

AFTER RECORDING PLEASE RETURN TO:  
HindmanSanchez P.C.  
5610 Ward Road, Suite 300  
Arvada, CO 80002

***DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR  
STREAMSIDE  
(A PLANNED COMMUNITY)***

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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
STREAMSIDE  
(A PLANNED COMMUNITY)**

**THIS DECLARATION** is made on the date hereinafter set forth by 805 East Prospect, LLC, a Colorado limited liability company ("**Declarant**").

**RECITALS**

**A.** Declarant is the owner of certain real estate in Larimer, State of Colorado, which is more particularly described as set forth in *Exhibit A* attached hereto and by reference made a part hereof.

**B.** Declarant desires to create a single family residential community on the real estate described in *Exhibit B* under the name of "Streamside," in which portions of the real estate described in *Exhibit B* will be designated for separate ownership and uses of a residential nature and in which portions of the real estate are to be owned by an owners' association.

**C.** Declarant has caused the "Streamside Homeowners Association, Inc.," a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado, as an owners' association, for the purpose of exercising the functions as herein set forth.

NOW, THEREFORE, Declarant declares and states as follows:

**ARTICLE 1 SUBMISSION/DEFINED TERMS**

Section 1.1 Submission of Property.

The Declarant hereby submits the real estate described in *Exhibit B* and such additional real property as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with and subject to all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the "**Property**"), to the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as it may be amended from time to time (the "**Act**") and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration

shall remain applicable. Declarant hereby declares that all of the Property described in *Exhibit B*, and as added by expansion, shall be held or sold, and conveyed subject to the following easements, restrictions, covenants, and conditions. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Property, that this Declaration shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Lot Owner thereof.

Section 1.2 Name and Type.

The type of Common Interest Community is a Planned Community. The name of the Community is "Streamside." The name of the Association is the "Streamside Homeowners Association, Inc."

Section 1.3 Property.

The Community is located in Larimer, State of Colorado. The initial Property of the Community is described in *Exhibit B*. The Community may be subject to easements or licenses granted pursuant to this Declaration, or granted by authority reserved in any recorded document or established in the Act.

Section 1.4 Defined Terms.

Each capitalized term in this Declaration or in the Plat shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration:

(a) "**Act**" shall mean the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as it may be amended from time to time.

(b) "**Assessment**" shall include all common expense assessments, insurance assessments, utility assessments, and any other expense levied to a Lot pursuant to this Declaration or the Act.

(c) "**Association**" shall mean Streamside Homeowners Association, Inc., a Colorado nonprofit corporation, and its successors.

(d) "**Board of Directors**" or "**Board**" or "**Executive Board**" shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.

(e) "**Common Elements**" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and such property as Declarant may convey to the Association.

(g) **"Common Expense"** shall mean any expenditure made a liability received by or on behalf of the Association, together with any allocations to reserves.

(h) **"Common Expense Assessment"** shall mean the Assessment for allocation of Common Expenses among the Lots and Owners, as provided in this Declaration and the Act.

(i) **"Community"** shall mean the planned community known as "Streamside," and the real property subject to this Declaration and as further defined by the recorded plats and the legal descriptions contained therein, and the Members of the Association.

(j) **"Declarant"** shall mean the Declarant named in this Declaration, and any successor and/or assignee designated by written notice or assignment executed by the Declarant designated in this Declaration and executed by the transferee and recorded, to the extent any rights or powers reserved to Declarant are transferred or assigned to that party.

(k) **"Design Review Committee"** or **"Architectural Review Committee"** or **"Committee"** or **"DRC"** or **"ARC"** means the committee initially established by the Declarant for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.

(l) **"Development"** or **"Special Declarant Rights"** shall mean those rights set forth in this Declaration and those rights set forth in the Act.

(m) **"Exhibit B"** shall mean and refer to *Exhibit B* as attached to and incorporated in this Declaration, and as Exhibit B may be amended or supplemented, from time to time.

(n) **"Governing Documents"** shall mean this Declaration, the Plat, any Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.

(o) **"Improvement(s)"** shall mean structures installed within or upon a Lot.

(p) **"Initially Unoccupied Lot"** shall mean a Lot within the Community upon which an Improvement has not yet received a certificate of occupancy.

(q) **"Limited Common Elements"** shall mean those portions of the Common Elements, if any, designated by Declarant for the exclusive use of one (1) or more but fewer than all of the Lots, as initially described in *Exhibit E*.

(r) **"Lot"** or **"Unit"** shall be defined to enable these terms to be used interchangeably, as appropriate, and shall mean and refer to any plot of land shown upon any recorded subdivision Map or Plat of the Property with the exception of Common Elements, if any.



(s) **"Map"** shall mean and refer a recorded map(s) of the Property and Improvements that are subject to this Declaration. More than one map or supplement thereto may be recorded, and, if so, then the term "Map" shall collectively mean and refer to all maps and supplements thereto.

(t) **"Member"** shall mean and refer to those persons entitled to membership as provided in the Bylaws and as set forth in this Declaration.

(u) **"Owner"** shall mean any person or entity that owns a Lot.

(v) **"Period of Declarant Control"** shall mean the period of time commencing on the date of recordation of this Declaration and expiring on the earlier of seven (7) years thereafter, sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than Declarant, two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business or two (2) years after any right to annex property was last exercised; provided, however, that if the Period of Declarant Control has not terminated pursuant to the foregoing provisions, the Period of Declarant Control shall in any case terminate on the date upon which all property subject to annexation to the Community has become a part of the Community and the last Lot within the Community has been conveyed by the Declarant.

(w) **"Plat"** shall mean and refer to the plat(s) of the Property and Improvements that are subject to this Declaration. More than one Plat or supplement thereto may be recorded, and, if so, then the term "Plat" shall collectively mean and refer to all plats and supplements thereto.

(x) **"Property" or "Real Estate"** (as 'real estate' is used in the Act) shall mean the property described in this Declaration together with all easements, rights, and appurtenances thereto and the buildings and Improvements erected or to be erected thereon.

(y) **"Reserved Declarant Rights"** shall mean those certain rights reserved unto the Declarant as more particularly set forth in this Declaration.

(z) **"Rules and Regulations"** shall mean any instruments, however denominated, which are adopted by the Board for the regulation and management of the Community, including architectural guidelines, and including any amendment to those instruments.

## ARTICLE 2 EASEMENTS

### Section 2.1 Utility, Map and Plat Easements.

Easements for utilities and other purposes over and across the Lots and Common Elements may be as shown upon the recorded Plats of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by or under the authority reserved in any recorded document.

### Section 2.2 Owners' Easements of Enjoyment/Acknowledgments.

(a) Every Owner shall have a right and easement access to their Lot and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply.

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

(iii) The right of the Association to suspend the voting rights and rights to use the Common Elements by an Owner for any period during which any Assessment against their Lot remains unpaid; and for any infraction of its published Rules and Regulations.

(iv) The right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act.

(v) The Development and Special Declarant Rights of the Declarant reserved in this Declaration.

### Section 2.3 Drainage Easements.

An easement is hereby granted to the Association and Declarant and local government, their officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Property subject to this Declaration for the purpose of changing, correcting or otherwise modifying the grade of the Property, the Lots or drainage channels so as to improve the drainage of water. Said easements shall be deemed to also include easements for the collection of storm water runoff. Every Lot and the Common Elements shall be burdened with

easements for natural drainage of storm water runoff from other portions of the Property; provided, no Person shall alter the natural drainage on any Lot so as to materially increase the drainage of water onto adjacent portions of the Property or any Lot without the consent of the Owner of the affected property. Any damage to any Improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

#### Section 2.4 Utilities.

Declarant hereby creates and reserves to the Association, a blanket easement upon, across, over and under the Association for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment, effluent irrigation systems, gas, telephone, electricity and master television antenna or cable systems, if any; *provided, however*, such easement shall not encumber or affect any portion of the Real Estate that is anticipated to be improved, or that has been improved, with a residence, improvement or any related structure, such as a patio or garage. By virtue of this blanket easement, it shall be expressly permissible for the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Property and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, telephone and television wires, circuits, conduits and meters, and such other improvements or facilities. If any utility or quasi-utility company furnishing a service covered by the general easement created in this Section requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Property is reserved, provided the easement granted does not conflict with the terms hereof. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property. Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

#### Section 2.5 Emergency Easements.

A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

Section 2.6 Delegation of Use.

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

Section 2.7 Disclaimer of Liability.

The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Area or any of its improvements, fixtures, and facilities. It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Area, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

### ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership.

Every person who is a record Lot Owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person holds an interest in any Lot, all such persons shall be Members.

Section 3.2 General Purposes and Powers of the Association.

The Association, through its Board of Directors, shall perform functions and manage the Community as provided in this Declaration so as to protect the value and desirability of the Community and the Lots and to further the interests of the residents, occupants, tenants and guests of the Community and members of the Association. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

**Section 3.3 Authority of the Association.**

The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Plat, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility.

**Section 3.4 Specific Powers.**

The Association shall have the powers, authority and duties as necessary and proper to manage the business and affairs of the Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Owners present at a meeting called for that purpose.

**Section 3.5 Association Agreements.**

Any agreement for professional management of the Community or any contract providing for services of the Declarant, may not exceed one (1) year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days' written notice. The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Declarant Control period unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the turnover date upon not more than thirty (30) days' notice to the other party thereto.

**Section 3.6 Bulk Service Agreements.**

The Association shall have the power and authority to enter into one (1) or more bulk service agreements for such terms and rates as it deems appropriate in order to provide the Owners with any of the following services: cable television, community satellite television, electronic entertainment, information or communication services, trash removal or any other service the Association believes to be in the best interests of the Owners. If such a bulk service agreement is executed, the costs shall be allocated a Common Expense of the Association.

**Section 3.7 Allocated Interests.**

Common Expense liability and votes in the Association allocated to Lots are as follows:

- (a) The percentage of liability for Common Expenses, on an equal basis between each Lot in the Community;
- (b) The percentage of liability for expenses related to a Limited Common Element shall be allocated on an equal basis to those to whom the Limited Common Element is assigned;
- (c) Lot Owners shall be entitled to one (1) vote for each Lot owned. When more than one person holds an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Lot's vote shall be suspended in the event more than one Owner of a Lot attempts to cast it.
- (d) Initially Unoccupied Lots shall not have a voting interest.

If Lots are added to the Community, pursuant to the provisions of this Declaration and the Act, the formulas set forth above, or then in use, shall be used to reallocate the Allocated Interests.

**Section 3.8 Duty to Accept Common Elements and Facilities Transferred by Declarant.**

The Association shall accept any Common Elements or property, including any Improvements thereon, and personal property transferred to the Association by Declarant and equipment related thereto, together with the responsibility to perform any and all functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens (other than the lien of property taxes and Assessments not then due and payable), but shall be subject to the terms of this Declaration and any Supplemental Declaration applicable thereto.

**Section 3.9 Power to Operate and Charge for Facilities and Services.**

The Association shall have the power to acquire, create, own and operate any and all such facilities and services as it deems appropriate, including, without limitation, landscape maintenance and refuse collection, or any other similar or dissimilar function, and to establish charges for the use of facilities and services. The charges may include admission, rental or other fees and charges for any use of property, facilities or services of the Association. Such charges or fees shall be as determined from time to time by the Board of Directors.

Section 3.10 Right to Notice and Comment.

Pursuant to C.R.S. § 38-33.3-205(1)(o), whenever the Governing Documents require that an action be taken after "Notice and Comment," and at any other time the Board of Directors determines, the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Further, any Owner may give "Notice and Comment" to the Owners of any matter affecting the Community, and Owners shall then have the right to comment, orally or in writing, on the matter. Notice shall be given to each Owner in writing, delivered personally or by mail to all Owners at such address as appears in the records of the Association, or notice shall be published in a newsletter or similar publication which is routinely circulated to all Owners. The notice shall be given not less than three days before proposed action is to be taken. The Notice shall invite comment (orally or in writing) to the Board of Directors or an Owner before the scheduled time of any meeting.

Section 3.11 Indemnification.

To the full extent permitted by law, each officer, director, committee member and volunteer of the Association shall be and hereby are indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or volunteer, or any settlements thereof, whether or not they are an officer, director, committee member or volunteer at the time such expenses are incurred; except in such cases wherein such officer, director, committee member or volunteer is adjudged guilty of breaching his or her duty of care (as set forth in the Act) in the performance of his or her duties.

Section 3.12 Declarant's Right to Appoint During Period of Declarant Control.

The Declarant shall have the reserved power to appoint and remove officers and members of the Board as allowed under the Act and more particularly provided for in the Bylaws, based on the total number of Lots that may be created within the Community pursuant to this Declaration. The Declarant may voluntarily surrender any or all of the foregoing rights to appoint and remove officers and members of the Board before termination of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

## ARTICLE 4 LOTS AND COMMON ELEMENTS

### Section 4.1 Number of Lots.

The number of Lots initially included in the Community is 25. Declarant has the reserved right to create up to a total of 25 Lots.

### Section 4.2 Identification of Lots/Lot Descriptions.

The identification of each Lot is shown on the Plat. Every contract for sale, deed, lease, security interest, will or other legal instrument shall legally describe a Lot by its identifying lot number, followed by the name of the Community, with reference to the Plat and the Declaration. Reference to the Declaration and Plat in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration and Plat, without specific references thereto.

### Section 4.3 Association Maintenance.

- (a) The Board of Directors of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance, repair, replacement and improvement responsibilities.
- (b) The Association shall be responsible for:
  - (i) the improvement, maintenance, repair, upkeep and reconstruction, and replacement of the Common Elements and Limited Common Elements, excluding any improvements thereto by Owners;
  - (ii) the maintenance, repair, and replacement of certain or any designated perimeter fences and perimeter landscaping and related water or irrigation systems;
  - (iii) snow removal from the streets and sidewalks in the Community, excluding driveways on Lots;
  - (iv) trash removal;
  - (v) for the payment of expenses which may be incurred by virtue of maintenance, repair or replacement as set forth on the recorded plat and final development plan, agreement with or requirement of any local governmental authority; and
  - (vi) operational expenses of the Association.



Section 4.4 Common Elements.

The property described in *Exhibit D* and any improvements thereon are the initial Common Elements to be deeded by the Declarant to the Association. The improvements on the Common Elements may be changed from time to time by the Board of Directors of the Association. Portions of the Common Elements may be designated by Declarant as a part of a Lot or as a Limited Common Element to a Lot or Lots. Portions of Lots not yet conveyed by Declarant to a third party Owner may become Common Elements or Limited Common Elements, pursuant to rights reserved elsewhere in this Declaration. Portions of Lots may become Common Elements, pursuant to rights reserved elsewhere in this Declaration.

Section 4.5 Limited Common Elements.

The Declarant reserves, for itself, through seven years after the recording of this Declaration, the right to allocate areas of the Community as Limited Common Elements, for the exclusive use of the owners of Lots to which those specified areas shall become appurtenant. The Declarant may allocate or assign Common Elements or Limited Common Element areas (1) by making such an allocation in a recorded instrument, or (2) in the deed to the Lot to which such Limited Common Element shall be appurtenant, or (3) by recording an appropriate amendment or supplement to this Declaration, or (4) by recording a supplement to the Plat or by recording a map. Such allocations by the Declarant may be made as a matter of reserved right.

Section 4.6 Initial Limited Common Elements.

The property described in *Exhibit E* are the initial Limited Common Elements, the exclusive use of which is assigned to the Lots indicated on *Exhibit E*. The Declarant reserves the right to assign rights to use to any Limited Common Element to additional Lots and reserves the right to assign additional Limited Common Elements.

Section 4.7 Allocation of Expenses for Limited Common Elements.

In the event a Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, those Common Expenses shall be assessed equally against the Lots to which the Limited Common Element is assigned. Notwithstanding the preceding, Initially Unoccupied Lots shall be assessed at 25% of the regular Assessments.

**ARTICLE 5 COVENANT FOR COMMON EXPENSE ASSESSMENTS**

Section 5.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments.

Declarant, for each Lot, shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance Assessments, and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late fees, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association and additional fees charged by the managing agent, including but not limited to, administration and witness fees, and/or any other charges that may be assessed and/or levied or may be agreed to in the process of collecting past due Assessments, including but not limited to, credit card convenience fees from whatever source, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums owed to the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

Section 5.2 Annual Assessment.

The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. The budget shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. Unless at the budget meeting, Owners to whom are allocated a majority or more of the votes in the Association vote to reject the proposed budget, the proposed budget will be ratified, whether or not a quorum is present; provided however, any portions of the proposed budget pertaining to any Limited Common Elements expenses will be ratified unless Owners holding a majority or more of the votes allocated to the Lots encumbered thereby vote to reject such portions of the budget. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors.

Section 5.3 Special Assessments.

In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. Except as provided for in this Section, no Special Assessment proposed by the Association shall be levied until it is ratified by the Owners that will be subject to such Special Assessment. A proposed Special Assessment will be ratified unless Owners representing more than a majority of the votes allocated to the Lots that will be subject to the special Assessment vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

Section 5.4 Commencement of Assessments.

The obligation to pay Assessments against fewer than all of the Lots as provided for in this Declaration shall commence as to each Lot on the first day of the month following the later of: (a) the month in which the Lot is made subject to this Declaration or (b) the month in which the Association first establishes and ratifies a budget and levies Assessments pursuant to this Declaration. The first annual Common Expense Assessment levied on each Lot, whether levied at partial or full rate as provided in this Declaration, shall be prorated according to the number of months remaining in the fiscal year at the time Assessments commence on the Lot. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 5.5 Application of Payments.

All sums collected on a delinquent account shall be remitted to the Association's attorney until the account is brought current. All payments received on an account of any Owner or the Owner's Lot shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner.

Section 5.6 Effect of Non-Payment of Assessments.

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 15 days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly, from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors.

(b) Failure to make payment within 45 days of the due date thereof shall cause the total amount of such Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board.

(c) Further, the Association may foreclose its lien and/or bring an action at law or in equity, or all of the same, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving the Association's lien therefor. Likewise, the obtaining of a money judgment shall not preclude the foreclosure of the Association's lien so long as the judgment remains unsatisfied.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 5.7 Lien Priority.

The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited

lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 5.8 Working Fund.

The Association may require the first Owner of each Lot (other than Declarant) to make a non-refundable payment to the Association in an amount equal to 2 months of the annual Common Expense Assessment against that Lot in effect at the closing thereof, which sum shall be held, without interest, by the Association as a working fund. Said working fund shall be collected and transferred to the Association at the time of closing of the initial sale by Declarant of each Lot, as aforesaid, and shall be for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of Assessments as the same become due.

Section 5.9 Owner's Negligence or Misconduct.

In the event that the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If such expenses, costs and fees incurred by the Association are not repaid to the Association within seven days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration. Such expenses, costs, and fees shall automatically become a default Assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of Article 5 hereof.

**Section 5.10 Common Expenses Attributable to Fewer Than All Lots.**

Any Common Expense associated with the maintenance, repair, replacement or improvement of components and elements attached to or a part of a Lot or to a Lot to which a Limited Common Element is assigned may be assessed against that or those Lots. For any Limited Common Element assigned to more than one Lot, the Common Expenses attributable to the Limited Common Element may be assessed equally among the Lots to which it is assigned or in such reasonable proportions as determined by the Association. Any Common Expense for services provided by the Association to an individual Lot at the request of the Owner may be assessed against that Lot. Any insurance premium increase attributable to a particular Lot by virtue of activities in or construction of the Lot shall be assessed against that Lot. An Assessment to pay a judgment against the Association may be made only against the Lots in the Planned Community at the time the judgment was entered, in proportion to their Common Expense liabilities. If a Common Expense is caused by the negligence or misconduct of an Owner, the Association may assess that expense exclusively against that Owner and their Lot. Fees, charges, taxes, impositions, late fees, fines, collection costs and interest charged against an Owner pursuant to this Section are enforceable as Common Expense Assessments.

**ARTICLE 6 RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY**

All Property within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules. The following use restrictions are also subject to the Development Rights and Special Declarant Rights reserved by the Declarant.

**Section 6.1 Use of Lots/Occupancy of Improvements on Lots.**

Occupancies of Improvements on the Lots shall be primarily for residential use, as a residential dwelling, as provided for in this Declaration. Secondary commercial and business uses, without any adverse external effect on the nature, perception, operation or ambiance of the Community as a first class residential community are expressly permitted, subject to restrictions of record and local zoning ordinances and regulations. No Lot within the Community shall be used for any purpose other than as allowed by the local zoning codes.

**Section 6.2 Design Approval Required.**

Improvements to the Lot must first be approved by the Design Review Committee as set forth in this Declaration, except for any real property added to this Community by Declarant, as allowed for in this Declaration. Property added to the Community by Declarant may be exempt from this Article, initially, and for subsequent Improvements. Specifically, no structure, temporary building, trailer attachment, improvements, landscaping change shall be commenced, constructed, erected, placed or installed, including, but not limited to, a change in painting and/or staining of exterior siding, unless first submitted to and approved in writing by the Design Review Committee. No shed or other outbuilding shall be used or permitted to be kept or stored on any portion of a Lot, either temporarily or permanently, unless approved by the Design Review Committee. All additions to the Improvements on a Lot shall be of new construction.

**Section 6.3 Landscaping Requirements and Restrictions.**

All portions of a Lot not improved with a residence, driveway, walkways, patios or decks (referred to as the unimproved area of a Lot) shall be landscaped by the Owner. All landscaping shall be installed in accordance with landscaping plans submitted to and approved by the Design Review Committee. All landscaping plans shall be drawn to scale and shall set forth the location of landscaping, type of landscape materials, and be in accord with the requirements of this paragraph and other provisions of this Declaration. The unimproved area of a Lot, once improved with a residence, shall be fully landscaped, as approved by the Committee, no later than nine months after the issuance of a certificate of occupancy for occupancy of the initial improvements, or the first date of occupancy for residential purposes, whichever first occurs. The landscaping of each Lot, having once been installed, shall be maintained in a neat, attractive, sightly and well-kept condition, which shall include lawns mowed, hedges, shrubs, and trees pruned and trimmed, adequate watering, replacement of dead, diseased or unsightly materials, and removal of weeds and debris. Yard and other decorative or unique landscaping ornaments are prohibited without the express written approval of the Committee.

**Section 6.4 Plat Restrictions.**

The restrictions, if any, included on the plat for the Property are incorporated in this Declaration by this reference.

**Section 6.5 Lot Maintenance.**

Owners are responsible for the maintenance, repair and replacement of the Improvements and properties located within their Lot boundaries which are not specifically the obligation of the Association to maintain, replace and keep in good repair. Each Lot, at all times, shall be kept well maintained, in good repair, and replacement, and in a clean, sightly, and wholesome condition. Trash, litter, junk, boxes, containers, bottles, cans implements, machinery, lumber or

other building materials shall not be permitted to remain exposed upon or within any Lot so that the same are visible from any neighboring Lot, or any street, except as necessary during a period of construction. During construction of Improvements on a Lot, the Owner and their contractors, if any, shall keep the Owner's Lot in a neat and maintained order, without construction debris on the Lot, and without debris blown or otherwise deposited or left elsewhere in the Community. The Association and its agents, after 30 days notice to the Owner, shall have the authority to enter, replace, maintain, repair and clean up Lots which do not conform to the provisions of this Section, and to charge and collect from the Lot Owners thereof all reasonable costs related thereto as an Assessment hereunder.

Section 6.6 Fences and Privacy Walls.

Fences, and/or privacy walls must have prior written approval of the Design Review Committee.

Section 6.7 Restrictions on Vehicles, Vehicular Parking, Storage and Repairs.

(a) Vehicles and trailers shall be parked only in the garages, in the driveways serving the Lots, or in appropriate spaces or areas designated by the Board of Directors; provided, however, no more than one vehicle may be parked outside of the garage. Vehicles shall be subject to such reasonable rules and regulations as the Board may adopt.

(b) Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, trailers (either with or without wheels), campers, camper trailers, boats and other water craft, trucks over one ton, recreational vehicles, and boat trailers shall be prohibited in the Community unless such vehicles are: (a) parked only in enclosed garages; (b) are otherwise authorized in writing by the Association; or (c) are otherwise exempted by Colorado law. This restriction shall not apply to service, construction and delivery vehicles temporarily located within the Community which are necessary for construction or for the maintenance of a Lot.

(c) No abandoned vehicles of any kind shall be permitted on any Lot or the Common Elements. A vehicle shall be considered "abandoned" if it remains nonoperative for a period of one month or fails to have current registration and license plates.

(d) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat may be performed or conducted on a Lot, except within a completely enclosed structure which screens the sight and sound of the repair or other activity from other Owners and residents.



(e) No motor vehicle may impede the safe and efficient use of streets within the Community by residents, obstruct emergency access to/from the Community, or interfere with the reasonable needs of other residents to use their driveway, streets, or guest parking within the Community.

Section 6.8 No Temporary Structures.

Except during construction of Improvements on a Lot, no trailer, mobile home, tent or shack, shed, playhouse, barn, or other temporary building or similar structure shall be placed upon any Lot.

Section 6.9 Roof Apparatus.

No types of refrigerating, cooling or heating apparatus shall be permitted on a roof and no such apparatus shall be permitted elsewhere on a Lot, except when appropriately screened and approved by the Design Review Committee.

Section 6.10 No Wind Generators.

No wind generators of any kind shall be constructed, installed, erected, or maintained on the Lots.

Section 6.11 Clotheslines and Storage.

Except for retractable clotheslines which comply with reasonable aesthetic regulations adopted by the Board and except as otherwise permitted by Colorado law, no nonretractable clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted on any Lot unless the same, in each instance, is expressly permitted in writing by the Association. Owners shall deem to hold the Association harmless from any claim resulting from any clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Lot.

Section 6.12 Restrictions on Animals and Pets.

Pets, including domestic cats (as set forth in the City of Fort Collins code), domestic dogs (as set forth in the City of Fort Collins code), birds, reptiles, or other household animals, hereinafter for brevity termed "animal," may be kept, maintained or harbored on a Lot, *if* the animal is not a nuisance to other Owners or occupants; provided, however, no more than two dogs or two cats shall be permitted per Lot. No Owner or resident shall maintain any animal which, in the sole discretion of the Board, is considered to be a danger or a nuisance to the Owners, management staff or occupants in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations. If an animal is deemed

a nuisance, the Owner or person having control of the animal shall be given a written notice to correct the problem. If not corrected, that Owner, upon a second written notice, will be required to remove the animal from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any. The written notices provided for in this Section shall be issued by the authorized representative of the Association or, if there is no authorized representative then by one or more of the members of the Board of Directors of the Association. Animals may not be kept for any commercial purposes. Animals are not permitted in the recreational areas. When on the Common Area, animals must be on a leash and under the control of the Owner of the animal. Feces left by animals upon the Common Area, on any Lot or in any dwelling, must be removed promptly by the owner of the animal or the person responsible for the animal. Owners shall hold the Association harmless from any claim resulting from any action of their animals.

Section 6.13 Restriction on Further Subdivision of Lots.

Lots in the Community may not be further subdivided into smaller or a larger tracts or Lots, without the written approval of the Board.

Section 6.14 Leasing and Occupancy.

Any Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Owner may deem advisable, subject to restrictions of record and the terms of this Declaration. Any lease or rental agreement shall be for a minimum term of at least one year, shall be in writing, a copy of which shall be delivered to the Board of Directors or the Association's managing agent prior to the effective date of the lease, and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation and the Rules and Regulations of the Association. All leases and rental agreements of Lots shall state that the failure of the tenant, renter or guest to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the Rules and Regulations of the Association shall constitute a default of the lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them. All occupants of a Lot shall be subject to the right of the Association to remove and/or evict the occupant for failure of the occupant to comply with the terms of the Declaration, Bylaws, Articles of Incorporation or the Rules and Regulations of the Association. If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within 30 days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner has delegated and assigned to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien

against the Lot. Except as restricted in this Declaration, and such Rules and Regulations as the Association may promulgate, the right to lease or allow occupancy of a Lot shall not be restricted.

Section 6.15 Nuisances.

No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Lot or Common Elements, or any portion of the Community by Owners. Further, no improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. As used in this Section, the term "nuisance" shall not include activities of Declarant or its assignees which are reasonably necessary to the development and construction of Improvements within this Community; *provided, however*, that such activities shall not reasonably interfere with any Owner's use and enjoyment of their Lot, or any Owner's ingress and egress to or from their Lot or a public way.

Section 6.16 Use of Common Elements.

There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association.

Section 6.17 Antenna.

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

Section 6.18 No Unsightliness.

All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure.

Section 6.19 Restriction on Signs and Advertising Devices.

(a) Except as provided in this Section, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere on a Lot except such sign or signs as may be approved in writing by the Association. (b) Signs intended to impact the outcome of an election must be displayed in accordance with the Association's Rules and Regulations. (c) One professionally lettered "For Sale" or "For Rent" sign not to exceed three feet by two feet and one professionally lettered security or alarm system sign not exceeding one square foot may be displayed on a Lot.

Section 6.20 Restriction on Sale of a Lot.

The right of an Owner to sell, transfer or otherwise convey their Lot shall not be further restricted or subject to any right of first refusal or similar restriction.

Section 6.21 No Restrictions on Mortgaging of a Lot.

There are no restrictions on the right of the Owners to mortgage or otherwise encumber their Lot. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 6.22 Tanks.

No tanks of any kind (either elevated or buried), except for small portable tanks associated with an outdoor gas grill shall be erected, placed or permitted upon any Lot without the prior written approval of the Association.

Section 6.23 Restriction on Mining and Drilling.

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

Section 6.24 Prohibition of Marijuana Distribution and Growing.

No Owner or occupant of a Lot may utilize such Lot for the purpose of growing or distributing marijuana or medical marijuana. This prohibition may further be clarified by the Board of Directors through Rules and Regulations. Owners will be responsible for any damage resulting from a violation of this restriction, including but not limited to increased water and utility charges.

**Section 6.25 Rules and Regulations.**

In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors, or its successors and assigns. The Board of Directors may establish and enforce penalties for the infraction thereof.

**Section 6.26 Declarant's Use.**

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its assigns, employees and agents, and any others with reserved Development Rights (as and if allowed for under this Declaration) to perform such reasonable activities, and to maintain upon portions of the Community such facilities as deemed reasonably necessary or incidental to the construction and sale of Lots in the development of the Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities.

**Section 6.27 Use of the Words Streamside and Streamside Homeowners Association, Inc.**

No resident shall use the words Streamside or Streamside Homeowners Association, Inc. or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

**ARTICLE 7 DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS**

**Section 7.1 Development Rights and Special Declarant Rights.**

The Declarant reserves, through seven years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

- (a) the right to relocate boundaries between adjoining Lots owned by the Declarant, subdivide Lots owned by Declarant or complete or make improvements, as the same may be indicated on Maps or Plats filed of record;
- (b) the right to enlarge or reduce the Common Elements and to create additional Lots, subject to the limitations set forth in Section 4.1 of this Declaration;
- (c) the right to add Lots and to subject all or any part of the property described in *Exhibit A* attached hereto and hereby incorporated by reference and additional unspecified real estate to the provisions of this Declaration subject to the

limitations set forth in this Declaration;

(d) the right to exercise any additional reserve right created by any other provision of this Declaration;

(e) the right to withdraw Lots owned by Declarant from the Community and the terms of this Declaration, except for lots with dwellings once a dwelling on that Lot has been conveyed, and as allowed and within applicable parameters of the Act. Such withdrawal may be accomplished by the execution, acknowledgment and recordation of a notice of withdrawal. The notice of withdrawal (i) shall be executed and acknowledged by the Owner or Owners of the property to be withdrawn; (ii) shall, if not then owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant owns any property in the Community and has the power to annex additional property to the Community; (iii) shall contain an adequate legal description of the property to be withdrawn; (iv) shall contain a reference to the Supplemental Declaration for the portion of the Real Property to be withdrawn, which reference shall state the date thereof and the date of recordation thereof; and (v) shall contain a statement and declaration that the property sought to be withdrawn is withdrawn from the Community and from the effect of this Declaration;

(f) the right to amend the Declaration to add unspecified real estate in accordance with Section 222 of the Act;

(g) the right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions;

(h) the right to amend the Declaration in connection with the exercise of any development right;

(i) the right to amend the Maps or Plats in connection with the exercise of any development right.

(j) the right to make amendments to the Declaration, Bylaws or Articles of Incorporation to meet or comply with any requirement of FHA or VA; and

(k) The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by the Declarant, recorded in the real property records of Larimer.

#### Section 7.2 Additional Reserved Rights.

In addition to the rights set forth above, Declarant also reserves the following additional rights:

(a) *Sales.* The right to maintain mobile and other sales offices, parking lots, management offices and models on Lots of the Declarant.

(b) *Construction Easement.* Declarant and its assignees expressly reserve to itself the right to perform warranty work, and repairs and construction work, and to store materials in secure areas, in Lots and in Common Elements, and the future right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Owner or holder of a security interest. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property.

Section 7.3 Rights Transferrable/Rights Transferred.

Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of Larimer. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. §38-33.3-210 and C.R.S. §38-33.3-209(6) without the consent of the Association, any Owners or any holders of a security interest in a Lot. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of Larimer. Such instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. §38-33.3-210 and C.R.S. §38-33.3-209(6) with the consent of the appropriate Owner(s) or any holders of a security interests on the Lot(s).

Section 7.4 No Further Authorizations Needed.

Except as set forth in this Declaration, the consent of Owners or holders of security interests shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Lots initially submitted.

Section 7.5 Amendment of the Declaration or Plat.

If Declarant or its assignees elect to exercise any reserved rights, that party shall comply with the Act.

Section 7.6 Interpretation.

Recording of amendments to the Declaration and the plat or plats pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically (a) vest in each existing Owner the reallocated Allocated Interests appurtenant to their Lot, and (b) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any Additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Lots after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration or Plat. Reference to the Declaration and Plat in any instrument shall be deemed to include all Amendments to the Declaration, and the Plat without specific reference thereto.

Section 7.7 Construction.

Subsequent to the initial Property and improvements made subject to this Declaration, any additional buildings, structures and types of improvements to be placed on the Property or any part thereof may be of such quality and type as the persons developing the same may determine, and those improvements need not be of the same quality or type as the Improvements previously constructed on the Property, nor of the same size, style or configuration. The improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Property as may be added or as shown on the Plat.

## ARTICLE 8 ARCHITECTURAL REVIEW

Section 8.1 Required Approval.

No structures, including, but not limited to, primary residence, accessory buildings, sheds, swimming pools, antennas, flag poles, fences, walls, exterior lighting, landscaping, yard or decorative ornaments or any other Improvement shall be constructed, erected, or installed on a Lot, nor shall any alteration or change to the exterior of the Improvements, the exterior of a residence, to a Lot or to any structure, or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced within the Community unless complete plans and specifications shall have been first submitted to and approved in writing by the Design Review Committee ("Committee"). Only house numbers and mail boxes which have been approved by the Committee shall be used and maintained on any Lot within the Community. The Committee may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or



proposed Improvement (plotted horizontally and vertically), location and size of driveways, walls, and grading plan, as well as such other materials and information as may be required by the Committee.

Section 8.2 Architectural Criteria.

The Committee shall exercise its reasonable judgment to the end that all attachments, Improvements, construction, landscaping and alterations to Improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth in this Declaration. The approval or consent of the Design Review Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of Improvements on nearby Lots, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration. Upon its review of such plans, specifications and submittals, the Design Review Committee may require that the applicant(s) reimburse the Board for actual expense incurred by it in its review and approval process.

Section 8.3 Establishment of the Design Review Committee.

The Design Review Committee shall consist of a minimum of three members. Until 100% of all Lots in the Community have been conveyed by the Declarant, Declarant shall appoint all members of the Design Review Committee and may remove any appointee at any time upon written notice to such appointee. After expiration of Declarant's appointment rights, the Design Review Committee may then be appointed by the Board, and be comprised completely of Lot Owners without regard to special qualifications. Until that date, Declarant, in its sole discretion, may at any time grant the power of appointment of the members of the Design Review Committee, and the chairman thereof, to another or to the Association. Notwithstanding the above, appointments shall be for staggered terms of a year different in termination so as to provide reasonable continuity to the architectural review process.

Section 8.4 Architectural Guidelines.

The Committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board of Directors and included in or with any Rules and Regulations of the Association.

Section 8.5 Reply and Communication.

The Committee shall reply to all submittals of plans made in accordance herewith in writing within 30 days after receipt. In the event the Design Review Committee fails to take any action on submitted plans and specifications within thirty 30 days after the Committee has

received the plans and specifications, approval shall be deemed to be granted; provided, however, even if the requirements of this Section are satisfied, nothing in this Declaration shall authorize anyone to construct or maintain any structure or Improvement that is otherwise in violation of the Declaration, architectural guidelines or Rules and Regulations then in effect. All communications and submittals shall be addressed to the Committee at such address as the chairman of the Committee shall hereafter designate in writing addressed and mailed to the Owners.

**Section 8.6 Commencement and Completion of Construction.**

All improvements approved by the Committee must be commenced within six months from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the Committee, unless the Committee gives a written extension for commencing the work. Additionally, except with written Committee approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the Committee shall be completed within nine months of commencement.

**Section 8.7 Variances.**

The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in architectural guidelines. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Lots or Common Elements nor deviate substantially from the general intent and purpose of this Declaration.

**Section 8.8 Right to Appeal.**

An Owner may appeal any decision of the Design Review Committee to the Board of Directors. The Board of Directors shall review the decision of the Design Review Committee pursuant to the criteria set forth in this Declaration and the architectural guidelines. Any decision of the Design Review Committee may be overruled and reversed on appeal by a majority of the Directors by a written decision setting forth the reasons for the reversal when the Directors conclude that the Design Review Committee's decision was inconsistent with the criteria set forth in this Article and the guidelines.

Section 8.9 Waivers.

The approval or consent of the Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 8.10 Liability.

The Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants.

Section 8.11 Enforcement.

Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association shall be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction in this Section shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE 9 INSURANCE/CONDEMNATION

Section 9.1 Insurance on the Lots.

Each Owner shall obtain adequate hazard and liability insurance covering loss, damage or destruction by fire or other casualty to the Improvements, installed or made to their Lot, the other property of that Owner, and any injuries occurring to the persons while on a Lot.

Section 9.2 Hazard Insurance on Common Elements.

The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to any Improvements, installed or made to any Common Elements and the other property of the Association.

Section 9.3 Association Liability Insurance.

The Association shall obtain adequate public liability and property damage liability insurance covering any Common Elements, in such limits as the Board may determine from time to time, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

Section 9.4 Association Fidelity Insurance.

The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees, as required by law.

Section 9.5 Association Worker's Compensation and Employer's Liability Insurance.

The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 9.6 Officers' and Directors' Personal Liability Insurance.

The Association shall obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 9.7 Other Association Insurance.

The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 9.8 Insurance to be Carried by the Association.

The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado:

(a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least 30 days prior written notice to all of the Owners, holders of first lien security interests and the Association.

(b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien security interests at least 10 days prior to the expiration of the then-current policies.

(c) All liability insurance shall name the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien security interests, their successors and assigns and Owners as insureds.

(d) Prior to the Association obtaining any blanket policy of casualty insurance on any Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of any Common Area and any Improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In the event the Association obtains casualty insurance on the Lots, then in no event shall that casualty insurance policy contain a co-insurance clause.

(e) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 9.9 Insurance Premium.

Except as assessed in proportion to risk, insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 9.10 Managing Agent Insurance.

The manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association.

Section 9.11 Annual Insurance Review.

The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 9.12 Adjustments by the Association.

Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 9.13 Duty to Repair.

Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

Section 9.14 Condemnation and Hazard Insurance Allocations and Distributions.

In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 9.15 Responsibility for Payment of Deductible Amount.

Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Elements unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under the terms of the Declaration.

(b) Any loss falling within the deductible portion of the Association policies to property for which Owners have repair and maintenance responsibility shall be paid or absorbed by the Owners of the Lots involved in the same proportion as each Owner's claim bears to the total amount of insurance proceeds paid for the occurrence.

**Section 9.16 Insurance Assessments.**

If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense.

**Section 9.17 Payment of Claims to Delinquent Owners.**

Notwithstanding anything to the contrary in this Declaration, the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in payment of Assessments owed to the Association under this Declaration hereof, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

**ARTICLE 10 DISPUTE RESOLUTION PROCEDURES**

**Section 10.1 Alternate Dispute Resolution.**

The (a) Declarant, (b) Association (including its officers, directors and committee members), (c) all Owners, and (d) any other person or entity not otherwise subject to this Declaration who agrees to submit to this Article (a "Bound Party") agree to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party hereby covenants and agrees to submit all claims, grievances, controversies or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the rules and regulations of the Association, the design or construction of any improvements on the Property, or otherwise relating to the Community (the "Claims") to the dispute resolution procedures set forth in this Article, with the exception of the "Exempt Claims" described in this Article.

Section 10.2 Exempt Claims.

The provisions of this Article shall not apply to, and the term "Claims" shall not include, any of the following: (a) the imposition and collection of Assessments or other charges levied under the Assessments section of this Declaration, including actions to foreclose assessment liens; (b) a suit by the Association to obtain injunctive relief; (c) proceedings involving challenges to ad valorem taxation, (d) counterclaims brought by the Association in proceedings instituted against it; (e) claims of the Association; and (f) claims against a non-Bound Party.

Section 10.3 Claim Resolution Procedures.

All Claims other than Exempt Claims shall be resolved using the following procedures in lieu of litigation:

(a) Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely (i) the nature of the Claim, including the date, time, location, persons involved, and Respondent's role in the Claim, (ii) the basis of the Claim (i.e. the provisions of this Declaration, the Bylaws, the Articles, Rules or Regulations or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(c) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Community.

(d) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association or such other mediator upon which the Parties may agree.



(e) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, 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 persons or entities not a Party to the foregoing proceedings.

(f) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(g) Each Party shall, within 10 days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(h) Subject to subsection (i) below, if the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 20 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the appropriate rules of the American Arbitration Association, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided nothing herein shall release or discharge Respondent from any liability to persons not a party to the foregoing proceedings.

(i) If a Claim alleges that any improvements located on the Properties suffer from construction or design defects, the following additional requirements must be satisfied before such a Claim may be submitted to arbitration: (a) if the Claim relates to one or more Single Family Homes, the written approval of the Owner of each such Townhome or Single Family Home and the First Mortgagee on each such residence shall be obtained; (b) if the Claim relates generally to improvements on the Common Areas, the written approval of at least 67% of all Owners must be obtained, together with the written approval of First Mortgagees holding First Mortgages on at least 67% of the Lots; and (c) if the Claim is to be pursued by the Association, the Association shall hold a meeting of the Members no sooner than 10 days following the Association providing a written statement to all Owners and First Mortgagees discussing the potential Claim. Such written statement must include at least the following information: (I) a statement of

the Claim and the Declarant's response thereto, including any settlement offer; (II) an estimate of the time and costs of pursuing such Claim, (III) the potential impact of the Claim on the marketability of the Lots; and (IV) a statement advising the Owners of their duty to disclose the Claim or alleged defect to prospective purchasers of their Lots. Such written statement shall also be sent to the Declarant at least 10 days before such meeting and the Declarant shall have the right to attend and make a presentation at such meeting.

(j) This Article is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Colorado. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(k) If the Claims are resolved through negotiation or mediation as provided above, each Bound Party shall bear all of its own costs incurred in resolving the Claims, including its attorney fees and mediation expenses, unless the Bound Parties otherwise agree. If the Claims are not resolved through negotiation or mediation as provided above and the Claims go to binding arbitration, the "Prevailing Party" shall receive as a part of its Award from the opposing Party(ies) all of its costs, including attorney fees, costs for other representatives in resolving such Claim, and any expenses incurred as a result of the dispute resolution procedures of this Article.

(l) For purposes of subparagraph (k) above, if the Award is equal or more favorable to Claimant than Claimant's Settlement Demand, the Claimant shall be deemed to be the Prevailing Party; if the Award is equal to or less favorable to Claimant than any Respondent's Settlement Offer, such Respondent shall be deemed to be the Prevailing Party. If neither of the above apply, neither party shall be deemed a Prevailing Party and each shall bear its own costs and expenses, including attorney fees.

(m) If the Parties agree to resolve any Claim through negotiation or mediation as set forth above, and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without need to comply with the provisions of this Article. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one noncomplying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including without limitation, attorney fees and costs.

## ARTICLE 11 GENERAL PROVISIONS

### Section 11.1 Compliance and Enforcement.

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

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

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, at the Board's discretion, the fine may first be assessed against the violator; provided, however, if the fine is assessed against the violator and is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board and the opportunity for a hearing have been provided);

(ii) suspending the right to vote;

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

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

(v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

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

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

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

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

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

#### Section 11.2 Attorney Fees.

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

Section 11.3 Severability.

Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 11.4 Term of Declaration.

The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 11.5 Amendment of Declaration, Map or Plat by Declarant.

If Declarant shall determine that any amendments to this Declaration or the Plat shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of seven years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Owner and holder of a security interest. Each deed, security interest, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 11.6 Amendment of Declaration by Owners.

Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Owners holding at least 67% of the votes in the Association and with the written consent of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. Except to the extent expressly permitted in this Declaration or the Act, no amendment may create or increase any special Declarant's rights, increase the number of Lots in the Community, or change the boundaries of any Lot or the Allocated Interests of a Lot, or the uses to which any Lot is restricted, without compliance with the Act. The amendment or repeal shall be effective upon

the recordation in the office of the Clerk and Recorder of Larimer, State of Colorado of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

**Section 11.7 Amendment Required by Mortgage Agencies.**

Prior to seven years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which a holder of a first lien security interest, or FHA, VA, HUD, FHLMC ("Freddie Mac"), GNMA ("Ginnie Mae"), FNMA ("Fannie Mae"), or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Larimer, State of Colorado of a certificate setting forth the amendment or repeal in full.

**Section 11.8 Security Disclaimer.**

The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-Owners and non-occupants will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by other Owners or occupants. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures taken.

**Section 11.9 Captions.**

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

**Section 11.10 Interpretation.**

The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 11.11 Singular Includes the Plural.

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

Section 11.12 Education and Training.

As a Common Expense, the Association shall provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting facilities use for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefiting or contributing to operation or governance of the Community. The Association may also fund and support education and training for officers and Directors.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized agent this 6<sup>th</sup> day of FEBRUARY, 2014.

805 EAST PROSPECT, LLC,  
a Colorado limited liability company,

By: William A. Dodder III, MANAGER

STATE OF COLORADO )  
                                  ) s.  
COUNTY OF El Paso )

The foregoing Declaration was acknowledged before me by William A. Dodder III as Manager of 805 East Prospect, LLC, a Colorado nonprofit corporation, on this 6<sup>th</sup> day of February, 2014.

TAMARA THOMPSON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20014007549  
MY COMMISSION EXPIRES APRIL 18, 2017

Tamara Thompson  
Notary Public  
My commission expires: 4-18-2017

RECEPTION#: 20140006693, 02/10/2014 at 08:56:24 AM, 48 OF 54, Angela Myers,  
Clerk & Recorder, Larimer County, CO

**EXHIBIT A**

**PROPERTY OWNED BY DECLARANT THAT MAY BE SUBMITTED TO THE  
DECLARATION**

Lots 1 through 25, inclusive,  
Tracts A, B, C, D, E, and F;  
New Prospect, City of Fort Collins, County of Larimer, State of Colorado.



**EXHIBIT B**

**DESCRIPTION OF SUBMITTED PROPERTY**

Lots 1 through 25, inclusive,  
Tracts A, B, C, D, E, and F;  
New Prospect, City of Fort Collins, County of Larimer, State of Colorado.

Property added to the Community may be subject to the following easements and interests of record:

1. [see attached]; and
2. Other instruments of record.

ALTA COMMITMENT

Schedule B-2

(Exceptions)

Our Order No. FCC25115856-17

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

NOTE: EXCEPTION 7(A) AND 7(B) ARE HEREBY DELETED.

8. EXISTING LEASES AND TENANCIES, IF ANY.

NOTE: UPON COMPLETION OF FINAL AFFIDAVIT THIS EXCEPTION MAY BE REMOVED.

9. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED FEBRUARY 17, 1876, IN BOOK I AT PAGE 133.
10. ALL DITCHES, DITCH RIGHTS OF WAY AND LATERALS AND EASEMENTS APPURTENANT THERETO AS EVIDENCED IN DEED RECORDED JANUARY 15, 1890 IN BOOK 63 AT PAGE 499.

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ALTA COMMITMENT

Schedule B-2

(Exceptions)

Our Order No. FCC25115856-17

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

11. TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT RECORDED NOVEMBER 08, 1961 IN BOOK 1157 AT PAGE 265.
12. TERMS, CONDITIONS AND PROVISIONS OF EASEMENT AGREEMENT RECORDED APRIL 14, 1976 IN BOOK 1694 AT PAGE 667.
13. RIGHT OF WAY FOR EAST PROSPECT ROAD AS THE SAME EXISTS AND/OR IS USED
14. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF NEW PROSPECT RECORDED JUNE 20, 2013 AT RECEPTION NO. 20130046757.
15. ANY LOSS OR DAMAGE ARISING FROM THE FOLLOWING MATTERS SHOWN ON ALTA/ACSM LAND TITLE SURVEY DATED JULY 1, 2013 PROJECT #NEW\_PROSPECT, BY RON PERKINS LAND SURVEYOR:
  - A. FENCES DO NOT COINCIDE WITH THE PROPERTY LINES
  - B. DITCH
  - C. CONCRETE IRRIGATION CHANNEL AND HEADGATE
  - D. CONCRETE PAD IN LOT 2 AND TRACT A
  - E. NO INTERNAL MONUMENTS WERE SET
  - F. THE PLAT OF NEW PROSPECT OVERLAPS PLAT OF PINNACLE TOWNHOMES BY .87'

**EXHIBIT C**

**PROPERTIES OWNED BY DECLARANT WHICH MAY BE ADDED TO THE  
DECLARATION**

None.

**EXHIBIT D**

**INITIAL COMMON ELEMENTS**

The following shall be designated as Common Elements, as further set forth on the Plat:

1. Parking lots;
2. Walkways;
3. Pipes/utilities/landscaping located on Common Elements;
4. Private streets;
5. Street lighting;
6. Sidewalks and steps;
7. Irrigation located on Common Elements;
8. Street trees/landscaping;
9. Entry monument;
10. Community signage;
11. Perimeter walls/fencing;
12. Stormwater detention/retention ponds;
13. Wetland preserve/mitigation areas;
14. Conservation areas;
15. Trails access;
16. Any other areas designated on the Plat as Common Elements.

**EXHIBIT E**

**INITIAL LIMITED COMMON ELEMENTS**

None.