in Article 13 of this Declaration (Use Easements on SFD Lots), every Owner shall have a non-exclusive right and easement for the purpose of access to such Owner's Lot and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot.

**Section 12.2.      *Extent of Owners' Easements.***

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

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

12.2.2. The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

12.2.3. The right of the Association to promulgate and publish standards, guidelines, rules and regulations, with which each Member shall strictly comply; and

12.2.4. The right of the Association to suspend the voting rights of a Member for any period during which any Assessment against his Lot remains unpaid and, for a period



not to exceed sixty (60) days, for any infraction of this Declaration, the Association Bylaws or the rules and regulations of the Association; and

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

12.2.6. The right of the Association, through its Executive Board, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, guests and invitees, for any purpose(s) the Executive Board may deem to be useful, beneficial or otherwise appropriate; and

12.2.7. The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

**Section 12.3.      *Use of Common Elements by Declarant.***

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

**Section 12.4.      *Delegation of Use.***

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

**Section 12.5.      *Payment of Taxes or Insurance by Security Interest Holders.***

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

**Section 12.6.      *Conveyance or Encumbrance of Common Elements.***

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

**Section 12.7.      *Designation of Common Elements.***

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

**Section 12.8.      *Duty to Accept Property and Facilities Transferred by Declarant.***

The Association shall accept title to any property or Common Elements, including Improvements thereon, as well as personal property, equipment, and easements, transferred to the Association by the Declarant, together with responsibility to perform all duties and functions of the Association which are set forth in this Declaration or otherwise assumed by the Association; as long as such transfer(s) do not require the Association to perform in a manner which is inconsistent with the duties and functions of the Association as provided in this Declaration or the Articles of Incorporation or Bylaws of the Association. As of the date of recording of this Declaration, interests which are planned to be transferred by the Declarant to the Association are planned to consist only of fee simple title to Common Elements to be located in the property described on the attached Exhibit A and/or the Annexable Area, and/or easements.

**ARTICLE 13.      USE EASEMENTS ON SFD LOTS.**

**Section 13.1.      *General Description of Use Easements.***

Each SFD Lot may have an Active Area and a Passive Area. If an SFD Lot includes a Passive Area, then such Passive Areas will be subject to a use easement as provided in this Article. That is, the Declarant intends to expand the general area for use and enjoyment of an SFD Lot by providing an Easement Premises for such SFD Lot so that the useable area of such SFD Lot will essentially be expanded to include the useable area which is the Passive Area of the SFD Lot next door. As a result, those SFD Lots which benefit from an Easement Premises will have an expanded use area for their general use, enjoyment, and improvement, all as provided in this Article.

**Section 13.2.      *Reservation of Use Easements.***

Declarant hereby reserves a perpetual, exclusive easement in accordance with this Article, on, over and across each Easement Premises for the benefit of the SFD Lot adjacent to such Easement Premises. Not all SFD Lots will be granted the benefit of an Easement Premises as provided herein, nor will all SFD Lots be burdened by having an Easement Premises located thereon. The listing provided on the attached Exhibit E, and the Easement Premises as designated on the attached Exhibit F, constitute the present plans for the SFD Lots in the Community, but the Declarant may change any of such designations as to SFD Lots owned by the Declarant which are listed on the attached Exhibit E and/or shown on the attached Exhibit F. Notwithstanding the foregoing, at any time, from time to time, as to any SFD Lots owned by Declarant, Declarant may add, remove, or otherwise change the Easement Premises or the designations of "Active Area" or "Passive Area" applicable to such SFD Lot or Easement Premises, including without limitation those listed on the attached Exhibit E and/or shown on the attached Exhibit F, and/or may supplement the attached Exhibit E and/or Exhibit F.

**Section 13.3.      *Purpose of Easement Premises.***

The Owner of the SFD Lot that is immediately adjacent to an Easement Premises, and also the family members, tenants, guests and invitees of such Owner, shall have the right to use the adjacent Easement Premises in a manner that is consistent with this Declaration, to the exclusion of the Owner of the SFD Lot on which such Easement Premises is located, except as otherwise provided in this Article or Article 13 hereof. Subject to compliance with all terms and provisions of this Declaration, including without limitation obtaining the prior written approval of the Design Review Committee as required, such permitted uses of the Easement Premises include those uses permitted by applicable zoning and also include, without limitation, grass, shrubs, plants, flowers, vegetables and trees, construction, location, and use of hot tubs, patios, dog houses, trellises, chairs and tables, and similar improvements. The Easement Premises may be used as a general recreational, picnic, social and garden area, as though such Easement Premises were owned by the Owner of the SFD Lot with a right to use such Easement Premises; provided that such Easement Premises shall not be used in any manner, at any time, to unreasonably disturb the Owner of the SFD Lot on which the Easement Premises is located or such Owner's family members, tenants, guests and invitees, and nothing shall attached to the exterior wall of the dwelling unit on such SFD Lot on which the Easement Premises is located. Use of an Easement Premises is subject to this Article and the other provisions of this Declaration; the Owner of a Lot on which an Active Area is located shall not plant flower beds (especially annuals), vegetable gardens, other landscaping which requires regular watering, or locate piping or heads for sprinkler systems, within five feet (5') of the foundation of the dwelling unit or any slab on an Easement Premises, and if evergreen shrubbery is located within five feet (5') of any foundation wall or slab on an Easement Premises, then the Owner with the right to use such Easement Premises shall water such shrubbery by "controlled hand-watering" only, and should avoid excessive watering.

**Section 13.4.      *Right of Entry.***

The Owner of an SFD Lot on which an Easement Premises is located shall have the right at all reasonable times to enter upon the Easement Premises, including the right to reasonably cross over the Active Area that borders on the Easement Premises, for the purpose of performing work related to maintenance of the dwelling unit located on the Lot on which the Passive Area is located.

**Section 13.5.      *Right of Drainage.***

The Passive Area shall have the right of drainage over, across and upon the Easement Premises for normal precipitation upon and irrigation of the SFD Lot on which the Passive Area is located, as long as such is done in accordance with the approved drainage plan, and the Owner of the SFD Lot adjacent to such Easement Premises shall not do or permit to be done any act which interferes with such drainage.

**Section 13.6.      *Side Yard Fencing.***

Side yard fencing is not allowed on the side Lot line between structures on Lots due to the use easements provided for in this Article and in the easements provided for in Article 13 hereof.



**Section 13.7.      *Window Wells.***

The residence that is now or hereafter located on an SFD Lot on which a Passive Area is located may have one or more window wells in an Easement Premises. The Owner of the Active Area that is adjacent to such Easement Premises has the right but not the obligation, at any time, to cover such window well if the Declarant does not do so. However, the Owner of the Passive Area shall have liability with respect to such window well(s), as more fully provided in Section 12.8 of this Declaration.

**Section 13.8.      *Right of Support.***

The SFD Lot on which the Passive Area is located shall have the right of lateral and subjacent support for the dwelling unit and all improvements now or hereafter constructed upon such SFD Lot, and no use of the Easement Premises shall adversely affect such right of support.

**Section 13.9.      *Indemnity of Owner of Active Area.***

The Owner of the Passive Area shall indemnify and hold the Owner of the Active Area harmless from damage to any Improvements, shrubs, plants, flowers, vegetables, trees and other landscaping, including without limitation the permitted Improvements and items listed in Section 13.3 of this Declaration, to the extent the damages result from the right of access reserved to the Owner of the Passive Area onto the Easement Premises and/or such damages occurred as a direct or indirect result of any of such window well(s) in the Easement Premises.

**Section 13.10.     *Indemnity of Owner of Passive Area.***

The Owner of the Active Area shall indemnify and hold the Owner of the Passive Area harmless from damage to any Improvements now or hereafter constructed, located or erected on the SFD Lot on which such Passive Area is located, and from any personal injury (including death), to the extent that any such damage or injury is caused by use of the Easement Premises by the Owner of the adjacent Active Area or by such Owner's family members, tenants, guests and invitees. The Owner of the Active Area shall acquire and keep in force adequate hazard and liability insurance covering the Easement Premises.

**Section 13.11.     *Maintenance of Easement Premises.***

The Owner of the SFD Lot which has the right to use an Easement Premises, as provided in this Article, shall be responsible for maintenance, repair and replacement of the Easement Premises, and of all improvements that are located thereon by or for the benefit of such SFD Lot, to the same extent as if the Easement Premises were a portion of such SFD Lot and owned by the Owner of such SFD Lot. The foregoing shall include, without limitation, watering of landscaping on the Easement Premises and maintenance, repair and replacement of any fence that lies on, or borders, the Easement Premises, but shall not include any window wells of the residence now or hereafter located on the SFD Lot on which the Passive Area is located.

## **ARTICLE 14. EASEMENTS FOR CERTAIN MAINTENANCE.**

### **Section 14.1. *Reservation of Easement for Certain Maintenance.***

Declarant hereby reserves a perpetual, non-exclusive easement in accordance with this Article, on, over and across each Active Area for the benefit of the SFD Lot which is adjacent to such Active Area ("Easement for Maintenance"). The purpose of the Easement for Maintenance is to permit the Owner of each SFD Lot to use the adjacent Active Area, if any, for purposes of maintenance, repair and replacement of Improvements on the SFD Lot which is adjacent to such Active Area and the dwelling unit now or hereafter thereon; provided, however, that such Easement for Maintenance shall not be used in any manner, at any time, to unreasonably disturb the Owner of the Active Area on which such Easement for Maintenance is located or such Owner's family members, tenants, guests and invitees.

### **Section 14.2. *The Right of Entry.***

The Owner of the SFD Lot which is the beneficiary of an Easement for Maintenance shall have the right to enter upon or cross over the referenced Active Area, at all reasonable times, for the purpose of performing work related to maintenance, repair and replacement of Improvements now or hereafter located on the SFD Lot which is benefited by the Easement for Maintenance. In emergency situations entry upon an SFD Lot may be made at any time, provided that the Owner or occupants of each affected SFD Lot shall be warned of impending emergency entry as early as is reasonably possible. Owner of the SFD Lot which is the beneficiary of an Easement for Maintenance shall indemnify and hold the Owner of the adjacent Active Area harmless from damage to any Improvement, shrubs, plants, flowers, vegetables, trees and other landscaping now or hereafter located on such Active Area or on the SFD Lot on which such Active Area is located.

## **ARTICLE 15. DISPUTE RESOLUTION**

### **Section 15.1. *Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.***

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

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

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

### **Section 15.2. *Definitions Applicable to this Article.***

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

15.2.1. "AAA" means the American Arbitration Association.

15.2.2. "Claimant" means any Party having a Claim.

15.2.3. "Claim" means, except as excluded or exempted by the terms of this Article, any claim, grievance or dispute between one Party and another, regardless of how the same may have arisen or on what it might be based, including without limitation those arising out of or related to (a) the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Party under any of the Governing Documents; (b) the design or construction of improvements; (c) any statements, representations, promises, warranties, or other communications made by or on behalf of any Party.

15.2.4. "Governing Documents" means this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, and any guidelines and rules and regulations of the Association.

15.2.5. "Inspecting Party" means a Party causing an inspection of the Subject Property to be made.

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

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

15.2.8. "Subject Property" means the property being inspected pursuant to the inspection right provided in Section 15.7 of this Declaration (Right to Inspect).

15.2.9. "Termination of Mediation" means a period of time expiring thirty (30) days after a mediator has been agreed upon by the parties (however, a mediator shall be selected no later than forty-five (45) days after the Claimant has given notice to the Respondent of the Claim and if the parties are unable to agree on a mediator, one shall be chosen by the AAA) and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent) and upon the expiration of which the Claimant and Respondent have not settled the Claim.

### **Section 15.3. *Approval Required for Association Actions.***

Except as provided in Section 15.6 of this Declaration (Exclusions from "Claim"), the approval of seventy-five percent (75%) of a quorum (as provided in Section 15.4 of this Declaration (Notice and Quorum for Association Actions)) of the Association votes cast by Members voting in person or by proxy at a meeting duly called for this purpose, or voting pursuant to written ballot, must be obtained before the Association shall have the power to institute action on any Claim pursuant to this Article, or to make any counterclaim or cross-claim in any lawsuit or other action brought against the Association. Such approval must be obtained in accordance with the

requirements of Section 15.4 of this Declaration (Notice and Quorum for Association Actions).

**Section 15.4.      *Notice and Quorum for Association Actions.***

Written notice of any meeting of Members which includes a vote pursuant to Section 15.3 of this Declaration (Approval Required for Association Actions) shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. Such written notice, or if the vote is to be by written ballot then such written ballot, shall include the following information:

15.4.1.      A statement regarding the nature of the Claim. Such statement shall include, without limitation, the name(s) of the proposed Respondent(s), the basis and reason for the Claim, and any other information necessary to adequately explain the nature of the proposed Claim; and

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

15.4.3.      A statement advising Members that the costs and fees of prosecuting any Claim may substantially increase the amount of Assessments payable by the Owners to the Association; and

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

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

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

The presence of Members or of proxies, or if by ballot then receipt by the Association of written ballots, entitled to cast seventy-five percent (75%) of all of the Association votes, shall constitute a quorum at any meeting at which the Members vote on approval of any Claim the Association wishes to bring.

**Section 15.5.      *Required Form of Proxy or Ballot.***

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

Despite the fact that my annual Assessments may be significantly increased by the costs and fees associated with the proposed claim, I/we APPROVE the authority of the Association to bring such claim.





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#### **Section 15.6.      *Exclusions from "Claim".***

Unless specifically exempted by this Article, all Claims between any of the Parties shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all Parties thereto otherwise agree, "Claim" does not include the following, whether such are brought by lawsuit, counterclaim, cross-claim, mediation, arbitration or in any other manner, and the same shall not be subject to the provisions of this Article:

15.6.1.      An action by the Association to enforce any provision of Article 4 of this Declaration (Assessments); and

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

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

15.6.4.      any action in which any indispensable party is not a Party.

#### **Section 15.7.      *Right to Inspect.***

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

15.7.1.      Be careful to avoid unreasonable intrusion upon, or harm, damage or costs to the affected Party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any Improvements to the Subject Property;

15.7.2.      Minimize any disruption or inconvenience to any person who occupies the Subject Property;

15.7.3.      Remove daily all debris caused by the inspection and located on the Subject Property; and

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

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

**Section 15.8.      *Mandatory Procedures.***

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

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

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

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

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

15.8.3.      *Mediation.*

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

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

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

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

15.8.3.5. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 15.8.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 15.8 of this Declaration (Mandatory Procedures). In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

15.8.4. Binding Arbitration.

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

15.8.4.2. Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

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

**Section 15.9. *Liability for Failure of Association to Maintain an Action.***

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

**Section 15.10. *Amendment.***

Notwithstanding anything to the contrary, this Article shall not be amended unless such amendment is approved by Members to which at least eighty percent (80%) of the votes in the

Association are allocated. An amendment to this Article shall only be effective as to claims that arise after the recording or later effective date.

## **ARTICLE 16. GENERAL PROVISIONS**

### **Section 16.1. *Enforcement; Fines.***

16.1.1. Subject to Article 15 hereof (Dispute Resolution), enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Except as otherwise provided in this Declaration, the Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings subject to Article 15 of this Declaration (Dispute Resolution). Remedies for violation(s) of the Declaration, the Articles of Incorporation, Bylaws, rules, regulations, standards and/or guidelines of the Association shall be cumulative and no remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under any of such documents, the prevailing party shall be entitled to recover its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

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

### **Section 16.2. *Severability.***

All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

### **Section 16.3. *Conflict of Provisions.***

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



**Section 16.4.     *Annexation; Withdrawal.***

16.4.1.     Additional property may be annexed to this Declaration with the consent, at the time such annexation is to be effective, of Members casting sixty-seven percent (67%) of the Association votes and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed.

16.4.2.     Notwithstanding the foregoing, the Declarant may annex to this Declaration the Annexable Area or any portion(s) thereof, until seven (7) years after recording of this Declaration, without consent of any other Owners, Security Interest Holders, or any other Person; however, such annexation is subject to a determination by HUD or VA (if the Declarant desires to attempt to obtain HUD or VA approval of the property being annexed, and if HUD or VA require such approval) that the annexation is in accord with the general plan approved by them and that the structures to be located thereon will be of comparable style, quality, size and cost to the existing Improvements. Each annexation shall be effected, if at all, by recording an Annexation of Additional Land in the Office of the Clerk and Recorder of the County in which the annexed property is located, which document shall:

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

16.4.2.2.   identify that the Declarant (or other Person(s)) is the owner(s) of the Lots thereby created;

16.4.2.3.   assign an identifying number to each new Lot;

16.4.2.4.   describe any Common Elements within the property being annexed;

16.4.2.5.   if the annexed property includes one (1) or more Lots, reallocate the Allocated Interests; and

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

16.4.3.     Except as otherwise specifically stated in the Annexation of Additional Land, all provisions of this Declaration, including, but not limited to, those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon the effective date of the Annexation of Additional Land or other document of annexation (which shall constitute the

date of recording of the Annexation of Additional Land or other annexation document, unless otherwise stated therein).

16.4.4. Subsequent to the date of recording hereof, each Person who acquires any property within the Annexable Area after the date of recording hereof will have agreed, pursuant to applicable documents, that such property will be governed by this Declaration. The Declarant, therefore, reserves the right (but not the obligation), during the time period set forth in Section 1.28 of this Declaration (Special Declarant Rights), to annex such property to the Declaration without further authorization from the Person who has purchased such property, even if such annexation occurs subsequent to conveyance of such property by Declarant.

16.4.5. The property which is described on the attached Exhibit A and each portion of the Community which is annexed to this Declaration as provided in the preceding subsections, shall be subject to a right of withdrawal by the Declarant. Such withdrawal may be accomplished, if at all, in accordance with the Act. However, the Declarant's right to withdraw such property and each such portion of the Community, shall expire and terminate as to such property and each portion of the Community, upon the first conveyance of any Lot in such property and in each such portion, to any Person other than the Declarant but in any event, no later than the automatic termination provided in Section 1.28 of this Declaration (Special Declarant Rights).

**Section 16.5. *Minor Violations of Setback Restrictions.***

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

**Section 16.6. *Subdivision or Replatting of Lots.***

The Declarant hereby reserves the right to subdivide or replat any Lot(s) owned by the Declarant, and each such subdivision or replatting may change the number of Lots in the Community. Without limiting the generality of the foregoing, the Declarant reserves the right to move any Lot lines(s) on Lot(s) owned by the Declarant, for the purpose of accommodating Improvements which are constructed or are to be constructed. The rights provided for in this Section shall terminate automatically as provided in Section 1.28 of this Declaration (Special Declarant Rights). No Lot may be further subdivided from that existing at the time such Lot becomes subject to this Declaration, except by Declarant.

**Section 16.7. *Declarant's Use.***

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly

permissible and proper for the Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Lots and the Common Elements such facilities as the Declarant deems appropriate, specifically including, without limiting the generality of the foregoing, maintaining signs, sales offices, management offices, model units and construction offices in such numbers, of such sizes, and at such locations as the Declarant determines in its reasonable discretion from time to time. Nothing contained in this Declaration shall limit the rights of the Declarant to conduct all construction, sales, and marketing activities as the Declarant deems necessary or desirable and to use the easements provided in this Declaration for those and other purposes. Further, nothing contained in this Declaration shall limit the rights of the Declarant or require the Declarant to obtain approvals: (a) to excavate, cut, fill or grade any property or to construct, alter, demolish or replace any Improvements; (b) to use any Improvements on any property as sales offices, management offices, model units and/or construction offices in connection with the development, construction or sale of any property; and/or (c) to require the Declarant to seek or obtain the approval of the Design Review Committee, the Executive Board, or the Association for any such activity. Any real estate used as a sales office, management office, model unit, or for the location of a trailer used as a construction or sales office, shall be a Lot or Common Elements, as such property is designated in the document(s) annexing such property to this Declaration.

**Section 16.8.      *Duration, Revocation, and Amendment.***

16.8.1.      Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. Except as otherwise provided in this Declaration (including, without limitation, Sections 15.10 (Amendment), Sections 16.4, 16.8.2, 16.8.3, and 16.8.4 of this Declaration), this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests.

16.8.2.      Subject to Section 15.10 of this Declaration (Amendment), Sections 16.8.3 and 16.8.4 of this Declaration, but notwithstanding anything else to the contrary, while Declarant owns any portion of the property described on the attached Exhibits A and D, no amendment may be made to this Declaration except with the affirmative vote or agreement of Members holding at least seventy-five percent (75%) of the Allocated Interests.

16.8.3.      Notwithstanding anything to the contrary contained in this Declaration, the Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of any of the Agencies or of recognized secondary mortgage markets. Such right of amendment shall terminate automatically as provided in Section 1.28 of this Declaration (Special Declarant Rights).

16.8.4.      Notwithstanding anything to the contrary contained in this Declaration, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical, or technical errors. Such right

of amendment shall terminate automatically as provided in Section 1.28 of this Declaration (Special Declarant Rights).

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

**Section 16.9.      *Registration of Mailing Address.***

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Executive Board or the Association during the Period of Declarant Control shall be sent by registered or certified mail, postage prepaid to 6 West Dry Creek Circle, Littleton, Colorado 80120, unless such address is changed by the Association during the Period of Declarant Control; subsequent to expiration of the Period of Declarant Control, the Association shall notify the Owners of a different address for notices.

**Section 16.10.      *HUD or VA Approval.***

During the Period of Declarant Control, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more first Security Interests, and HUD or VA require such approval: annexation of additional real property (if the Declarant desires to obtain VA or HUD approval of the property that is being annexed); amendment of this Declaration, except as provided in Sections 16.4, 16.8.3 and 16.8.4 hereof; termination of this Community; dedication of Common Elements; or merger or consolidation of the Association, except as provided in Section 3.11 of this Declaration (Merger).

**Section 16.11.      *Termination of Community.***

The Community may be terminated only in accordance with the Act.

**Section 16.12.      *Transfer of Special Declarant Rights.***

A Special Declarant Right created or reserved under this Declaration may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the Community is located, and in accordance with the Act.



**Section 16.13.     *Eminent Domain.***

The taking by eminent domain of a Lot(s) or Common Elements, or any portion thereof, shall be done in accordance with applicable law, including without limitation the Act.

**Section 16.14.     *Limitation on Liability.***

The Association, the Executive Board, the Declarant, and the officers, directors, members, partners, agents and employees of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 16.17 (Waiver) shall apply to this Section.

**Section 16.15.     *No Representations, Guaranties or Warranties.***

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Executive Board, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. The release and waiver set forth in Section 16.17 (Waiver) shall apply to this Section.

**Section 16.16.     *Disclaimer Regarding Safety.***

DECLARANT, THE ASSOCIATION, AND THE EXECUTIVE BOARD, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THE EXECUTIVE BOARD, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 16.17 (WAIVER) SHALL APPLY TO THIS SECTION.

**Section 16.17.     *Waiver***

By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant, the Association, the Executive Board, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, including without limitation, those contained in Sections 16.14, 16.15, and 16.16.

**Section 16.18.     *Headings.***

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

**Section 16.19.     *Gender.***

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

**Section 16.20.     *Run with Land; Binding Upon Successors.***

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

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal this \_\_\_\_\_  
day of \_\_\_\_\_, 200\_\_.

DECLARANT:

VILLAGE HOMES OF COLORADO, INC, a  
Colorado corporation

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

STATE OF COLORADO )  
COUNTY OF \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
200\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of VILLAGE  
HOMES OF COLORADO, INC., a Colorado corporation.

Witness my hand and official seal.

{S E A L}

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

EXHIBIT A  
TO  
DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
CARDIFF GLEN II OWNERS ASSOCIATION, INC.

(Community)

The following property as shown on the Subdivision Plat of Cardiff Glen P.U.D., Filing Six,  
recorded on 8-3, 2004, in Book \_\_\_\_\_, at Page \_\_\_\_\_, at Reception No.  
1057173, in the office of the Clerk and Recorder of Garfield County, Colorado, as  
amended and supplemented from time to time:

Lots 1-36

Tract G

Tract F-1

Tract D



EXHIBIT D  
TO  
DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
CARDIFF GLEN II OWNERS ASSOCIATION, INC.

(Annexable Area)

All of the property as shown and described on the Subdivision Plat of Cardiff Glen P.U.D.,  
Filing Six, recorded on August 3, 2004, in Book \_\_\_\_\_, at Page \_\_\_\_\_, at  
Reception No. 657173, in the records of the office of the Clerk and Recorder of  
Garfield County, Colorado, as amended and supplemented from time to time; and

Lot 92  
Lot 95  
Lot 96  
Lot 97  
Tract F - 2  
Tract H

EXCEPTING AND EXCLUDING all of the property described on Exhibit A to this Declaration.

EXHIBIT C  
TO  
DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
CARDIFF GLEN II OWNERS ASSOCIATION, INC.

(Certain Title Exceptions)

IF RECORDED, THE FOLLOWING ITEMS ARE RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF THE COUNTY OF GARFIELD, COLORADO:

1. TAXES AND ASSESSMENTS FOR THE YEAR IN WHICH THE DECLARATION IS RECORDED AND FOR SUBSEQUENT YEARS, NOT YET DUE AND PAYABLE.
2. RIGHT OF PROPRIETOR OF A VEIN OR LODGE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED MAY 11, 1892, IN BOOK 12 AT PAGE 148, AND RECORDED JULY 29, 1895, IN BOOK 12 AT PAGE 375.
3. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED MAY 11, 1892, IN BOOK 12 AT PAGE 148, AND RECORDED JULY 29, 1895, IN BOOK 12 AT PAGE 375.
4. EASEMENTS AND RIGHTS-OF-WAY FOR WATER PIPELINES AND TANKS GRANTED IN INSTRUMENT RECORDED DECEMBER 9, 1907, IN BOOK 67 AT PAGE 523.
5. EASEMENTS AND RIGHTS OF WAY AS GRANTED TO MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY IN INSTRUMENT RECORDED APRIL 28, 1972, IN BOOK 430 AT PAGE 140.
6. EASEMENTS AND RIGHTS-OF-WAY AS GRANTED TO ROCKY MOUNTAIN NATURAL GAS IN INSTRUMENT RECORDED OCTOBER 11, 1988, IN BOOK 742 AT PAGE 448.
7. TERMS, CONDITIONS, PROVISIONS, RESTRICTIONS, EASEMENTS AND RIGHTS OF WAY AS CONTAINED IN AVIATION AND HAZARD EASEMENT RECORDED JUNE 24, 1999, IN BOOK 1136 AT PAGE 848.
8. EASEMENTS, RIGHTS OF WAY AND OTHER MATTERS AS FOUND ON THE CARDIFF GLEN PLAT RECORDED JUNE 24, 1999, AS RECEPTION NO. 547815.
9. TERMS, CONDITIONS, AND PROVISIONS OF SUBDIVIDER'S AGREEMENT AS CONTAINED IN INSTRUMENT RECORDED JUNE 24, 1999, IN BOOK 1136 AT

PAGE 905, FIRST AMENDMENT RECORDED APRIL 6, 2001, IN BOOK 1243 AT PAGE 502 AND SECOND AMENDMENT RECORDED DECEMBER 4, 2003, IN BOOK 1544 AT PAGE 507.

10. TERMS, CONDITIONS AND PROVISIONS OF WATER FACILITIES EASEMENT RECORDED JUNE 24, 1999, IN BOOK 1136 AT PAGE 826.
11. TERMS, CONDITIONS AND PROVISIONS OF COST SHARING AGREEMENT RECORDED SEPTEMBER 08, 1999, IN BOOK 1149 AT PAGE 529.
12. TERMS, CONDITIONS AND PROVISIONS OF UTILITY EASEMENT AGREEMENT RECORDED JUNE 24, 1999, IN BOOK 1136 AT PAGE 837.
13. TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT RECORDED OCTOBER 30, 2000, IN BOOK 1214 AT PAGE 794.
14. EXISTING UTILITY AND IRRIGATION LINES, CONNECTIONS AND PEDESTALS AS SHOWN ON IMPROVEMENT SURVEY PLAT DATED MARCH 26, 2004, PREPARED BY VISTA ENGINEERING CORP. AS JOB NO. 4012.00-02.
15. ENCROACHMENT OF WATERLINE, SIDEWALK, PARKING AREA, SLIDE AND BUS STOP IN THE EASTERLY PORTION OF PARCEL A AS SHOWN ON IMPROVEMENT SURVEY PLAT DATED MARCH 26, 2004, PREPARED BY VISTA ENGINEERING CORP. AS JOB NO. 4012.00-12.
16. EASEMENTS AND RIGHTS OF WAY FOR STORMWATER DISTRIBUTION BED AND DETENTION AREA IN PARCEL A AS SHOWN ON IMPROVEMENT SURVEY PLAT DATED MARCH 26, 2004, PREPARED BY VISTA ENGINEERING CORP. AS JOB NO. 4012.00-12.
17. UTILITY EASEMENT ALONG THE EASTERLY BOUNDARY OF PARCEL B AS SHOWN ON IMPROVEMENT SURVEY PLAT DATED MARCH 26, 2003, PREPARED BY VISTA ENGINEERING CORP. AS JOB NO. 4012.00-12.
18. RESERVATIONS BY THE UNION PACIFIC RAILROAD OF (1) ALL OIL, COAL AND OTHER MINERALS UNDERLYING SUBJECT PROPERTY, (2) THE EXCLUSIVE RIGHT TO PROSPECT FOR MINE, AND REMOVE ALL OIL, COAL AND OTHER MINERALS, AND (3) THE RIGHT OF INGRESS AND EGRESS AND REGRESS TO PROSPECT FOR, MINE AND REMOVE OIL, COAL AND OTHER MINERALS ALL AS CONTAINED IN DEED RECORDED JANUARY 8, 1917, IN BOOK 66 AT PAGE 58.
19. RESERVATIONS TO THE UNION PACIFIC RAILWAY COMPANY AND ITS ASSIGNS, ALL COAL THAT MAY BE UNDERNEATH THE SURFACE OF THE LAND HEREIN DESCRIBED AND THE EXCLUSIVE RIGHT TO PROSPECT AND MINE FOR THE SAME. ALSO, SUCH RIGHT OF WAY AND OTHER GROUNDS AS

MAY BE NECESSARY FOR THE PROPER WORKING OF ANY COAL MINE THAT MAY BE DEVELOPED UPON SAID PREMISES AND FOR THE TRANSPORTATION OF THE COAL FROM THE SAME, BY QUIT CLAIM RECORDED APRIL 16, 1971, IN BOOK 1920 AT PAGE 247 AND BY MINERAL DEED RECORDED JULY 20, 1977, IN BOOK 2620 AT PAGE 139, UNION PACIFIC LAND RESOURCES CORPORATION CONVEYED ITS OIL AND GAS RIGHTS TO CHAMPLIN PETROLEUM COMPANY, A DELAWARE CORPORATION.

QUIT CLAIM DEED FROM CHAMPLIN PETROLEUM COMPANY TO UNION PACIFIC LAND RESOURCES CORPORATION, RECORDED JULY 15, 1983, IN BOOK 3915 AT PAGE 672.

20. TERMS, CONDITIONS AND PROVISIONS OF WATER AND SEWER TAP PURCHASE AGREEMENT RECORDED OCTOBER 04, 1994, IN BOOK 7726 AT PAGE 317.



EXHIBIT B  
TO  
DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
CARDIFF GLEN II OWNERS ASSOCIATION, INC.

(Common Elements)

The following property as shown on the Subdivision Plat of Cardiff Glen P.U.D., Filing Six, recorded on August 3, 2004, in Book \_\_\_\_\_, Page \_\_\_\_\_, at Reception No. 1657173, in the office of the Clerk and Recorder of Garfield County, Colorado, as amended and supplemented from time to time:

Tract G

Tract F - 1

Tract D

EXHIBIT E  
TO  
DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
CARDIFF GLEN II OWNERS ASSOCIATION, INC.

(Use Easements)

## Cardiff Glen

### Use Easement Matrix

This table represents those lots effected by the USE EASEMENT.

| LOTS WHICH ARE BURDENED<br>BY THE USE EASEMENT | LOTS WHICH ARE BENEFITED<br>BY THE USE EASEMENT |
|--|---|
| Lot 13   | Lot 12  |
| Lot 14   | Lot 13  |
| Lot 15   | Lot 14  |
| Lot 16   | Lot 15  |
| Lot 17   | Lot 16  |
| Lot 18   | Lot 17  |
| Lot 20   | Lot 19  |
| Lot 21   | Lot 20  |
| Lot 22   | Lot 21  |
| Lot 23   | Lot 22  |
| Lot 24   | Lot 23  |
| Lot 25   | Lot 24  |
| Lot 29   | Lot 28  |
| Lot 30   | Lot 29  |
| Lot 31   | Lot 30  |
| Lot 34   | Lot 33  |
| Lot 35   | Lot 34  |
| Lot 36   | Lot 35  |



670741 03/22/2005 02:08P B1672 P318 M ALSDORF  
69 of 70 R 351.00 D 0.00 GARFIELD COUNTY CO

EXHIBIT F  
TO  
DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
CARDIFF GLEN II OWNERS ASSOCIATION, INC.

(Map)



670741 03/22/2005 02:08P B1672 P319 M ALSDORF  
70 of 70 R 351.00 D 0.00 GARFIELD COUNTY CO

# CARDIFF GLEN P.U.D. - FILING 6 COMMON USE EASEMENTS

