

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
HERON LAKES LIFESTYLE COMMUNITY**

County of Larimer, State of Colorado

**WHEN RECORDED RETURN TO:**

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
HERON LAKES LIFESTYLE COMMUNITY**

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
HERON LAKES LIFESTYLE COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERON LAKES LIFESTYLE COMMUNITY is made this 2<sup>nd</sup> day of November, 2018, by Waterfront Development, Inc., a Colorado corporation (as more fully defined below, "Declarant").

**RECITALS**

A. Declarant owns or has the real property described on Exhibit A and Exhibit B, attached hereto and incorporated herein by this reference (as supplemented and amended from time to time, the "Lifestyle Community," as more fully defined below). Declarant also owns or holds the contractual right to acquire the real property described on Exhibit C attached hereto and incorporated herein by this reference (the "Additional Property," as more fully defined below); and

B. Together, Boulder Creek TPC LLC, a Colorado limited liability company, PJJ, LLC, a Colorado limited liability company, and Classic Custom Builders, Inc., a Colorado corporation (each, a "Builder" as more fully defined below), own or hold the contractual right to acquire the Builder Property (as defined below), and, by accepting and acknowledging this Declaration below, agrees that the Builder Property shall, upon annexation to this Declaration pursuant to a Supplemental Declaration recorded by the Owner of the Builder Property, be subject to this Declaration; and

C. Declarant desires to ensure the attractiveness of the Lifestyle Community, as it may be amended from time to time by annexation or withdrawal as provided in this Declaration, to prevent the future impairment thereof, to prevent nuisances, and to preserve, protect, and enhance the value thereof. In order to achieve these goals, Declarant desires to subject and place upon the Lifestyle Community, and, upon annexation thereof, any Additional Property and Builder Property that becomes subject to and included in the Lifestyle Community, certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other provisions; and

D. Declarant desires to specify an alternative dispute resolution process for addressing disputes in the Lifestyle Community that do not involve an imminent threat to the peace, health or safety of the Lifestyle Community, as encouraged by the Colorado General Assembly and as specified in Section 38-33.3-124 of the Act (as hereinafter defined), including a binding arbitration provision for specific situations as provided in ARTICLE 12 of this Declaration; and

E. 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.

## **DECLARATION**

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

### **ARTICLE 1. DEFINITIONS**

**Section 1.1.** ACC. "ACC" means the Architectural Control Committee established pursuant to the Master Declaration.

**Section 1.2.** Act. "Act" means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as amended.

**Section 1.3.** Additional Property. "Additional Property" means the property described on Exhibit C attached hereto and incorporated herein by this reference, plus such additional real property as the Declarant may elect to add in its sole discretion, in an amount not to exceed the maximum permitted pursuant to the Act. Unless and until the Additional Property or any portion thereof is annexed to this Declaration (and not withdrawn), such property shall not be subject to this Declaration or any provision hereof except the right of annexation provided in Section 13.4 of this Declaration. This Declaration does not affect the title of the Additional Property nor constitute a cloud on title until the Additional Property or any portion thereof is annexed into this Declaration as provided in Section 13.4 of this Declaration.

**Section 1.4.** Agencies. "Agencies" collectively means the Government National Mortgage Association ("GNMA"), Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Department of Housing and Urban Development ("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 1.5.** Allocated Interests. "Allocated Interests" means the share of Association common expenses and votes allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Lifestyle Community from time to time.

**Section 1.6.** Assessment. "Assessment" means annual Assessments and special Assessments, which are provided for in this Declaration. For purposes of Section 4.1, Section 4.8 through Section 4.17, inclusive of this Declaration, "Assessments" also includes late charges, fines, fees, interest, costs, expenses, reasonable attorneys' fees and any other amounts which are provided for in this Declaration.

**Section 1.7.** Association. “Association” means Heron Lakes Lifestyle Community, a Colorado non-profit corporation, its successors and assigns, a community association as provided in the Act.

**Section 1.8.** Board of Directors. “Board of Directors” or “Board” means the body, regardless of name, designated in this Declaration, the Articles of Incorporation and the Bylaws of the Association to act on behalf of the Association.

**Section 1.9.** Builder. “Builder” means each of Boulder Creek TPC LLC, a Colorado limited liability company, P JL, LLC, a Colorado limited liability company, and Classic Custom Builders, Inc., a Colorado corporation and any other party that acquires a vacant portion of the Property for purposes of constructing residential structures or other structures or Improvements on such Lot and that has been designated by Declarant as a Builder in a document recorded in the Records.

**Section 1.10.** Builder Property. “Builder Property” means the real property described on Exhibit D attached hereto and incorporated herein by this reference. Immediately prior to conveyance of all or any portion of the Builder property to a Builder or to any party with whom the Builder has assigned its right to purchase from Declarant all or any portion of Builder Property, Declarant shall execute and record in the Records the Partial Assignment of Declarant’s Rights.

**Section 1.11.** Common Elements. “Common Elements” means all real property and Improvements owned or leased by the Association other than a Lot, which exists for the common use of more than one of the Owners. The real property that comprises the Common Elements at the time of recordation of this Declaration, if any, is described on the attached Exhibit B. Additional Common Elements may be annexed to this Declaration by Declarant as provided in Section 13.4 of this Declaration.

**Section 1.12.** Declarant. “Declarant” means Waterfront Development, Inc., a Colorado corporation, and any other Person(s) to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant’s rights under this Declaration (which shall be the extent of the Declarant’s rights to which such assignee succeeds).

**Section 1.13.** Declarant Control Period. “Declarant Control Period” means the period of time during the Special Declarant Rights period defined in Section 1.40 which Declarant has certain rights to appoint or remove officers and directors of the Association as provided in Section 3.4 and Section 3.5, which length of time terminates upon the first to occur of the following events: sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant; two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business, whichever is later; or two (2) years after any right to add new Lots to the Declaration was last exercised by Declarant.

**Section 1.14.** Declaration. “Declaration” means this Declaration of Covenants, Conditions and Restrictions for The Heron Lakes Lifestyle Community and any other recorded instruments, however denominated, that create this Lifestyle Community, including any



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

**Section 1.15.**            Development Rights. “Development Rights” means the following rights or combination of rights reserved by the Declarant as provided in this Declaration:

- 1.15.1.            add real estate to this Lifestyle Community;
- 1.15.2.            create Lots and/or Common Elements;
- 1.15.3.            subdivide or replat Lots; and
- 1.15.4.            withdraw real estate from this Lifestyle Community.

The Declarant’s right to exercise Development Rights shall terminate automatically as provided in Section 1.40 of this Declaration.

**Section 1.16.**            DRC. “DRC” means the committee appointed by the Declarant until automatic termination of the Special Declarant Rights and then appointed by the Board of Directors, all as provided in Section 5.1 of this Declaration. The Committee shall review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

**Section 1.17.**            Governing Documents. “Governing Documents” means this Declaration, the Articles of Incorporation, Bylaws, and any rules and regulations, policies and procedures, design guidelines, and similar documents, of the Association.

**Section 1.18.**            Governmental Authority. “Governmental Authority,” means, as applicable, the Town of Berthoud, Larimer County, the State of Colorado, or other governmental agency or entity with authority as to the Lifestyle Community.

**Section 1.19.**            Improvements. “Improvements” means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features. The foregoing shall include, without limitation, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, driveways, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, fixed basketball backboards and hoops, signs, exterior tanks, utilities facilities, pipes, lines and exterior air conditioning, cooling, heating and water softening equipment, if any.

**Section 1.20.**            Initially Unoccupied Lots. “Initially Unoccupied Lots” means only those Lots for which the Occupancy Date has not occurred.

**Section 1.21.**            Lifestyle Community. “Lifestyle Community” means real property described on the attached Exhibit A and the attached Exhibit B to this Declaration, as supplemented and amended from time to time. All or portions of the Additional Property and Builder Property may be annexed to this Declaration by Declarant as provided in Section 13.4 of this Declaration, and upon such annexation, Exhibit A shall be deemed to include such annexed

property, which shall then be part of the Lifestyle Community. The Lifestyle Community is a planned community under the Act. The name of the Lifestyle Community is The Heron Lakes Lifestyle Community.

**Section 1.22.** Lot. “Lot” means each platted lot that is specifically described on the attached Exhibit A, as the same may be subdivided or replatted from time to time (and “Lot” shall include all lots created as a result of such subdivision or replatting), and any other platted lot(s) that may hereafter be annexed to this Declaration as provided in Section 13.4, with the exception of the Common Elements and any publicly dedicated property. Each Lot shall constitute a “unit” under the Act and it shall not be necessary to use the term “unit” as a part of a legal sufficient description of a Lot.

**Section 1.23.** Lots that May Be Included. “Lots that May Be Included” means a total of thirty four (34) Lots which shall be the maximum number of Lots that may be subject to this Declaration, including the Lots described on Exhibit A and those Lots which may be added if all of the Additional Property and Builder Property 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 Lifestyle Community.

**Section 1.24.** Master Community. “Master Community” means the Heron Lakes Community created by the Master Declaration.

**Section 1.25.** Master Declaration. “Master Declaration” means that certain Declaration of Covenants, Conditions and Restrictions and Easements for Heron Lakes Community recorded in the Records on April 4, 2017 at Reception No. 2017002171.

**Section 1.26.** Member. “Member” means all Owners of a Lot collectively or, following termination of the Lifestyle Community, all former Owners of each Lot entitled to distributions of proceeds under the Act or their heirs, personal representatives, successors or assigns.

**Section 1.27.** Metropolitan District. “Metropolitan District means Berthoud-Heritage Metropolitan District No. 1.

**Section 1.28.** Notice and Hearing. “Notice and Hearing” means the notice and hearing as provided in the Bylaws or by resolution of the Board of Directors in accordance with the Act.

**Section 1.29.** Occupancy Date. “Occupancy Date” means, for each Lot, the date upon which a certificate of occupancy is issued to permit the occupancy of the Improvements constructed on such Lot.

**Section 1.30.** Owner. “Owner” means each fee simple title holder of a Lot, including, 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 Owner of a Lot.

**Section 1.31.** Partial Assignment of Declarant Rights. “Partial Assignment of Declarant Rights” means the assignment substantially in the form attached hereto as Exhibit F and incorporated herein.

**Section 1.32.** 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 1.33.** Phase. “Phase” means each Lot within the Lifestyle Community.

**Section 1.34.** Plat. “Plat” means that certain HERON LAKES THIRD FILING, recorded in the Records on June 10, 2016 at Reception No. 20160036869, as corrected by that Affidavit recorded in the Records on July 28, 2017 at Reception No. 20170050166, as the same may be supplemented and amended from time to time.

**Section 1.35.** Rules and Regulations. “Rules and Regulations” means the Rules and Regulations adopted by the Association as provided in Section 3.10.

**Section 1.36.** Records. “Records” means the real property records in the office of the Clerk and Recorder of Larimer County, Colorado.

**Section 1.37.** Related Parties. “Related Parties” or “Related Party” means any Person who: (a) resides with an Owner within a Lot, (b) is a guest of an Owner, or (c) is an occupant, tenant or contract purchaser of a Lot, and any family member, guest, invitee or cohabitant of such Person.

**Section 1.38.** Security Interest. “Security Interest” means an interest in real estate or personal property in the Lifestyle Community or any portion thereof, created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.12 of this Declaration (Certificate Status of Assessments) and, with respect to notice of cancellation or substantially 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 Records in which the property described on Exhibit A (as amended and supplemented from time to time) is located show the Administrator as having the record title to the Lot.

**Section 1.39.** Security Interest Holder. “Security Interest Holder” means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest, or any successor to the interest of any such Person under such 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 Records show the said Administrator as having the record title to the Lot.

**Section 1.40. 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 Lifestyle Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, model homes and signs advertising the Lifestyle Community and sale of Lots; to use easements through the Common Elements for the purpose of making Improvements within the Lifestyle Community or within real estate which may be added to the Lifestyle Community; to make the Lifestyle Community subject to a master association; or to merge or consolidate a common interest community of the same form of ownership. 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 Lifestyle Community. The Declarant may exercise its Special Declarant Rights at any time and from time to time in all or any portion of the Lifestyle Community, and no assurances are made as to the boundaries or order of exercise of any Special Declarant Rights. Such Special Declarant Rights shall terminate on the earlier of: the twentieth (20th) anniversary date of the date of recording of this Declaration or ten (10) years following such time as Declarant and its assigns owns no portion of the property described on the attached Exhibits A, B and C.

**Section 1.41. Supplemental Declaration.** "Supplemental Declaration" means a written recorded instrument amending or supplementing this Declaration, including new or revised covenants, conditions, restrictions, reservations, easements or equitable servitudes, annexations, or any combination thereof, which affects any portion of the Property.

## **ARTICLE 2. MEMBERSHIP; VOTING RIGHTS; MASTER DECLARATION**

**Section 2.1. Membership in the Association.** Each Owner of a Lot shall be a Member of the Association. An Owner shall automatically be the holder of the membership appurtenant to such Owner's Lot, and the membership shall automatically pass with fee simple title to the Lot. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except that an Owner may assign some or all of the Owner's rights as an Owner and as a Member of the Association to a tenant or Security Interest Holder, and may arrange for a tenant to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of Owners under this Declaration, nor shall a tenant exercise an Owner's right to attend Association meetings or to exercise an Owner's right to vote (except by valid proxy) or exercise an Owner's right to be elected to the Board. The rights acquired by any such tenant or Security Interest Holder shall be extinguished automatically upon termination of the tenancy or Security Interest.

**Section 2.2.** One Class of Membership. The Association shall have one (1) class of membership. Each Lot shall have one (1) membership and there is only one (1) Member per Lot, even if the Lot is owned by multiple Owners.

**Section 2.3.** Voting Rights. Each Member shall be entitled to one (1) vote for each Lot owned except that no votes allocated to a Lot owned by the Association may be cast. The total number of votes which may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Lifestyle Community, less the number of Lots owned by the Association.

**Section 2.4.** The Act; Recorded Title Exceptions. The Act is incorporated herein by this reference except where specific provisions of this Declaration conflict with the Act and such conflict is permissible under the Act; in such event this Declaration shall prevail over the Act. In all other cases the Act shall prevail over this Declaration. The easements and recorded title exceptions are listed in Exhibit E attached hereto and incorporated herein by this reference. The Plat sets forth the boundary of the Lots, and each Lot's identifying number.

**Section 2.5.** Master Declaration. The Lifestyle Community is subject to the Master Declaration and any Rules and Regulations adopted by the board of directors of Metropolitan District (collectively, the "Metropolitan District Governing Documents"). The Metropolitan District is hereby expressly authorized, permitted and empowered to exercise all of the powers set forth in the Metropolitan District Governing Documents.

### **ARTICLE 3. ASSOCIATION**

**Section 3.1.** Association. The Association has been formed as a Colorado non-profit corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration, in its Articles of Incorporation and Bylaws and as provided in the Act or otherwise by Colorado law.

**Section 3.2.** Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

**Section 3.3.** Authority of the Board of Directors. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee without a vote of the Members, except as otherwise specifically provided in this Declaration, the Articles of Incorporation or Bylaws of the Association.

**Section 3.4.** Election of Part of the Board During the Declarant Control Period. No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May Be Included to Owners other than a Declarant, at least one (1) director and not less than twenty-five percent (25%) of the directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board. Not later than

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

**Section 3.5.**            Authority of Declarant During the Declarant Control Period.

Except as otherwise provided in Section 3.4, during the Declarant Control Period, the Declarant or Persons appointed by the Declarant may appoint all officers and directors of the Association, and may remove all officers and directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and directors of the Association before termination of the Declarant Control Period; but, in that event, the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed only by the Declarant, be approved by the Declarant before they become effective.

**Section 3.6.**            Termination of the Declarant Control Period. After termination of the Declarant Control Period, the Members shall elect a Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers.

**Section 3.7.**            General Duties and Powers of Association. The Association has been formed to further the common interests of the Members. The Association, acting through the Board or Persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain and repair the Common Elements (except as otherwise provided in this Declaration); and to improve and enhance the attractiveness and desirability of the Lifestyle Community.

**Section 3.8.**            Budget and Review or Audit.

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

3.8.2.            At the discretion of the Board of Directors or as required pursuant to subsections 3.8.2.1 or 3.8.2.2 below, the Association's books and records shall be subject to an audit, using generally accepted auditing standards, or a review, using

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

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

- (i) The Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000); and
- (ii) An audit is requested by the Owners of at least one-third (1/3) of the Lots represented by the Association.

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

3.8.2.3. Copies of an audit or review under this subsection 3.8.2 shall be made available upon request to any Owner beginning no later than thirty (30) days after its completion.

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

### **Section 3.9. Association Books and Records.**

3.9.1. The Association's books and records shall be subject to an audit or a review as further provided in this Declaration. Except as otherwise provided in subsection 3.9.2 below, the Association shall make reasonably available for inspection and copying by Owners, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of all of the Governing Documents, financial documents and all other documents described in Section 38-33.3-317 of the Act. The Person(s) accessing and/or copying such documents shall pay all costs associated therewith. "Reasonably available" shall mean available during normal business hours, upon prior notice of at least ten (10) business days, or at the next regularly scheduled meeting if such meeting occurs within thirty (30) days after the request.

3.9.2. Notwithstanding subsection 3.9.1, a membership list or any part thereof may not be obtained or used by any Person for any purpose unrelated to an Owner's interest as an Owner without the consent of the Board of Directors. Without limiting the generality of the foregoing, without the consent of the Board of Directors, a membership list or any part thereof may not be:

3.9.2.1. Used to solicit money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association;

3.9.2.2. Used for any commercial purpose; or

3.9.2.3. Sold to or purchased by any Person.

3.9.3. The information described in this Section 3.9 shall be provided to the Owners by the Association either by (a) posting such information on an internet website with notice of the URL for such website delivered to the Owners by electronic mail or first-class mail; (b) placing such information on a literature table or in a binder in the Association's main office; (c) mail or personal delivery; or (d) such other method as may be permitted under the Act. In the event the Act is amended to remove, modify, or otherwise revise the requirements under this Section 3.9 of this Declaration, Section 3.9 shall be deemed amended to require only that which is required pursuant to the Act, as amended.

3.9.4. In the event the Act is amended to remove, modify, or otherwise revise the requirements under Section 3.9 of this Declaration, Section 3.9 shall be deemed amended to require only that which is required pursuant to the Act, as amended.

**Section 3.10.** Rules and Regulations and Policies and Procedures. Rules and Regulations and Policies and Procedures. Rules and regulations and policies and procedures concerning and governing the Lots, Common Elements, and/or this Lifestyle Community may be adopted, amended and/or repealed from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including the levying and collecting of fines for the violation of any of such rules and regulations or policies and procedures; provided that until automatic termination of the Special Declarant Rights as provided in Section 1.40 hereof, each adoption, amendment and repeal of the rules and regulations or policies and procedures requires the prior, written approval of the Declarant. The rules and regulations and policies and procedures may include procedural requirements, interpretations and applications of this Declaration and law, including blanket requirements, blanket interpretations, and blanket applications. Any rules and regulations or policies and procedures that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration.

**Section 3.11.** Cooperation with, and/or Delegation to, Other Community Association(s). The Association shall have the right and authority to cooperate with, and/or delegate to, any other community association(s), any metropolitan or other district(s), and/or any other Person, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors.

**Section 3.12.** Management Agreements and Other Contracts. Any agreement for professional management of the Association's business or other contracts providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereof, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice; provided,



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

**Section 3.13.**            Merger. The Declarant hereby reserves the right to merge the Association with one or more other common interest communities without the approval of any Owner or any other Person. This right shall terminate automatically as provided in Section 1.40 of this Declaration.

**Section 3.14.**            Notice of Meetings and Other Matters of the Association. Any notices of meetings, newsletters and other correspondence or documents concerning the Association shall be delivered to the Declarant at the same time that such information is sent to the Owners.

**Section 3.15.**            Association Enforcement of Metropolitan District Guidelines. The Association shall have the right and authority to enforce the Guidelines adopted by the Metropolitan District pursuant to Section 2.4 of the Master Declaration.

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

**Section 4.1.**            Personal Obligation for Assessments. Each Owner of a Lot, including the 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: annual Assessments or charges, special Assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such Assessments and other amounts to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all Assessments, fees, charges and other amounts attributable to their Lot. Each amount, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of any Person who was an Owner of such Lot at the time when the amount became due. The personal obligation for delinquent amounts (including Assessments) shall not pass to such Owner's successors in title unless expressly assumed by them.

**Section 4.2.**            Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health and welfare of the residents of the Lots, and for all of those purposes and activities which may be required of the Association, or the Board of Directors, or which the Association or the Board of Directors may be empowered to pursue, as provided in any of the Governing Documents or law.

**Section 4.3.**            Initial Annual Assessment. Until the effective date of an Association budget proposed by the Board of Directors and not vetoed by the Owners, as provided herein, the amount of the annual Assessment against each Lot shall not exceed \$100.00

per Lot per month, exclusive of any other community association, any district and/or any other Person. However, the rate of the Assessments against the Initially Unoccupied Lots shall be less than that against the other Lots, as provided in Section 4.4.

**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.

4.4.2.                    Notwithstanding the foregoing, however, the amount of the annual and special Assessments against the Initially Unoccupied Lots shall be set at a lower rate than the rate of annual Assessments and special Assessments against other Lots, because the Initially Unoccupied Lots receive and benefit from fewer services funded by such Assessments than the other Lots. Colorado Revised Statutes §38-33.3-315(3)(b) states that "Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited." Based on this provision, the Initially Unoccupied Lots shall pay annual and special Assessments at the rate of twenty-five percent (25%) of any annual Assessment or special Assessment charged to Lots other than the Initially Unoccupied Lots. Such reduction is in recognition that Initially Unoccupied Lots shall not require the use or enjoyment of the Common Elements and that Initially Unoccupied Lots do not require most of the services of the Association. The common expenses for services, including trash removal; park and open space irrigation, lighting, mowing and other landscaping maintenance of Common Elements; sidewalk snow removal; drainage maintenance; insurance of Common Elements; exterior maintenance of Improvements; and other services provided by the Association related to Common Elements and Lots will not benefit an Initially Unoccupied Lot prior to the Occupancy Date of such Lot.

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

**Section 4.5.**                    Date of Commencement of Annual Assessments. The annual Assessments shall commence at such time as the Board of Directors may determine in its discretion. After any annual Assessment has been made by the Association, annual Assessments shall not be greater than the amount set forth in Section 4.3 hereof until a budget is proposed by the Board of Directors and not vetoed by the Owners, as provided in this Declaration. The annual Assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines in its discretion from time to time, provided that the first annual Assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

**Section 4.6.**                    Special Assessments. In addition to the annual Assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval

of sixty-seven percent (67%) of a quorum of Association votes as provided in Section 4.7 below, at a meeting duly called for this purpose, a special Assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, repair or replacement of a capital improvement upon any portion of real property for which the Association has repair and/or replacement obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements, or for the funding of any expense or deficit of the Association. Any such special Assessment shall be set against each Lot in accordance with the Allocated Interests set forth in this Declaration, except that the special Assessments against Initially Unoccupied Lots shall be set in accordance with Section 4.4.1 hereof. A meeting of the Members called for the purpose of approving a special Assessment shall be held in conformance with Section 4.7 below.

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

**Section 4.8.**            Association Funding By Declarant. The Declarant may, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall constitute loans from the Declarant to the Association, with such loan(s) to be repaid by the Association to the Declarant, without interest, at such time(s) as may be determined by the Declarant; provided, however, that at all times all amounts advanced by the Declarant to the Association which have not been repaid to the Declarant prior to such time shall constitute advances against amounts due from the Declarant (including Assessments). If the Declarant elects to loan any amounts as provided in this subsection, Declarant shall not, under any circumstances, be obligated to continue loans, payment or funding of any amount(s) in the future.

**Section 4.9.**            Assessments/Charges for Services to Less than All Lots. The Association may provide services to less than all of the Lots. If such services are not funded by the annual Assessments or special Assessments, then the Owner(s) of the applicable Lot(s) shall pay to the Association the anticipated costs, fees and expenses for such services and/or reimburse the Association for the same. By way of example, and not in limitation of the foregoing, a residence and/or Lot requiring greater or special maintenance needs and expenses may be assessed accordingly by the Association.

**Section 4.10.**           Lien for Assessments.

4.10.1.            The Association has a lien on each Lot for any amount levied against that Lot or the Owner(s) thereof, including for fines imposed against the Lot's Owner(s). Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as Assessments under this Article. The amount of the

lien shall include all those items set forth in this Section from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

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

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

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

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

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

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

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

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

**Section 4.12. Certificate of Status of Assessments.** The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered to the Association's registered agent or management company, a written statement setting forth the amount of unpaid Assessments, if any, currently levied against such Owner's Lot. The statement shall be furnished after written request within such times as

required by law, and is binding on the Association, the Board of Directors, and every Owner. The Association or its agents shall have the right to charge a reasonable fee for the issuance of such certificates.

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

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

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

**Section 4.14. Surplus Funds.** Any surplus funds of the Association remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves, shall be retained by the Association and shall be paid to the Owners or credited to them (excluding any Owner that is delinquent in the payment of Assessments) in proportion to the Owner's Allocated Interests or credited to the Owners to reduce further Assessments.

**Section 4.15. Working Capital Fund.** The Association shall require the first Owner (other than the Declarant) of any Lot who purchases that Lot from the 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). 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 for the use and benefit of the Association, including to meet expenditures or to purchase equipment, property or services. Such contribution to the working

capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due.

**Section 4.16.**            Other Charges. The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such amounts(s) as the Board of Directors may determine, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; returned checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; reasonable attorneys' fees, notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the Assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments.

**Section 4.17.**            Charges for Misconduct. If any Association expense is caused by the misconduct of any Owner, Related Parties of the Owner or invitees, the Association may assess that Association expense against such Owner and his Lot.

## **ARTICLE 5.        DESIGN REVIEW COMMITTEE**

**Section 5.1.**            Composition of Committee. The DRC shall consist of one (1) or more Persons and such Persons may be member(s) of the Board of Directors. Until automatic termination of the Special Declarant Rights as provided in Section 1.40 of this Declaration, the Declarant has the right to appoint the DRC; subsequent to such date, the DRC shall be appointed by the Board of Directors. The power to "appoint" the DRC, as provided herein, shall include without limitation the power to: constitute the initial members of the DRC; appoint member(s) to the DRC on the occurrence of any vacancy therein, for whatever reason; and remove any member of the DRC, 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 Declarant. The appointments of all then-current members of the Committee who were appointed by the Declarant shall automatically terminate at such time as the Declarant's power to appoint members of the Committee expires as provided in Section 1.40. One or more or all members of the DRC may be, but are not required to be, members of the Board. However, the members of the DRC shall not be "officers" of the Association solely as a result of their membership on the Committee and thus, solely as a result of such membership on the Committee, shall not have any of the rights or duties attributable to officers of the Association.

**Section 5.2.**            Appointment of Representative. 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 5.3. Review and Approval by Committee; Reimbursement for Expenses; Requirement for Approval by Others.**

5.3.1. Except as provided in Section 5.9 and Section 5.13 of this Declaration, no landscaping Improvements shall be constructed, erected, placed, planted, applied or installed upon the Association Landscape Area or Owner Landscape Area (as defined below) unless complete plans and specifications therefor (said plans and specifications to show design, height, materials, color, and location of the landscaping Improvements, location, size, and type with grading plan, as well as such other materials and information as may be required by the DRC), shall have been first submitted to and approved by the DRC and the ACC.

5.3.2. The DRC shall exercise its reasonable judgment to the end that all landscaping Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures.

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

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

**Section 5.4. Procedures.** The DRC shall decide each request for approval within forty-five (45) days after the complete submission of all plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the DRC fails to decide any request within forty-five (45) days after the complete submission of all plans, specifications, materials and other information with respect thereto, then such request shall be deemed to have been denied by the Committee.

**Section 5.5. Vote and Appeal.** A majority vote of the DRC 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 DRC decides a request for approval which is adverse to the applicant, then the applicant shall have the right to an appeal of such decision to the full Committee, upon a written request therefor submitted to the Committee within ten (10)

days after such decision by the Committee's representative. The decision of the Committee shall be final. No additional or further appeals are permitted, nor will any be recognized.

**Section 5.6.**            Prosecution of Work After Approval. After approval of any proposed Improvement by the DRC, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the terms and conditions of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application or such other time as may be agreed to in writing by the DRC, or to complete the Improvement in complete conformance with the terms and conditions of the approval, shall constitute noncompliance and a violation of this Article.

**Section 5.7.**            Inspection of Work. The DRC or its duly authorized representative shall have the right to inspect any Improvement prior to, during or after completion of the same, in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with this Article and any approval granted by the DRC. However, no compliance or approval shall be inferred from any inspection of the Improvement.

**Section 5.8.**            Standards. The DRC, with the advice of the Board of Directors, has the authority, at any time from time to time, to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce architectural or design standards, guidelines, rules and regulations to interpret and implement the provisions of this Declaration. Without limiting the generality of the foregoing, such provisions may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the DRC, may state procedural requirements, may specify acceptable Improvement(s), and may contain architectural standards and design guidelines that are different for different types of dwelling units. In addition, such provisions may provide for blanket approvals, interpretations or restrictions on Improvements. All Improvements proposed to be constructed, and any guidelines that are adopted, shall be done and used in accordance with this Declaration.

**Section 5.9.**            Variance. The DRC may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or ARTICLE 10 of this Declaration, in order to overcome practical difficulties or prevent unnecessary hardships. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the Lifestyle Community, and shall not militate against the general intent and purpose hereof.

**Section 5.10.**          Waivers; No Precedent. The approval or consent of the DRC 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 DRC as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter. The granting or denial of a variance or adjustment by the DRC, 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 DRC as to any other request for variance or adjustment.



**Section 5.11.** Records. The DRC shall, for such period(s) as the Board may determine in its discretion from time to time, maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall, subject to the provisions of Section 3.9 of this Declaration, be available to Members for inspection at reasonable hours of the business day.

**Section 5.12.** Liability. Neither the DRC nor any members or representatives thereof, shall be liable in equity or damages to any Person submitting requests for approval or to any Owner or other Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter under this ARTICLE 5. In reviewing any matter or inspecting any work, neither the DRC, nor any members or representatives thereof, shall be responsible for the safety, whether structural or otherwise, of any Improvement(s), nor the conformance with applicable building codes or other governmental laws or regulations, nor any other matters, and any approval of an Improvement by the DRC or any representative thereof shall not be deemed an approval of any of the same. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval or disapproval granted by the DRC or any representative thereof.

**Section 5.13.** Exemption for Declarant and Builders. Notwithstanding anything to the contrary contained in this Declaration, until termination of the Special Declarant Rights as provided in Section 1.40 hereof, the Declarant and the Builders shall be exempt from the provisions of this Article as well as any and all other matters that require DRC review and/or approval, except for the requirement to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 5.3.4 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 Board of Directors may elect, including fidelity coverage, workers compensation insurance, and personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors or officers on behalf of the Association, as well as insurance on such other property and/or against such other risks as the Board of Directors may elect in its discretion.

**Section 6.2.** Insurance on Structures on Lots. In addition to insurance in connection with the Common Elements as provided in the preceding subsection, the Board of Directors or its agent may obtain and maintain a policy of property insurance covering the structure(s) constructed on a 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, as determined by the Board, coverage on basic interior surface finishes (basic floor coverings such as carpeting, dry wall and basic applications of paint to walls) and any fixtures and equipment (such as toilets, sinks, faucets, bathtubs, cabinets, utility meters, meter boxes and air conditioning

compressors) (the "Insurance"). The Insurance 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 may be determined by the Board of Directors. The Insurance shall also 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 at least thirty (30) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest on the Lot insured by such insurance policy. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any Owner or member of such Owner's household. Further, all policies of insurance carried by the Association shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

**Section 6.4. Deductibles.** The Association may adopt and establish written non-discriminatory rules and regulations or policies and procedures relating to the responsibility for deductibles. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association may, at the election of the Board of Directors in its discretion: be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed; be apportioned among the Persons sharing in a joint duty of repair and maintenance; and/or be partly or wholly borne by the Association and/or any such Person(s). Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the Act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question and the Association may collect such amounts from said Owners in the same manner as any Assessment.

**Section 6.5. Payment of Insurance Proceeds.** Any loss covered by an insurance policy described in Section 6.1 or Section 6.2 of this Declaration must be adjusted with the

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

**Section 6.6.**            Insurance to be Maintained by Owners. An insurance policy issued to the Association does not eliminate the need for Owners to obtain insurance for their own benefit. Each Owner of a Lot shall obtain and maintain in place an HO3 or HO5 (Single Family Owner's) insurance policy, or its equivalent, providing coverage for, at a minimum, unit coverage for all interior Improvements within a residence including, without limitation, window treatments, floor coverings, appliances, light fixtures, stairs, interior doors, bathroom fixtures, cabinets, countertops, paint, wall paper, paneling and any other wall coverings, any Improvements added by the Owner, and Improvements located on the Lot added by Owner, and personal property coverage, liability coverage and loss assessment. 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.

**Section 6.7.**            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 6.8.**            Acceptable Insurance Companies. Each insurance policy purchased by the Association or an Owner must be written by an insurance carrier which is authorized by law to do business in the State of Colorado. No insurance policy shall be obtained where: (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee; or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

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

**Section 7.1.**            Damage or Destruction.

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

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 Lifestyle 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 Lifestyle Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to the Owners and/or lienholders, as their interests may appear, in proportion to the Allocated Interests of the Lots.

**Section 7.2.** Lots. Except as otherwise permitted by the Act, any damage to or destruction of any structure located on a Lot shall be promptly repaired and reconstructed by the Owner(s) thereof in accordance with this Declaration. "Repaired and reconstructed," as used in this Section, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. If the Owner of a Lot does not commence repair or reconstruction activities, as provided above, and diligently pursue the same in conformance with the approval of the ACC and, if required, the DRC, then the Association may, in its reasonable discretion, after providing the notice required in Section 8.3 of this Declaration, unless the same is an emergency, enter upon the Lot and complete such repair or reconstruction. Except as otherwise provided in this Declaration, the cost of such repair or replacement shall be the personal obligation of the Owner of the Lot on which such work was performed, and shall be subject to the terms and provisions of ARTICLE 4 of this Declaration.

## **ARTICLE 8. MAINTENANCE**

### **Section 8.1. General.**

8.1.1. Maintenance, repair or replacement of the Common Elements and all Improvements located thereon, including landscaping, and of any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Lifestyle Community or any part thereof, shall be the responsibility of the Association, unless such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair or replacement or unless such maintenance, repair or replacement has been authorized to be performed by a special district or other municipal or quasi-municipal entity. Further, the Association may provide such other maintenance, repair and replacement as the Board of Directors determines, including publicly-dedicated property and Improvements located thereon. The amounts to be expended for such maintenance, repair and/or replacement shall, subject to Section 8.5 of this Declaration (Acts or Omissions), be collected and enforced by the Association as Assessments as provided in ARTICLE 4 of this Declaration (Assessments).

8.1.2. The Association shall provide (or arrange for the provision of) the following services with respect to the landscaped areas of the Lots to the extent such landscaped areas that lie between the boundary of of the Lot and the concrete edging installed on the Lot (the "Association Landscape Area"): periodic mowing, weeding, trimming, fertilization, aeration, and repair and replacement, as necessary of the sprinkler system (including sprinkler system components), and sprinkler system start-up and shut-down/winterization.

8.1.3. The Association shall obtain and provide snow removal from sidewalks up to the front door of the residence constructed on any Lot, garage aprons and driveways. Such snow removal to be of a level and frequency adequate to provide reasonable access to the garages facing such aprons or driveways, as determined by the Board of Directors. Except as specifically required in this 8.1.1, the extent, degree and timing of Association provided snow removal may be determined by the Board of Directors. In no event shall the Association be responsible for snow removal from areas on Lots that are enclosed by a fence, or have any responsibility or liability, to any Person or property as a result of damage caused by ice or the build-up of ice.

8.1.4. Except as provided in subsections 8.1.1 through 8.1.3 above, and subject to the provisions of Section 8.5, 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, including without limitation maintenance of landscaped areas that lie between the concrete edging installed on the Lot and the residence constructed on the Lot (the "Owner Landscape Area") (including periodic mowing, weeding, trimming, fertilization, aeration, and repair and replacement, as necessary of the sprinkler system and sprinkler system components, and sprinkler system start-up and shut-down/winterization; provided, however, that the Metropolitan District shall maintain the rear fence of any Lot.

**Section 8.2. Changed or Added Improvements.** Any Improvement which has been changed, altered or modified by or for an Owner or occupant of a Lot shall be maintained, repaired and replaced by such Owner to the extent of the change, alteration or modification. If the Improvement is newly constructed, erected, placed, planted, applied or installed by an Owner or occupant of a Lot after conveyance of such Lot by Declarant, then the entirety of such Improvement shall be maintained, repaired and replaced by, the Owner of such Lot. However, the Board may at any time, by resolution, elect to have the Association provide such maintenance, repair or replacement; provided that any such resolution shall be subject to being repealed, revoked, modified, changed or altered, at any time, from time to time, by the Board.

**Section 8.3. Association's Right to Maintain, Repair and Reconstruct.** In the event any Owner shall fail to perform his maintenance, repair and/or reconstruction obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a twenty (20) day period after written notice to said Owner by the Board, enter upon said Lot subsequent to the expiration of said twenty (20) day time period to perform any or all of such maintenance, repair or reconstruction. Notwithstanding the foregoing, no notice shall be required in emergency situations. The cost of such maintenance, repair or reconstruction shall be the personal obligation of the Owner of the Lot on which such work is performed, and shall be

subject to all of the terms and provisions applicable to "Assessments" as provided in ARTICLE 4 of this Declaration, including interest, late charges and lien rights.

**Section 8.4.** Non-Interference with Grade and Drainage. Each Owner and the Association agree, for themselves and their heirs, personal representatives, successors and assigns, that they will not in any way interfere with or obstruct the established drainage pattern over any real property. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading by the Declarant is completed.

**Section 8.5.** Acts or Omissions. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair, replacement and/or reconstruction of the Common Elements or any Lot(s), or any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of any Related Party of such Owner or invitee of such Owner, the cost of such repair, maintenance, replacement and/or reconstruction, or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair, replacement and/or reconstruction shall be added to the Assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of ARTICLE 4 of this Declaration. A determination of the act or omission of any Owner, or any member of an Owner's family or a tenant, guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Board of Directors at a hearing after notice to the Owner.

## **ARTICLE 9. EASEMENTS**

**Section 9.1.** Reserved Easements. In addition to the recorded easements and licenses as depicted on Exhibit E attached hereto, and any other easements, including those which may be granted or reserved elsewhere in this Declaration or by law, the following Sections describe easements to which the Lifestyle Community is or may be subject.

**Section 9.2.** Access Easement. Each Owner hereby grants: to the Association, and to its agents, employees and contractors, a right and easement on, over, under, across and through such Owner's Lot for maintenance, repair and replacement as provided in this Declaration; to utility companies, their contractors, agents and employees, for access to, inspection, maintenance, repair and replacement of utility meters, lines and appurtenances; and to the Association for and incidental to enforcement of any term or provision of any of the Governing Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot, the Person responsible for the damage, or expense to avoid damage, is liable for the cost of prompt repair. The rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owners or occupants of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance, repair and/or replacement; and except that in emergency situations, entry upon a Lot may be made at any time provided that the Owner or occupants of each affected Lot shall be notified of emergency entry as early as is reasonably possible. The interior of any dwelling unit shall not be subject to the easement that is granted in this Section.

**Section 9.3. Utilities Easement.** Declarant hereby reserves a blanket easement upon, across, over and under the Common Elements for utilities and the installation, use, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect, use, and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, use, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, or modification of an easement, Declarant reserves and is hereby given the right and authority to grant or modify such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.40 of this Declaration, at which time said reserved right shall vest in the Association. The blanket easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s).

**Section 9.4. Easement for Encroachments.** To the extent that any Improvement on a Lot or on the Common Elements encroaches on any other Lot or Common Elements, a valid easement for the encroachment exists.

**Section 9.5. Drainage Easement.** Declarant hereby reserves, to itself and to the Association, easements for drainage and drainage facilities across the five (5) rear and five (5) side feet of each Lot; provided, however, that if a dwelling unit is located upon any of the areas described in this sentence, then such easement shall be reduced in width to the width of the distance from the nearest lot line to the exterior wall of the dwelling unit on such Lot that is nearest to such lot line. Except for residences as provided in the preceding sentence, no Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon each such rear and side yard drainage easements to construct, repair, replace or change drainage pipes, structures or drainage ways, or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.40 of this Declaration, at which time said reserved right shall vest in the Association

**Section 9.6. Easement for Unannexed Property.** The Declarant hereby reserves, for the use and benefit of the Additional Property and Builder Property, a non-exclusive, perpetual easement and right-of-way on, over, across and under the Common Elements for access, ingress and egress, and for utilities, and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement and use of any utilities Improvements that may now or hereafter serve the Additional Property and Builder Property or any portion thereof when annexed in accordance with Section 13.4 (herein collectively the "Additional Property Easement"). By virtue of the Additional Property Easement, the Declarant generally intends to

provide for access and for utilities services to those portion(s) of the Additional Property and Builder Property when included in the Lifestyle Community.

## **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 Lifestyle Community.

**Section 10.2. Restrictions Imposed.** The Lifestyle Community is subject to the easements, licenses and other matters of record in the Records as of the date of recording of this Declaration. In addition, the Declarant declares that all of the Lifestyle Community shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. Further, no improper, offensive or unlawful use shall be permitted in the Lifestyle Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Lifestyle Community, or any portion thereof, shall be observed.

**Section 10.3. Residential Use; Certain Permitted Business Activities.** Subject to Section 13.7 of this Declaration, Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied, as determined by the Board:

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

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

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

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

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

**Section 10.4. Household Pets.** No animals, horses, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in the Lifestyle Community; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Lifestyle Community. The Association shall have, and is hereby



given, the right and authority to, from time to time, do the following as well as take such other action(s) with regard to these matters as the Board of Directors may determine: set a maximum number of household pets; set a size or poundage limit to pets; regulate the type(s) of pets that are permitted to be kept; determine that any dog(s), cat(s) or other household pet(s) are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to pets; or determine that an Owner is otherwise in violation of any provision of this Section. If the Board determines that any of the foregoing have been or are being violated, the Board may take such action(s) as it may deem appropriate to correct the same. An Owner's right to keep household pets is coupled with the responsibility to pay for any damage caused by such pets, as well as all costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in ARTICLE 4 of this Declaration (Assessments).

**Section 10.5.**            Signage, Flags. No advertising or signs of any character shall be erected, placed, permitted, or maintained other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House," "For Rent" or security sign(s) of not more than a total of five (5) square feet posted only for the purpose of selling, renting or evidencing the existence of a security system on such Lot, and such other signs, for such length(s) of time, which have the prior written approval of the Committee or are otherwise expressly permitted by law; provided, however, that any and all such advertising or signs shall be subject to any and all specifications and/or rules and regulations adopted by the Committee or the Board of Directors, from time to time. Notwithstanding the foregoing, any signs, advertising, or billboards may be used by the Declarant without regard to any specifications or any rules and regulations of the Committee, and without the prior written approval of the Committee. The Owner or occupants of a Lot may display political signs (as defined in the Act) during the period that begins forty-five (45) days prior to an election and ends seven (7) days after an election, provided that such signs are no larger than the smaller of (a) the size of political signs allowed by local ordinance or (b) 36 inches by 48 inches. Notwithstanding anything to the contrary herein, the Owner or occupants of a Lot may display the American flag, service flags, and political signs in conformance with C.R.S. §38-33.3-106.5 and subject to the Rules and Regulations adopted by the Committee or the Board from time to time.

**Section 10.6.**            Antenna. Except as may otherwise be permitted in writing by the ACC and, if required, the DRC, 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 development, sales or construction; and provided further, however, that the requirements of this subsection shall be subject to the Telecommunications Act of 1996 and applicable regulations, as amended from time to time. Notwithstanding any provision in the Governing Documents to the contrary, the Association may not effectively prohibit renewable energy generation devices or the installation or use of any energy efficient measures, provided that the Association may adopt reasonable aesthetic rules and regulations concerning dimensions, placement or external appearance of such devices or measures.

**Section 10.7.**            Fences. No fences shall be permitted without the prior, written approval of the ACC and, if required, the DRC, except such fences as may be constructed, installed or located by the Declarant in the development of, or construction of Improvements in, the Lifestyle Community.

**Section 10.8.**            Vehicular Parking, Storage and Repairs, Use of Garages. Except as expressly permitted under the Act regarding the parking of emergency vehicles, no house trailer, camping trailer, boat trailer, hauling trailer, jet ski, boat, or accessories thereto, truck (excluding, except as hereinafter provided, pickup trucks that are rated at 1 ton or less), self-contained motorized recreational vehicle, or other type of recreational or commercial vehicle or equipment, may be parked or stored on a Lot unless such parking or storage is entirely within the garage area of any Lot or will be suitably screened from view in accordance with the requirements, and prior written approval of, the ACC (subject to subject to any provisions of any guidelines or standards adopted by the ACC) and, if required, the DRC. A “commercial vehicle” means a vehicle that: is used to transport cargo or passengers for profit or hire, or otherwise to further the purposes of a business or commercial enterprise; and may (but is not required to) contain signage, advertising, or written information on the vehicle or extending from the vehicle. However, any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles that are necessary for construction or maintenance of any portion of the Lifestyle Community or any Improvements located thereon. A “recreational vehicle” includes motor homes, pick-up trucks with camper shells, trailers, self-contained recreational vehicles, motorcycles, motorbikes, snowmobiles, jet skis, all-terrain vehicles, and other apparatus intended for use on land, water, or in the air, and the trailers used for their transportation.

**Section 10.9.**            Abandoned Vehicles. Except as expressly permitted under the Act regarding the parking of emergency vehicles, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Lifestyle Community. An “abandoned or inoperable vehicle” shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of seventy-two (72) hours or longer, or which does not have an operable propulsion system installed therein, or which is not then currently registered and licensed; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

10.9.1.            In the event the Association shall determine that a vehicle is parked or stored in violation of Section 10.8 hereof, then a written notice describing said vehicle may be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or may be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Board, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

10.9.2.            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 Lifestyle Community unless it is done within a completely enclosed structure which screens the sight and sound of the activity from the

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

**Section 10.10.**            Nuisances. No nuisance shall be permitted in the Lifestyle Community, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of the Lifestyle Community or any portion thereof. As used herein, the term "nuisance" shall include each violation of the Governing Documents, but shall not include any activities of Declarant. No noxious or offensive activity shall be carried on nor shall anything be done or placed which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

**Section 10.11.**            No Hazardous Activities; No Hazardous Materials or Chemicals. No activities shall be conducted which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged and no open fires shall be lighted or permitted except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

**Section 10.12.**            No Annoying Lights, Sounds or Odors. No light shall be emitted which is unreasonably bright or causes unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be permitted which is noxious or offensive to others. Any exterior lighting installed or maintained on a Lot or Improvements(s) shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of adjacent or nearby property. Further, no annoying light, sound or odor shall be permitted which may be seen, heard or smelled.

**Section 10.13.**            Restrictions on Trash and Materials; Wood Piles. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any other portion of the Lifestyle Community. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. Trash removal is the responsibility of each Owner. However, the Association may, at the election of the Board, provide trash removal services for all or any portions of the Lifestyle Community. The scope of trash removal services that may be provided by the Association may be determined by the Board (e.g., the Board may elect to provide and use Assessments to pay for all regularly scheduled trash pickups, but require each Owner to be responsible for scheduling, and paying for, any extraordinary trash pick-ups and/or recycling services). No wood piles or storage areas shall be so located as to be visible from a street, from the ground level of any Lot or from the Common Elements.

**Section 10.14.**            Sightly Condition of Lots. Each Lot shall at all times be kept in a clean, sightly and wholesome condition by the Owner thereof. No trash, litter, junk, boxes, containers, bottles, cans, implements or machinery shall be permitted to remain upon any Lot except as necessary during the period of construction or as provided in Section 10.13 of this Declaration (Restrictions on Trash and Materials; Wood Piles).

**Section 10.15.**            Leases. The term “lease,” as used herein, shall include any agreement for the leasing or rental of a Lot, Improvements thereon, or any portion thereof, and shall specifically include month-to-month rentals and subleases. Any Owner shall have the right to lease his Lot, or any portion thereof, under the following conditions:

10.15.1.            All leases shall be in writing; and

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

**Section 10.16.**            Restrictions on Mining or Drilling. The surface of any Lot or Common Elements within the Lifestyle Community shall not 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.

**Section 10.17.**            Lot Restrictions. Owners of Lots shall not install any Improvements, plantings, wind chimes, bird baths, bird feeders, electric fences or other obstructions in the yard of, or adjacent tracts to, the Lots, without ACC and, if required, the DRC, approval. Owners of Lots shall not install any landscaping Improvements without DRC approval. The Association will not be responsible for any damage to any such obstructions or Improvements that are not within an Owner Landscape Area as a result of the Association’s maintenance and repair activities.

## **ARTICLE 11.    PROPERTY RIGHTS IN THE COMMON ELEMENTS**

**Section 11.1.**            Owners’ Easements of Enjoyment. Subject to this Declaration, every Owner shall have a non-exclusive right and easement for the purpose of access to such Owner’s Lot and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot.

**Section 11.2.**            Extent of Owners’ Easements. Subject to the other provisions of this Article, the rights and easements of enjoyment created hereby are subject to the following: the Common Elements may not be used in any manner which violates the statutes, rules, or regulations of any governmental authority with jurisdiction over the Common Elements; and no Person (other than the Declarant or the Association) may place any structure on the Common Elements. In addition, such rights and easements are subject to the following:

11.2.1.            the right of the Association to borrow money for any purpose and to mortgage the Common Elements as security for any such loan; provided, however, that

the Association may not subject any portion of the Common Elements to a Security Interest except in accordance with the Act; and

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

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

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

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

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

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

**Section 11.3. 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 such easement through the Common Elements.

**Section 11.4. 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 are not dedicated hereby for use by the general public.

**Section 11.5. Duty to Accept Property and Facilities Transferred by Declarant.** The Association shall accept title to any property and facilities, including Improvements, as well

as personal property, equipment, and easements, transferred to the Association by the Declarant, together with responsibility to perform all duties and functions with respect thereto, including maintenance, repair and replacement thereof.

## **ARTICLE 12. DISPUTE RESOLUTION**

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

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

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

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

**Section 12.2. Definitions Applicable to this Article.** For purposes of this Article only, the following terms have the meanings set forth in this Section:

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

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

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

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

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

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

**Section 12.3. Approval Required for Association Actions.** Except as otherwise required by law, the approval of sixty seven percent (67%) of the votes cast by Members voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present (with the "quorum" in such cases to be set as provided in Section 12.4 of this Declaration), must be obtained before the Association shall have the power to institute action on any Claim or incur legal fees or expert costs in excess of \$5,000.00 related to such Claim, pursuant to this Article, or to make any counterclaim or cross-claim in any lawsuit with respect to any Claim brought against the Association. Such approval must be obtained in accordance with the requirements of Section 12.4 of this Declaration. In addition to the foregoing, the Association shall seek to obtain the approval of sixty-seven percent (67%) of the holders of first lien Security Interests by written vote or proxy by written notice sent as provided in Section 12.9 or to the address specified in the applicable Security Interest.

**Section 12.4. Notice and Quorum for Association Actions.** Except as otherwise required by law, written notice of any meeting of Members which includes a vote pursuant to Section 12.3 of this Declaration shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. Such written notice, or if the vote is to be by written ballot then such written ballot, shall include the following information:

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

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

12.4.3. A 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

12.4.4. 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

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

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

12.4.7. And, the following disclosures in capital letters and bold typeface:

**(I) THE ALLEGED CONSTRUCTION DEFECTS MAY RESULT IN INCREASED COSTS TO THE ASSOCIATION IN MAINTENANCE OR REPAIR AND/OR CAUSE AN INCREASE IN ASSESSMENTS OR SPECIAL ASSESSMENTS TO COVER THE COST OF REPAIRS.**

**(II) UNTIL THE ALLEGED DEFECTS ARE REPAIRED, SELLERS OF UNITS WITHIN THE COMMON INTEREST COMMUNITY MAY OWE UNIT BUYERS A DUTY TO DISCLOSE KNOWN DEFECTS.**

**(III) THE EXECUTIVE BOARD INTENDS TO ENTER INTO A FEE ARRANGEMENT WITH THE ATTORNEYS REPRESENTING THE ASSOCIATION, UNDER WHICH (OF THE AMOUNT THE ASSOCIATION RECOVERS FROM THE DEFENDANT(S), THE ATTORNEYS WILL BE PAID A CONTINGENCY FEE EQUAL TO \_\_\_\_\_ PERCENT OF THE (NET) (GROSS) RECOVERY.) (THE ASSOCIATION'S ATTORNEYS WILL BE COMPENSATED AS FOLLOWS: \_\_\_\_\_).**

**(IV) IN ADDITION TO ATTORNEY FEES, THE ASSOCIATION MAY INCUR UP TO \$\_\_\_\_\_ FOR LEGAL EXPENSES, INCLUDING EXPERT WITNESSES, DEPOSITIONS, AND FILING FEES. THE AMOUNT WILL NOT BE EXCEEDED WITHOUT THE EXECUTIVE BOARD'S FURTHER WRITTEN AUTHORITY. IF THE ASSOCIATION DOES NOT PREVAIL ON ITS CLAIM, THE ASSOCIATION MAY BE RESPONSIBLE TO PAY THESE LEGAL EXPENSES.**

**(V) IF THE ASSOCIATION DOES NOT PREVAIL ON ITS CLAIM, THE ASSOCIATION MAY BE RESPONSIBLE TO PAY ITS ATTORNEYS' FEES.**

**(VI) IF THE ASSOCIATION DOES NOT PREVAIL ON ITS CLAIM, A COURT OR ARBITRATOR SOMETIMES AWARDS COSTS AND ATTORNEYS' FEES TO THE OPPOSING PARTY. SHOULD THAT HAPPEN IN THIS CASE, THE ASSOCIATION WILL BE RESPONSIBLE TO PAY SUCH AWARD.**



**(VII) THERE IS NO GUARANTEE THAT THE ASSOCIATION WILL RECOVER ENOUGH FUNDS TO REPAIR THE CLAIMED CONSTRUCTION DEFECT(S). IF THE CLAIMED DEFECTS ARE NOT REPAIRED, ADDITIONAL DAMAGE TO PROPERTY AND A REDUCTION IN THE USEFUL LIFE OF THE COMMON ELEMENTS MAY OCCUR.**

**(VIII) UNTIL THE CLAIMED CONSTRUCTION DEFECTS ARE REPAIRED, OR UNTIL THE CONSTRUCTION DEFECT CLAIM IS CONCLUDED, THE MARKET VALUE OF THE UNITS IN THE ASSOCIATION MAY BE ADVERSELY AFFECTED.**

**(IX) UNTIL THE CLAIMED CONSTRUCTION DEFECT(S) ARE REPAIRED, OR UNTIL THE CONSTRUCTION DEFECT(S) CLAIM IS CONCLUDED, OWNERS IN THE ASSOCIATION MAY HAVE DIFFICULTY REFINANCING AND PROSPECTIVE BUYERS MAY HAVE DIFFICULTY OBTAINING FINANCING.**

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

**Section 12.5. Required Form of Proxy or Ballot.** Each written proxy, and each ballot, which purports to vote on, or authorize a vote on, approval of the Association bringing a Claim shall contain the following statement:

With full knowledge and understanding 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.

**Section 12.6. Exclusions from "Claim".** Unless specifically exempted by this Article, all Claims between any of the Parties shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all Parties thereto otherwise agree in writing, "Claim" does not include any of the following, and the same shall not be subject to the provisions of this Article:

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

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

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

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

12.6.5. Any action to enforce an arbitration award under this Article.

**Section 12.7.** Right to Inspect. Except as otherwise required by law, prior to any Party commencing any proceeding against another Party, including but not limited to an alleged defect of any Improvement, the Respondent shall have the right to be heard by the Claimant and, if any Claimant is the Association, by the Members, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or to otherwise correct the alleged defect; provided, however, any correction to, or redesign of, an Improvement shall be made upon terms and conditions reasonably acceptable to all affected Parties. In the exercise of the inspection rights contained herein, the inspecting Party shall:

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

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

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

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

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

**Section 12.8.** Mandatory Procedures.

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

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

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

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

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

12.8.3. Mediation.

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

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

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

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

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

12.8.4. Binding Arbitration.

12.8.4.1. Subject to Section 12.8.3.2 above, upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant shall, as its sole remedy, initiate final, binding arbitration of the Claim under the auspices of the

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

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

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

**Section 12.9.** Liability for Failure of Association to Maintain an Action. No director or officer of the Association shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a Claim if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was not acting in bad faith; and (c) the Act or omission was not willful, wanton or grossly negligent.

**Section 12.10.** Inconsistencies Between Article 12 and C.R.S. § 38-33.3-303.5. In the event of any inconsistency between the requirements of this ARTICLE 12 and the requirements of C.R.S. § 38-33.3-303.5, as it may be amended from time to time, the required provision more restrictive requirement shall control, except to the extent the Act requires the applicable requirement of C.R.S. § 38-33.3-303.5 to control, in which case such requirement shall control.

## **ARTICLE 13. GENERAL PROVISIONS**

### **Section 13.1. Enforcement; Fines.**

13.1.1. This Section 13.1.1 is subject to ARTICLE 12 of this Declaration. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in the Governing Documents may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Except as otherwise provided in this Declaration, the Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings. Remedies for violation(s) of the Governing Documents shall be cumulative and no remedy shall be exclusive of other remedies that may be

available. In any action instituted or maintained under any of such documents, the prevailing party shall be entitled to recover its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the Governing Documents, shall in no event be deemed a waiver of the right to do so thereafter.

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

**Section 13.2.** Severability. All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, including without limitation any provision(s) of ARTICLE 12 of this Declaration by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

**Section 13.3.** Conflict of Provisions. In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control. In case of any conflict between the Bylaws and any Governing Documents (other than this Declaration or the Articles of Incorporation) the Bylaws shall control.

**Section 13.4.** Annexation; Withdrawal.

13.4.1. Additional Property may be annexed to this Declaration with the consent, at the time such annexation is to be effective, of Members casting sixty-seven percent (67%) of the Association votes and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed; provided, however, prior to the termination of the Special Declarant Rights, including without limitation the right to exercise any Development Rights, no annexation that is provided for in this subsection shall be effective without the prior written approval of the Declarant.

13.4.2. Notwithstanding the foregoing, until termination of the Special Declarant Rights as provided in Section 1.40 of this Declaration, the Declarant may annex to this Declaration the Additional Property and the Builder Property or any portion(s) thereof owned by Declarant, without consent of any other Owners, Security Interest Holders, or any other Person; however, such annexation is subject to a

determination by HUD or VA only if the Declarant 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; and further provided that Declarant shall be required to annex any portion of the Builder Property that is conveyed by Declarant to a third party homebuyer (the "Retail Buyer") if the Retail Buyer has contracted with a Builder to construct residential structures or other structures or Improvements on the Lot within the Builder Property to be conveyed by Declarant to the Retail Buyer. The Annexable Area and Builder Property or any Phase within the Annexable Area or Builder Property may be annexed on a Lot-by-Lot basis, and in any order, if at all.

13.4.3. Each such annexation shall be effected, if at all, by recording a Supplemental Declaration in the Records, which document:

13.4.3.1. shall provide for annexation to this Declaration of the portion of the Additional Property or Builder Property described in such Supplemental Declaration;

13.4.3.2. shall identify the owner(s) of the Lots included in such portion of the Additional Property or Builder Property;

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

13.4.3.4. shall describe any Common Elements within the Additional Property or Builder Property being annexed; and

13.4.3.5. may include such other provisions as the Declarant deems appropriate. Other provisions that may be included in a Supplemental Declaration 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 in a Supplemental Declaration may be amended with the consent of the Owners of sixty-seven percent (67%) of the Lots to which such other provisions apply.

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

13.4.5. Except as otherwise specifically stated in the Supplemental Declaration or annexing deed, all provisions of this Declaration, including as to Lots, those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon the

effective date of the annexing document (which shall constitute the date of recording thereof unless otherwise stated in such document).

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

13.4.7. The real property which is described on the attached Exhibit A (as hereafter amended) the real property that is described on the attached Exhibit B (as hereafter amended), shall each be subject to a right of withdrawal by the Declarant on a Lot-by-Lot basis. Such withdrawal may be accomplished, if at all, in accordance with the Act. However, the Declarant's right to withdraw each such portion of the Lifestyle Community shall expire and terminate, as to each portion of the Lifestyle Community, no later than termination of the Special Declarant Rights as provided in Section 1.40 hereof.

**Section 13.5.** Minor Violations of Setback Restrictions. If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation," for the purpose of this Section, is a violation of not more than four (4) feet beyond the required setback lines or Lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

**Section 13.6.** Subdivision or Replatting of Lots. The Declarant hereby reserves the right to subdivide or replat any Lot(s) owned by the Declarant in the Lifestyle Community. Without limiting the generality of the foregoing, the Declarant reserves the right to move any Lot lines(s) on Lot(s) owned by the Declarant, for the purpose of accommodating Improvements which are constructed or may be constructed. The rights provided for in this Section shall terminate automatically upon termination of the Special Declarant Rights, as provided in Section 1.40 hereof. No Lot may be further subdivided from that existing at the time such Lot becomes subject to this Declaration, except by, or with the consent of, Declarant.

**Section 13.7.** Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for 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 Declarant deems necessary or incidental to the construction and sale of Lots and development and construction of Improvements, including locating, maintaining and relocating management offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as Declarant determines. Any real estate used as a sales office, management office, or a model, shall be a Lot or Common Elements, as designated in this Declaration or any other recorded document(s). Further, nothing contained in this Declaration shall limit the rights of Declarant or require the Declarant to obtain approvals:

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

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

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

The rights provided for in this Section shall terminate automatically upon termination of the Special Declarant Rights, as provided in Section 1.40 hereof.

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

13.8.1. Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. Except as otherwise provided in this Declaration or required by law, this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests; provided, however, prior to the termination of the Special Declarant Rights, including the right to exercise any Development Rights, no amendment of this Declaration shall be effective without the prior written approval of the Declarant; and further provided that, to the fullest extent permitted by law, any amendment to ARTICLE 12 of this Declaration made at any time shall be effective only with the prior written approval of the Declarant. Each amendment of this Declaration enacted by the Members shall be applicable only to disputes, issues, events, circumstances, actions, Claims or causes of action that arose out of circumstances or events that occurred after the date of recording of such amendment in the Records; and no such amendment shall be applied retroactively to any earlier occurring disputes, issues, events, circumstances, actions, claims or causes of action.

13.8.2. Notwithstanding anything to the contrary contained in this Declaration, Bylaws of the Association and/or Articles of Incorporation of the Association may be amended in whole or in part, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, or the Agencies. Such right of amendment shall terminate as provided in Section 1.40 of this Declaration.

13.8.3. Notwithstanding anything to the contrary contained in this Declaration, Bylaws of the Association and/or Articles of Incorporation of the Association may be amended in whole or in part, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate as provided in Section 1.40 of this Declaration.

13.8.4. Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, recorded, and certified by



any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association; provided, however that in the case of an amendment requiring the Declarant's consent, the amendment must also be executed and acknowledged by the Declarant. 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 13.9.**            Registration of Mailing Address. Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by U.S. mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the Declarant Control Period shall be sent by registered or certified mail, postage prepaid, to Boulder Creek TPC LLC, 712 Main Street, Louisville, CO 80027, unless such address is changed by the Association during the Declarant Control Period; subsequent to termination of the Declarant Control Period, the Association shall notify the Owners of a different address for notices.

**Section 13.10.**            Limitation on Liability. The Association, the Board of Directors, the ACC, the DRC, the Declarant and its assigns, and the officers, directors, members, partners, agents and employees of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 13.14 shall apply to this Section.

**Section 13.11.**            No Representations, Guaranties or Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, the ACC, the DRC, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Lifestyle Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, freedom from hazardous or toxic materials, substances or gases, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. The release and waiver set forth in Section 13.14 shall apply to this Section.

**Section 13.12.**            Disclaimer Regarding Safety. THE DECLARANT AND ITS ASSIGNS, THE ASSOCIATION, THE THE DRC, THE BOARD OF DIRECTORS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE LIFESTYLE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE LIFESTYLE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE ACC, THE

DRC, THE BOARD OF DIRECTORS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS, RULES AND REGULATIONS OR POLICIES AND PROCEDURES OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE LIFESTYLE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN Section 13.14 SHALL APPLY TO THIS SECTION.

**Section 13.13.**        Development Within and Surrounding the Lifestyle Community.  
Each Owner acknowledges that development within and surrounding the Lifestyle Community may continue for an indefinite period, and that plans for the density, type and location of improvements, developments or land uses may change over time. Such development may entail changes to or alterations in the access to the Lifestyle Community, views of or from the Lifestyle Community or the Lots, surrounding land uses, open space or facilities, traffic volumes or patterns, privacy or other off-site aspects or amenities. Development also may entail noise, odors, unsightliness, dust and other inconveniences or disruptions. By accepting a deed to a Lot, each Owner accepts title to such Lot subject to the foregoing, and waives and releases any claim against the Declarant, the Association, the Board of Directors, the the DRC, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, arising out of or associated with any of the foregoing. The release and waiver set forth in Section 13.14 shall apply to this Section.

**Section 13.14.**        Waiver. By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant and its assigns, the Association, the Board of Directors, the ACC, the DRC, 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 Section 13.10, Section 13.11, Section 13.12 and Section 13.13.

**Section 13.15.**        HUD or VA Approval. During the Declarant Control Period, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more Security Interests, and HUD or VA require such approval: annexation of additional real property (if the Declarant desires to obtain HUD or VA approval of the property that is being annexed and if HUD or VA require such approval); amendment of this Declaration, except as provided in Section 13.4, 13.8.2 and 13.8.3 hereof; termination of this Lifestyle Community; dedication of Common Elements; or merger or consolidation of the Association, except as provided in Section 3.13 of this Declaration

**Section 13.16.**        Headings. The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

**Section 13.17.** Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

**Section 13.18.** Use of "Include," "Includes" and "Including". All uses in the Governing Documents of the words "include," "includes" and "including" shall be deemed to include the words "without limitation" immediately thereafter.

**Section 13.19.** Action. Any action that has been or may be taken by the Declarant, the Association, the ACC, the DRC, the Board, any Member, any director, any committee, or any other Person, may be taken "at any time, from time to time". Each provision that authorizes, directs or permits action shall be deemed to include such language.

**Section 13.20.** Sole Discretion. All actions which are taken by the Declarant, the Association, the ACC, the DRC, the Board, any Member, any director, any committee, or any other Person, shall be deemed to be taken "in the sole discretion" of each of such parties.

**Section 13.21.** Run with Land; Binding Upon Successors. The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon this Lifestyle 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.

**Section 13.22.** Third-Party Beneficiary. Declarant is hereby designated to be a third-party beneficiary under this Declaration, and from a period of eight (8) years after the later of: (i) termination of Special Declarant Rights as provided in Section 1.40; or (ii) the Occupancy Date of all Lots owned by Declarant, Declarant shall have the right, but not the obligation, to attend meetings of the Members and Board and to receive copies of minutes or notices of action from meetings of the Board, Members or any permanent or standing committee of the Board. In addition, during such period of time, Declarant shall have standing to enforce ARTICLE 12 of this Declaration and any violation of that adversely affects Declarant's rights specified in this Declaration.

31<sup>st</sup> IN WITNESS WHEREOF, the undersigned as Declarant has hereunto set its hand this  
day of October, 2018.

Waterfront Development, Inc.,  
a Colorado corporation

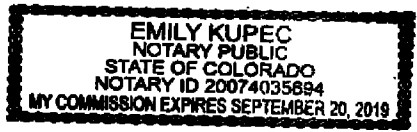
By: Jon A. Turner  
Name: Jon A. Turner  
Its: PRESIDENT

STATE OF COLORADO )  
COUNTY OF Larimer ) ss.

The foregoing instrument was acknowledged before me this day 31<sup>st</sup> of October  
2018, by Jon A. Turner, as President of Waterfront  
Development, Inc., a Colorado corporation.

Witness my hand and official seal.

(SEAL)



Notary Public Emily Kupec  
My Commission Expires: 9/20/2019

The foregoing Declaration is acknowledged and agreed to by the undersigned this 2  
day of Nov, 2018.

PJL, LLC,  
a Colorado limited liability company

By: [Signature]  
Name: PAUL LUDWICK  
Its: MEMBER

STATE OF COLORADO )  
COUNTY OF Larimer ) ss.

The foregoing instrument was acknowledged before me this day 2 of November  
2018, by Paul Ludwick, as member of PJL, LLC, a  
Colorado limited liability company.

Witness my hand and official seal.

(SEAL)

Notary Public [Signature]  
My Commission Expires: 9/20/2019





The foregoing Declaration is acknowledged and agreed to by the undersigned this 25  
day of October, 2018. The undersigned consents to annexation to this Declaration ~~by~~  
of the Lots within the Builder Property owned by the undersigned and listed on Exhibit A  
attached hereto.

Boulder Creek TPC LLC,  
a Colorado limited liability company

By: [Signature]  
Name: Steven A. Erickson  
Its: Authorized Signer

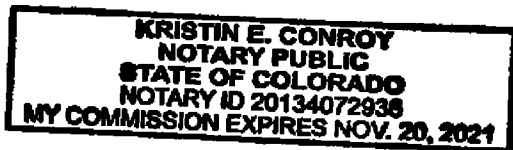
STATE OF COLORADO )  
COUNTY OF Boulder ) ss.

The foregoing instrument was acknowledged before me this day 25<sup>th</sup> of October,  
2018, by Steven A. Erickson, as Authorized Signer of Boulder  
Creek TPC LLC, a Colorado limited liability company.

Witness my hand and official seal.

(S E A L)

Notary Public [Signature]  
My Commission Expires: 11-20-21









**EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
THE HERON LAKES LIFESTYLE COMMUNITY  
(LIFESTYLE COMMUNITY)**

**Phases:  
Each Lot shall be considered to be a separate Phase.**

**LOTS 1 THROUGH 6, INCLUSIVE, BLOCK 3,  
HERON LAKES THIRD FILING,  
TOWN OF BERTHOUD, COUNTY OF LARIMER, STATE OF COLORADO.**

**EXHIBIT B  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
THE HERON LAKES LIFESTYLE COMMUNITY  
(COMMON ELEMENTS)**

**None initially.**

**EXHIBIT C  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
THE HERON LAKES LIFESTYLE COMMUNITY  
(ADDITIONAL PROPERTY)**

**Phases:  
Each Lot/Parcel shall be considered to be a separate Phase.**

**Lots 7 through 16, inclusive, Block 3,  
HERON LAKES THIRD FILING,  
TOWN OF BERTHOUD, COUNTY OF LARIMER, STATE OF COLORADO.**

**EXHIBIT D  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
THE HERON LAKES LIFESTYLE COMMUNITY  
(BUILDER PROPERTY)**

**Phases:**

**Each Lot/Parcel shall be considered to be a separate Phase.**

**Lots 17 through 29, inclusive Block 3, and  
Lots 1 through 4, inclusive, Block 4,  
TOWN OF BERTHOUD, COUNTY OF LARIMER, STATE OF COLORADO.**

**EXHIBIT E**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS**  
**AND RESTRICTIONS FOR**  
**THE HERON LAKES LIFESTYLE COMMUNITY**  
**(RECORDED EASEMENTS AND TITLE EXCEPTIONS)**

1. RIGHT OF THE PROPRIETOR OF A VEIN OR LODGE TO EXTRACT AND REMOVE HIS ORE THEREFROM, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES HEREBY GRANTED, AND A RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AS RESERVED IN UNITED STATES PATENT RECORDED JANUARY 06, 1896 IN BOOK 86 AT PAGE 194.
2. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED JULY 10, 1913, IN BOOK 238 AT PAGE 253.
3. RESERVATIONS MADE BY UNION PACIFIC RAILROAD COMPANY, IN DEED RECORDED MAY 12, 1930, IN BOOK 587 AT PAGE 393 AND FEBRUARY 23, 1906 IN BOOK 150 AT PAGE 54, PROVIDING SUBSTANTIALLY AS FOLLOWS: RESERVING UNTO SAID COMPANY AND ITS ASSIGNS ALL COAL THAT MAY BE FOUND UNDERNEATH THE SURFACE OF LAND HEREIN DESCRIBED AND THE EXCLUSIVE RIGHT TO PROSPECT AND MINE FOR SAME, ALSO SUCH RIGHT OF WAY AND OTHER GROUNDS AS MAY APPEAR NECESSARY FOR PROPER WORKING OF ANY COAL MINE THAT MAY BE DEVELOPED UPON SAID PREMISES AND FOR TRANSPORTATION OF COAL FROM SAME.
4. OIL AND GAS LEASE RECORDED SEPTEMBER 03, 1980 IN BOOK 2066 AT PAGE 877 AND ANY AND ALL ASSIGNMENTS THEREOF, OR INTEREST THEREIN.
5. OIL AND GAS LEASE RECORDED SEPTEMBER 03, 1980 IN BOOK 2066 AT PAGE 880 AND ANY AND ALL ASSIGNMENTS THEREOF, OR INTEREST THEREIN.
6. OIL AND GAS LEASE RECORDED MARCH 23, 1981 IN BOOK 2107 AT PAGE 1042 AND ANY AND ALL ASSIGNMENTS THEREOF, OR INTEREST THEREIN.
7. RIGHT OF WAY EASEMENT AS GRANTED TO TOWN OF JOHNSTOWN IN INSTRUMENT RECORDED JANUARY 29, 1997, UNDER RECEPTION NO. 97005692.

8. RIGHT OF WAY EASEMENT AS GRANTED TO POUDDRE VALLEY RURAL ELECTRIC ASSOCIATION, INC. IN INSTRUMENT RECORDED MARCH 10, 1997, UNDER RECEPTION NO. 97014538 AND 97014539.
9. TERMS, CONDITIONS AND PROVISIONS OF REQUEST FOR NOTIFICATION RECORDED MAY 20, 2002 AT RECEPTION NO. 2002055066.
10. TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE RECORDED NOVEMBER 02, 2001 AT RECEPTION NO. 2001098688.
11. TERMS, CONDITIONS AND PROVISIONS OF ANNEXATION MAP RECORDED NOVEMBER 02, 2001 AT RECEPTION NO. 2001098689.
12. TERMS, CONDITIONS AND PROVISIONS OF ANNEXATION MAP RECORDED NOVEMBER 20, 2001 AT RECEPTION NO. 2001098690.
13. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF MINOR SUBDIVISION FOR HERON LAKES RECORDED FEBRUARY 14, 2005 AT RECEPTION NO. 20050012172.
14. RIGHT OF WAY EASEMENT AS GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO IN INSTRUMENT RECORDED MARCH 23, 2005, UNDER RECEPTION NO. 20050022892.
15. TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE RECORDED JULY 22, 2005 AT RECEPTION NO. 20050060815.
16. TERMS, CONDITIONS AND PROVISIONS OF NOTICE RECORDED OCTOBER 16, 1981 IN BOOK 2137 AT PAGE 1035.
17. TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT RECORDED APRIL 07, 2008 AT RECEPTION NO. 20080021352.
18. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF HERON LAKES PUD FIRST FILING RECORDED MAY 19, 2008 AT RECEPTION NO. 20080031498.
19. TERMS, CONDITIONS AND PROVISIONS OF DEVELOPMENT AGREEMENT RECORDED MAY 19, 2008 AT RECEPTION NO. 20080031500 AND ADDENDUM RECORDED MAY 19, 2008 AT RECEPTION NO. 2008031499.
20. TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT RECORDED JUNE 05, 2008 AT RECEPTION NO. 20080035960.
21. TERMS, CONDITIONS AND PROVISIONS OF ORDER RECORDED JULY 01, 2008 AT RECEPTION NO. 20080042269.

22. RIGHT OF WAY EASEMENT AS GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO IN INSTRUMENT RECORDED JUNE 06, 2011, UNDER RECEPTION NO. 20110033015.
23. TERMS, CONDITIONS AND PROVISIONS OF SURFACE USE AGREEMENT RECORDED DECEMBER 21, 2011 AT RECEPTION NO. 20110080225.
24. OIL AND GAS LEASE RECORDED DECEMBER 21, 2011 UNDER RECEPTION NO. 20110080226 AND RERECORDED DECEMBER 23, 2011 AT RECEPTION NO. 20110080517 AND ANY AND ALL ASSIGNMENTS THEREOF, OR INTEREST THEREIN.
25. TERMS, CONDITIONS AND PROVISIONS OF MEMORANDUM OF AGREEMENT RECORDED DECEMBER 21, 2011 AT RECEPTION NO. 20110080227 AND RE-RECORDED DECEMBER 23, 2011 AT RECEPTION NO. 20110080518.
26. RIGHT OF WAY EASEMENT AS GRANTED TO TOWN OF BERTHOUD IN INSTRUMENT RECORDED DECEMBER 29, 2011, UNDER RECEPTION NO. 20110081539.
27. TERMS, CONDITIONS AND PROVISIONS OF DEED OF CONSERVATION EASEMENT RECORDED DECEMBER 29, 2011 AT RECEPTION NO. 20110081540.
28. MATTERS AS SET FORTH ON SURVEY RECORDED MARCH 20, 2012 AT RECEPTION NO. 20120018343
29. ALL OIL, GAS, MINERALS AND OTHER MINERAL RIGHTS AS CONVEYED IN INSTRUMENT RECORDED JULY 13, 2012, UNDER RECEPTION NO. 20120046686 AND DECEMBER 15, 2015 AT RECEPTION NO. 20150084087, AND ANY AND ALL ASSIGNMENTS THEREOF OR INTERESTS THEREIN.
30. TERMS, CONDITIONS AND PROVISIONS OF SPECIAL DISTRICT PUBLIC DISCLOSURE RECORDED DECEMBER 23, 2014 AT RECEPTION NO. 20140074215.
31. TERMS, CONDITIONS AND PROVISIONS OF DEVELOPMENT AGREEMENT RECORDED APRIL 10, 2014 AT RECEPTION NO. 20140017856.
32. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF HERON LAKES SECOND FILING RECORDED FEBRUARY 17, 2016 UNDER RECEPTION NO. 9367.
33. TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE RECORDED FEBRUARY 17, 2016 AT RECEPTION NO. 20160009365.



34. TERMS, CONDITIONS AND PROVISIONS OF DEVELOPMENT AGREEMENT RECORDED FEBRUARY 17, 2016 AT RECEPTION NO. 20160009368.
35. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF HERON LAKES THIRD FILING RECORDED JUNE 10, 2016 UNDER RECEPTION NO. 20160036869 AND CORRECTION AFFIDAVIT RECORDED JULY 28, 2017 AT RECEPTION NO. 20170050166.
36. TERMS, CONDITIONS AND PROVISIONS OF DEVELOPMENT AGREEMENT RECORDED JUNE 10, 2016 AT RECEPTION NO. 20160036870.
37. TERMS, CONDITIONS AND PROVISIONS OF REQUEST FOR NOTIFICATION OF APPLICATION FOR DEVELOPMENT RECORDED JULY 12, 2016 AT RECEPTION NO. 20160044648.
38. TERMS, CONDITIONS, PROVISIONS AND MINERAL RESERVATIONS AS CONTAINED IN SPECIAL WARRANTY DEED RECORDED AUGUST 18, 2016 UNDER RECEPTION NO. 20160054829.
39. RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN INSTRUMENT RECORDED APRIL 04, 2017, UNDER RECEPTION NO. 20170021714.
40. RIGHT OF WAY EASEMENT AS GRANTED TO POUFRE VALLEY RURAL ELECTRIC ASSOCIATION, INC. IN INSTRUMENT RECORDED JULY 10, 2017, UNDER RECEPTION NO. 20170044809.
41. RIGHT OF WAY EASEMENT AS GRANTED TO POUFRE VALLEY RURAL ELECTRIC ASSOCIATION, INC. IN INSTRUMENT RECORDED JULY 10, 2017, UNDER RECEPTION NO. 20170044810.
42. EASEMENT GRANTED TO POUFRE VALLEY RURAL ELECTRIC ASSOCIATION, INC., FOR UNDERGROUND ELECTRIC LINE OR SYSTEM, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 22, 2017, UNDER RECEPTION NO. 20170085974.
43. EASEMENT GRANTED TO POUFRE VALLEY RURAL ELECTRIC ASSOCIATION, INC, FOR UNDERGROUND ELECTRIC LINE OF SYSTEM, AND INCIDENTAL PURPOSES, BY INSTRUMENT RECORDED DECEMBER 22, 2017, UNDER RECEPTION NO. 20170085975.

**EXHIBIT F**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS**  
**AND RESTRICTIONS FOR**  
**THE HERON LAKES LIFESTYLE COMMUNITY**  
**FORM PARTIAL ASSIGNMENT OF DECLARANT RIGHTS**

**PARTIAL ASSIGNMENT OF DECLARANT RIGHTS**

THIS PARTIAL ASSIGNMENT OF DECLARANT RIGHTS (this "Assignment") is made and entered into effective as of \_\_\_\_\_, 20\_\_\_\_, by and between Waterfront Development, Inc., a Colorado corporation ("Declarant"), and \_\_\_\_\_, a \_\_\_\_\_ ("Builder").

**RECITALS**

A. Contemporaneously herewith, Declarant is conveying to [Builder][third party homebuyer of Declarant conveys the Lot directly] the real property legally described on Exhibit A attached hereto (the "Lots").

B. The Lots are subject to that certain Declaration of Covenants, Conditions and Restrictions for Heron Lakes Lifestyle Community recorded in the real property records of Larimer County, Colorado, on \_\_\_\_\_, 2018, at Reception No. \_\_\_\_\_ (as amended, the "Declaration").

C. Declarant now desires to partially and nonexclusively assign to Builder, and Builder desires to accept, certain rights of Declarant as Declarant under the Declaration.

D. Initially capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Declaration.

**ASSIGNMENT AND AGREEMENT**

1. Assignment of Special Declarant Rights. Declarant, as Declarant under the Declaration, hereby partially and nonexclusively assigns to Builder the Special Declarant Rights of Declarant, including without limitation the right to annex Lots to the Declaration (the "Assigned Rights"), to the extent the Assigned Rights relate to the Lots owned from time to time by [Builder][third party homebuyer of Declarant conveys the Lot directly]. The Assigned Rights shall only be exercised by Builder with respect to Lots owned by [Builder][third party homebuyer of Declarant conveys the Lot directly] from time to time and may not be exercised with respect to any Lots or other property not owned by [Builder][third party homebuyer of Declarant conveys the Lot directly].

2. Acceptance of Assigned Rights. Builder hereby accepts the foregoing assignment of Assigned Rights and assumes all obligations with respect to the Assigned Rights first arising from and after the date of this Assignment.

3. Reserved and Retained Rights. Subject to the foregoing partial and nonexclusive assignment of the Assigned Rights, Declarant reserves and retains all rights as Declarant under the Declaration. Declarant reserves the right to amend the Declaration in accordance with its terms; provided, however, so long as [Builder][third party homebuyer of Declarant conveys the Lot directly] owns any of the Lots, Declarant shall not, without Builder's prior written consent, not to be unreasonably withheld, seek, vote for or approve any amendment to the Declaration that will materially, adversely affect Builder's ability to develop the Lots or construct residences thereon.

4. Builder Designation; Architectural Review Exemption. Declarant hereby designates Builder as a "Builder" under the Declaration.

5. Binding Effect. The terms and provisions of this Assignment shall be binding upon and inure to the benefit of Declarant and Builder and their respective successors and assigns.

6. Further Assurances. From time to time following the date of this Assignment, each party shall perform such other acts and shall execute, deliver and furnish such other instruments, documents, materials and information as the other party may reasonably request in order to effectuate the transactions provided for in this Assignment.

7. Recitals. The foregoing Recitals are incorporated into and made a part of this Assignment.

8. Counterparts. This Assignment may be executed in multiple counterparts, which taken together shall be deemed one original.

[Signature page(s) follow]





**EXHIBIT A**  
**to**  
**Partial Assignment of Declarant Rights**  
**Legal Description of Lots**

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