

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**ERIE HIGHLANDS**

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THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ERIE HIGHLANDS (the "Declaration"), dated July 15, 2014, for reference purposes is made by OAKWOOD HOMES LLC, a Colorado limited liability company ("Declarant"). Unless otherwise defined, all other initially capitalized phrases, terms, and words in this Declaration have meaning given them in Article 2.

**INTRODUCTORY STATEMENT:**

Declarant is the owner of the Community Area as more particularly described in Attachment 1 to this Declaration. As part of its development and improvement of the Community Area and subject to the right of Declarant to expand the Community Area, Declarant is (1) hereby creating a planned community (the "Community") named Erie Highlands and (2) in furtherance thereof, imposing the conditions, covenants, reservations, and restrictions that will benefit and burden the Community Area as covenants running with the land.

**COVENANTS, CONDITIONS, AND RESTRICTIONS:**

DECLARANT declares that the Community Area is hereby made subject to the conditions, covenants, reservations, and restrictions contained in this Declaration and that all Persons owning as of the Effective Date or subsequently acquiring or occupying Lots in the Community Area shall hereafter convey, hold, and sell such Lots subject to the conditions, covenants, liabilities, obligations, and restrictions set forth herein. This Declaration is made in furtherance of a common and general plan for the Community to (a) enhance and protect the aesthetic nature, attractiveness, desirability, quality, and value of the Community, (b) provide a mechanism for the enforcement of the provisions hereof, and (c) define certain duties, powers, and rights of Declarant, the Design Review Committee, Principal Builders, the Operating District, any Subdistrict, any Association, and Owners of Lots in the Community Area.

DECLARANT, for itself, its assigns, and its successors, further declares that the entire Community Area shall, from and after the Effective Date, be altered, conveyed, developed, encumbered, held, hypothecated, improved, leased, maintained, managed, mortgaged, occupied, owned, rented, sold, transferred, and used subject to the conditions, covenants, declarations, easements, equitable servitudes, limitations, reservations, restrictions, and other provisions set forth in this Declaration for the duration hereof.

DECLARANT (a) intends that the provisions of this Declaration shall run with the land and (b) hereby declares that the conditions, covenants, declarations, easements, equitable servitudes, limitations, reservations, restrictions, and other provisions set forth herein shall bind, be a charge upon, and inure to the mutual benefit of (i) the Community and each part or parcel thereof, (ii) Declarant, all Principal Builders, and their respective successors and assigns, and (iii) all Persons having or acquiring any interest, right, or title in any part of the Community Area or any part or parcel thereof or any Improvement thereon and their respective assigns, heirs, representatives, successors, and transferees. The Community Area is a planned community, as that term is defined in

C.R.S. § 38-33.3-103.3(22). This Declaration does not impose any liability on any portion of the Community Area for the payment of common expenses. Accordingly and pursuant to C.R.S. § 38-33.3-116(2), the Community Area created by this Declaration is subject only to C.R.S. §§ 38-33.3-105 to 38-33.3-107, inclusive, of the Act.

## ARTICLE 1 Definitions

1.1 **Defined Terms.** Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration have the meanings hereinafter specified.

“Access Easement” has the meaning set forth in Section 4.1(a).

“Act” means the Colorado Common Interest Ownership Act as provided in C.R.S. §§ 38-33.3-101, *et seq.*, as amended from time to time.

“Applicable Laws” means the decrees, edicts, laws, orders, ordinances, promulgations, regulations, rules, and statutes of all federal, local (including the Operating District, the Town, and any District or Subdistrict), or state governments (including all agencies, departments, divisions, or parts thereof) having or from time to time exercising jurisdiction over the Community Area and including The Unified Development Code of the Town.

“Applicant” has the meaning set forth in Section 5.3(a).

“Application” has the meaning set forth in Section 5.3(b).

“Approval,” “Approve,” and any variant thereof means (a) for any action or matter requiring the approval of, consent to, or favorable vote with respect to an action, application, or other request by a Person (including an Applicant, a Board, Declarant, the Design Review Committee, an Officer, Owner, or a Principal Builder), that such Person has given (i) such approval, consent, or favorable in writing and (ii) Notice of such approval, consent, or favorable vote by Notice to the Persons affected by or otherwise requesting the approval of, or consent to, an action and (b) for any action or matter requiring the approval of, or consent to, an action by a Government Authority, that such Government Authority has given such approval or consent to such action in a final, nonappealable form.

“Approved Landscape Plan” has the meaning set forth in Section 3.4(a).

“Approved Landscaping” has the meaning set forth in Section 3.4(b).

“Approved Plans” has the meaning set forth in Section 5.3(c).

“Arbitration” and “Arbitration Notice” have the meanings set forth in Section 10.5(c).

“Arbitration Award” has the meaning set forth in Section 10.5(c)(v).

“Arbitration Panel” and “Arbitrators” have the meanings set forth in Section 10.5(c)(ii).

**“Association”** means any association established pursuant to Section 8.2.

**“Benefited Parties”** means (a) the Declarant, the Operating District, any Principal Builder, and any Association, District, or Subdistrict established hereby, (b) their respective affiliates, agents, Boards, directors, employees, members, managers, officers, partners, and shareholders, and (c) their respective assigns, heirs, representatives, and successors.

**“Board”** means (a) with respect to a District, the board of directors of the District and (b) with respect to any Association or Subdistrict, the board of directors of such Association or Subdistrict.

**“Bound Parties”** means any one or more of the following: (a) an Association, if any, established by Declaration as set forth in Article 8 below, (b) a District, if any, that has accepted an assignment of any duty or right hereunder, as set forth in Section 8.3 below, (c) any Builder, together with their respective officers, directors, employees, and agents, (d) the Design Review Committee or any of its members, (e) any Owner (including Declarant and/or a Principal Builder), (f) any Occupant, and/or (g) any Person not otherwise subject to this Declaration who agrees to submit to and participate in the Resolution Dispute Procedures, and “Bound Party” means one of the Bound Parties.

**“Builder”** means each Principal Builder and any other Person constructing Improvements or a Residence in the Community.

**“Common Area”** means any property within the Community Area conveyed to, dedicated to, maintained, owned, or operated by a Government Agency or an Association.

**“Common Area Facilities”** means public amenities that may include open space for passive recreational use, parks, a swimming pool, trails, and related facilities (including parking and restrooms plumbed for such facilities and uses).

**“Common Area Facilities Risks”** means all risks associated with, or attendant to, the operation of public facilities similar to the Common Area Facilities. Such risks include injury to person and/or property arising out of, or resulting from, (a) the construction, design, maintenance, operation, repair, or use of the Common Area Facilities, (b) lights and noise associated with the Common Area Facilities (including lights and noise generated by blowers, compressors, crowds, lights used to illuminate night time activities on the Common Area Facilities, mulchers, parked cars or vehicles of persons using the Common Area Facilities, public events held from time to time on the Common Area Facilities, pumps, tractors, traffic, utility vehicles, and wells), (c) trespass, acts, or omissions of persons employed in connection with, using, or otherwise on the Common Area Facilities, (d) the use of reclaimed water, treated waste water, or other sources of non-potable water for irrigation and overspray in connection with such use, (e) the use of fertilizers, insecticides, and pesticides in connection with the maintenance of the Common Area Facilities, together with overspray in connection with such use, (f) drainage resulting from drainage easements established for the property to the extent such drainage is in accordance with the drainage plan established for the Project Area, (g) creeks, water courses, and waterways constructed or located on the Common Areas, including flooding risks related thereto, and (h) the fact that the Common Area Facilities may constitute or be considered an “attractive nuisance.”

"Community Area" means (a) the real property initially subject to this Declaration as set forth in Attachment 1 and (b) following its inclusion in the manner provided in Article 2 below, Included Property added to the Community Area.

"Community Fences" means a Fence to the extent that such Fence is located (a) on a lot line separating a Lot from (i) adjoining Common Area, (ii) land dedicated to a Government Authority by a Final Plat, (iii) land dedicated to, or owned by the public as, open space, right-of-way, street, tract, trail, or other public use or (b) Fences located on public rights-of-way consistent with, or as required by, the Final Plat or any development or subdivision agreements governing the platted Lots in such Final Plat.

"Declarant" means Oakwood Homes LLC, a Colorado limited liability company and its successors and assigns. A Person shall be a successor and assign for this purpose only if (a) it is a successor to Declarant by consolidation, merger, or operation of law or (b) it is a Successor Declarant duly designated as such in the manner provided in Section 7.8 below and as to the rights or interests of Declarant specifically designated in the Recorded instrument.

"Declaration" means this instrument as amended from time to time in the manner provided herein.

"Design Review Committee" has the meaning set forth in Section 5.2(a).

"Design Standards" has the meaning set forth in Section 5.2(a) below.

"Dispute" means, except as exempted by the terms of Article 7 below, any claim, disagreement, grievance, or other dispute between one Bound Party and another, regardless of how the same may have arisen or on what it might be based, including but not limited to those arising out of or related to (a) the interpretation, application or enforcement of this Declaration, (b) the duties, liabilities, obligations, responsibilities, and rights of any Bound Party under this Declaration, (c) any action or inaction taken by the Design Review Committee (including those relating to the design or construction of any Improvements located in the Community Area), or (d) any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party.

"Disputing Party" has the meaning set forth in Section 10.5(a).

"District" means one or more metropolitan or other special district organized as quasi-public corporations under the laws of the State of Colorado that include within their boundaries any portion of the Community Area.

"Encroachment Easement" has the meaning set forth in Section 4.1(c).

"Entity" means a corporation, joint venture, limited liability company, partnership, trust, or other form of legal entity.

"Established Drainage Pattern" means the drainage pattern (a) existing at completion of the grading for the Community Area, (b) as Approved by all applicable Government Authorities,

and (c) including the drainage pattern (i) from other portions of the Community Area over any Lot, (ii) from any Lot over other portions of the Community Area (iii) from any property owned by, or dedicated to, a Government Authority or other Persons over any Lot, (iv) from any Lot over property owned by, or dedicated to, a Government Authority or other Persons, (v) from any Lot over another Lot; and (vi) from any Lot over properties outside the Community Area.

“Established Drainage Pattern Easement” has the meaning set forth in Section 4.1(d).

“Fees” has the meaning set forth in Section 5.2(c).

“Fences” has the meaning set forth in Section 3.3.

“FHA” means the Federal Housing Administration of the United States Department of Housing and Urban Development, including such department or agency of the United States government as shall succeed to the FHA in insuring notes secured by mortgages and deeds of trust on residential real estate.

“FHLMC” means Freddie Mac or the Federal Home Loan Mortgage Corporation or The Mortgage Corporation created by Title III of the Emergency Home Finance Act of 1970, including any successors thereto.

“FNMA” means Fannie Mac or the Federal National Mortgage Association, a government-sponsored private corporation established as such pursuant to Title VIII of the Housing and Urban Development Act of 1968, including any successor thereto.

“First Mortgage” means a Mortgage that has priority over all other security interests in a Lot, other than statutory liens for taxes and special assessment and includes an executory land sales contract wherein the VA Administrator is the seller, whether such contract is owned by the VA or its assigns, and whether Recorded or not.

“First Mortgagee” means any Person named as the mortgagee or beneficiary under any First Mortgage or any insurer or guarantor of a First Mortgage, including the VA Administrator.

“GNMA” means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, including any successor thereto.

“Government Authorities” means all governmental or quasi-governmental agencies, authorities, bodies, districts, or entities exercising or having jurisdiction over the Community Area and includes the District, FHA, HUD, the Town, and VA.

“Government Mortgage Agency” means one of the FHA, FHLMC, FNMA, GNMA, HUD, VA, or any similar entity, public or private, authorized, Approved or sponsored by any governmental agency to guarantee, insure, make, or purchase Mortgage loans directly or on the secondary market.

“HUD” means the United States Department of Housing and Urban Development.

**"Improvements"** means (a) additions, alterations to the exterior of a Residence, construction, erection, expansion, installation, remodeling, and replacement of any building, structure, or similar improvement to real property (including decks, driveways, elevated or raised gardens, Fences and Shared Fences, exterior antenna, exterior equipment, exterior stairs, landscaping, outdoor flower or garden boxes, outdoor sculptures or artwork, patio or exterior window covers, pipes, plantings, playground equipment, privacy or other type of exterior screening, retaining or other type of walls, utility facilities, walkways, and windbreaks, (b) the demolition or destruction, by voluntary action, of any building, structure, or other improvement on a Lot, (c) the excavation, filling, grading or similar disturbance to the surface of the land including changes to the Established Drainage Patterns, drainage in general, grade, ground level, or point of discharge of water to or from a Lot, (d) installation of landscaping on a Lot, alteration of Approved Landscaping, or replacement of more than 5% of the total organic landscaped area on a Lot with non-organic landscape materials except to the extent permitted by the Approved Landscape Plan or the Design Standards, and (e) any change or alteration of any previously approved Improvement, including any change of exterior appearance, color, materials, or texture.

**"Included Property"** means the real property described in a Notice of Inclusion that is included into and made a part of the Community Area pursuant to the provisions of Article 3 below.

**"Includible Area"** means the real property that an Including Party may add to the Community Area pursuant to Article 2 hereof. As of the Recording of this Declaration and subject to the right of Declarant to contract or expand the Includible Area as set forth in Section 2.5 below, the Includible Area is the real property described in Attachment 2 to this Declaration.

**"Including Party"** means Declarant, a Principal Builder, or any other Person having the ability to include property into the Community Area pursuant to the provisions of Article 3 below.

**"Lot"** means any lot, parcel, site, or tract of land within the Community Area shown upon any Plat upon which an Owner may construct an Improvement or a Residence in accordance with Applicable Law provided that "Lot" neither means nor includes (a) any area designated as "common elements" on a condominium declaration or map, (b) the Common Areas, (c) the Common Area Facilities, or (d) any property dedicated and/or conveyed to a Government Authority by Plat or other Recorded instrument.

**"Mediation"** and **"Mediation Request"** have the meanings set forth in Section 10.5(a).

**"Mediator"** has the meaning set forth in Section 10.5(b)(i).

**"Mortgage"** means any deed of trust, mortgage, or other such instrument encumbering a Lot to secure the performance of an obligation or the payment of a debt releasable only upon performance of the obligation or payment of the debt.

**"Mortgagee"** means a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee.

"Mortgagor" means the Person who mortgages his or its property to another (*i.e.*, the maker or grantor of a Mortgage) and includes a trustor or grantor under a Deed of Trust.

"Notice" has the meaning set forth in Section 11.10.

"Notice of Inclusion" means a Notice Recorded including additional real property into the Community Area as more particularly set forth in Section 2.3(c).

"Notice of Withdrawal" means a Recorded Notice withdrawing property from the Community Area as more particularly set forth in Section 2.4.

"Occupant" means each Person occupying a Lot and includes, but is not necessarily limited to, each Owner, guest, invitee, licensee, tenant, or other occupant of a Residence.

"Officers" mean (a) with respect to a District, the agents and officers of the District, (b) with respect to any Association or Subdistrict, the agents and officers of such Association or Subdistrict, and (c) with respect to Declarant or a Principal Builder, the agents and officers of the Declarant or Principal Builder.

"Operating District" means Erie Highlands Metropolitan District No. 2, its successors, and assigns.

"Owner" means the Person or Persons collectively holding fee simple title of Record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder.

"Owner Party" means the Owners, Occupants, and their respective agents, assigns, contractors, guests, heirs, invitees, licensees, representatives, and successors.

"Person" means a natural person or an Entity.

"Plat" means any Recorded development plan, plat, or similar filing that includes a Lot, a portion of the Community Area, or a portion of the Common Area that all Government Authorities have Approved.

"Principal Builder" means a Builder that (a) acquires one or more vacant Lots for the purpose of developing infrastructure on such Lots for sale to another Builder or for the construction of a single-family residential structure thereon for resale to the ultimate purchaser thereof and (b) is designated by Declarant as a "Principal Builder" in a Recorded instrument. Such Recorded writing also may assign to a Principal Builder designated therein some or all of the rights of Declarant that may be exercised in connection with the development of Lots acquired by such Principal Builder and designate a Principal Builder as an Including Party entitled to include property into the Community Area. The term "Principal Builder" includes Declarant, Oakwood Homes LLC, a Colorado limited liability company, which, by the Recording of this Declaration, Declarant hereby designates a Principal Builder.

"Project Area" means the aggregate of (i) the Community Area subject to this Declaration at any point in time and (ii) the Includible Area that Declarant may include in the Community Area.



"Proposed Plans" has the meaning set forth in Section 5.3(a).

"Record," "Recordation," "Recorded," "Recording," and any variant thereof means the filing for record of any document in the office of the Clerk and Recorder of the County of Weld, Colorado.

"Residence" means (a) a single-family residence and related Improvements constructed on a Lot in the Community Area or (b) a multifamily residential building and related Improvements leased to Occupants residing in apartment units located in such building as their principal place of residence.

"Responding Party" has the meaning set forth in Section 10.5(a).

"Shared Fence" has the meaning set forth in Section 3.3(c).

"Subdistrict" means any metropolitan district designated in a Supplemental Declaration that includes within its boundaries a portion of the Community Area and whose Residents are less than all of the Owners of Lots subject to this Declaration.

"Successor Declarant" means any Person that acquires some or all of the interest of Declarant in the Project Area pursuant to Section 7.8 hereof.

"Supplemental Declaration" has the meaning set forth in Section 8.1 below.

"Termination of Mediation" means a period expiring thirty days after submission of the matter to mediation (or within such other time as determined by the Facilitator or agreed to by the Bound Parties) and upon the expiration of which the Bound Parties have not settled the Dispute.

"Town" means the Town of Erie, Colorado.

"Use Restrictions" has the meaning set forth in Section 3.7.

"Utility Easement" has the meaning set forth in Section 4.1(e).

"Utility Service" means all utility services necessary for the convenient use and enjoyment of the Common Area, the Common Area Facilities, Improvements, Lots, and Residences in the Community Area (including cable, cable television, computer, data transmission, electric, gas, sanitary sewer, storm sewer, telecommunication, telephone, television, and water and all equipment, facilities, and lines necessary to provide such utility service).

"VA" means the Veterans Administration of the United States of America, including such department or agency of the United States government as shall succeed to the VA in its present function of issuing guarantees with respect to notes secured by Mortgages on Lots.

"Work" has the meaning set forth in Section 5.3(a).

1.2 Construction of Terms.

(a) General. Generally, (i) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined, (ii) whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms, and (iii) section headings are for convenience of reference only and do not affect the interpretation of this Declaration.

(b) Enforcement and Interpretation of Declaration. Persons construing, enforcing, or interpreting this Declaration shall construe, deem, and interpret (i) the words *include*, *includes*, and *including* as being followed by the phrase *without limitation*, (ii) the word *will* as having the same meaning and effect as the word *shall*, (iii) any definition of or reference to any agreement, instrument or other document (including any organization document) as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (iv) any reference herein to any Person including such Person's successors and assigns, (v) the words *herein*, *hereof*, and *hereunder*, and words of similar import when used in this Declaration as referring to this Declaration in its entirety and not to any particular provision thereof, (vi) references in this Declaration to sections, subsections, and attachments as references to the sections and subsections of, and attachments to, this Declaration, and (vii) references to any law as references to all statutory and regulatory provisions amending, consolidating, interpreting, replacing, or supplementing such law and any reference to any law or regulation, unless otherwise specified, as referring to such law or regulation as amended, modified or supplemented from time to time.

1.3 Attachments. Declarant (a) attaches the following attachments (the "Attachments") to this Declaration, (b) incorporates and makes the Attachments a part of this Declaration by this reference, and (c) states that all references in this Declaration to an *Attachment* is to one of the following:

Attachment 1	Community Area
Attachment 2	Includible Area
Attachment 3	Exceptions to Title

**ARTICLE 2**

Property Subject to Declaration

2.1 Property Subject to Declaration and Designation of District. Declarant hereby declares (a) that the Community Area, as described in Attachment 1, is hereby made subject to this Declaration, and (b) the District shall be responsible for the enforcement of the conditions, covenants, reservations and restriction set forth herein the Community Area.

2.2 Inclusion of Additional Property to Community Area. Declarant shall have, and Declarant hereby reserves, the right, but not the obligation, to develop the Project Area in phases. As a part of such phased development, Declarant reserves the right to add to the Community Area part or all of the Includible Area (as the boundaries of such area may exist from time to time as set forth in Section 2.5 below) in phases so long as such Including Party owns any part of the Project Area. Inclusion of Lots as a part of such phased development shall be accomplished in accordance

with a general development plan to be accomplished by Declarant, any Principal Builder, or any Successor Declarant, which plan may be filed, if applicable, with the Town and/or HUD and/or the VA before any such inclusion, if Declarant, a Principal Builder, or a Successor Declarant have previously obtained Approval of all or part of the Community from FHA, HUD, or VA. If Declarant has previously obtained Approval of all or part of the Community from FHA, HUD, or VA, then FHA, HUD, or VA, as the case may be, must also Approve the addition of Included Property containing Lots intended for the construction of Residences. Within the context of and in accordance with Declarant's general development plan, Residences on an Lots included into the Community Area shall be either substantially the same cost, quality, size, and style as Residences previously constructed in the same portion of the Community Area or such other cost, quality, size, and style as may be Approved by Declarant.

### 2.3 Manner of Inclusion.

(a) Inclusion by Declarant. Declarant may add real property to the Community Area as Included Property provided that (i) the proposed Included Property is within the Includible Area and (ii) Declarant either owns the proposed Included Property or (ii) has the prior Approval to such inclusion from the owner of the proposed Included Property. Declarant shall add real property as Included Property to the Community Area by Recording a Notice of Inclusion complying with Section 2.3(c) below.

(b) Inclusion by Other Persons; Notice of Inclusion. With the prior Approval of Declarant, all other Including Parties may add additional real property as Included Property provided that (i) such Including Party owns the proposed Included Property or has the prior Approval of the owner of the proposed Included Property, (ii) the proposed Included Property is within the Includible Area, and (ii) the Including Party executes and Records one of more of the following: (i) a Notice of Inclusion, (ii) a deed conveying a Lot to an Owner other than Declarant or a Principal Builder, (iii) a Supplemental Declaration as provided in Section 8.1 below, or (iv) a deed or Plat dedicating or conveying Common Area to the Town or a District (or, if a Supplemental Declaration is Recorded in connection with such inclusion, then the Association or Subdistrict, if any, designated in such Supplemental Declaration).

(c) Contents of Notice of Inclusion. Any deed, Notice of Inclusion, or Supplemental Declaration adding Included Property into the Community Area shall (i) state the name of the owner of the Included Property, (ii) if the Including Party is not the owner of the Included Property, contain the Approval of the owner of such property, (iii) if the Approval of Declarant is required pursuant to Section 2.3(b) above, contain the Approval of Declarant, (iv) describe the Included Property, and (v) refer to this Declaration, including the date and reception number for the Recordation of this Declaration. From and after the Recording of a Notice of Inclusion, the Included Property described in such Notice of Inclusion shall be subject to the terms and conditions of this Declaration.

2.4 Withdrawal of Included Property. An Including Party may withdraw Included Property from the Community Area and the effect of this Declaration to correct a surveyor error, a technical or clerical error, or other error provided that no Person shall have begun construction of Improvements (including improvement of Common Areas, construction of Common Area Facilities, or Residences) on such Included Property. Subject to the foregoing, an Including Party may

accomplish such withdrawal by executing, acknowledging, and Recording a Notice (a "Notice of Withdrawal") of such withdrawal. The Notice of Withdrawal shall (a) be executed and acknowledged by the owner of the Included Property being withdrawn, (b) if the Included Property is not then owned by Declarant, contain the executed and acknowledged Approval of Declarant for so long as Declarant owns any property in the Includible Area and has the power to include additional property to the Community Area, (c) contain an adequate legal description of the Included Property being withdrawn from the Community Area, (d) contain a reference to the Notice of Inclusion or Supplemental Declaration for the Included Property, which reference shall state the date thereof, the date Recorded, and the book and page of where the Notice of Inclusion or Supplemental Declaration was Recorded, and (e) contain a statement and declaration that such Included Property is being withdrawn from the Community Area and shall not be thereafter subject to this Declaration, Notice of Inclusion, or Supplemental Declaration for the Included Property. The withdrawal shall be effective upon Recording of the Notice of Withdrawal and upon Recording of the Notice of Withdrawal, the Included Property described therein shall no longer be part of the Community Area or subject to this Declaration or to the Supplemental Declaration for the Included Property.

2.5 Expansion or Contraction of Includible Area. Declarant may add to, expand, delete from, or remove all or part of the Includible Area effective upon the Recordation of an instrument, executed by the owner thereof (if Declarant is not then the owner of the real property being affected) and Declarant, describing such real property and declaring that, after the Recording of such instrument, such real property shall thereafter be added to or deleted from the Includible Area.

### ARTICLE 3

#### Covenants, Limitations, and Restrictions

3.1 General Maintenance of Improvements. At its cost and expense, (a) each Owner and Occupant shall (a) keep and maintain the Lot and Improvements (including the Residence) constructed thereon in good repair, in an attractive, clean, safe, and sightly condition, and in accordance with all Applicable Laws and the Design Standards and (b) each Owner and Owner Party shall comply with the Use Restrictions set forth in this Article 3.

3.2 Drainage. At its cost and expense, each Owner shall maintain the Established Drainage Pattern on its Lot in accordance with the grading plan for the Community Area Approved by and on file with the Town, the Declarant, and the Design Review Committee. Neither an Owner nor an Owner Party shall interfere with the Established Drainage Pattern over any property within the Community Area, except as Approved by (a) the Declarant during any period in which Declarant owns Lots in the Community Area, (b) the Design Review Committee, and (c) all applicable Government Authorities provided that neither the Declarant nor the Design Review Committee shall Approve any change in drainage unless the Owner requesting such change makes adequate provision for alternate drainage that will not adversely and materially affect any Owner affected by such change in drainage (including such changes). The Owner of the Lot that changes the Established Drainage Pattern, whether in accordance with this Section 3.2 or otherwise, shall be solely liable for the impact of such changes on adjacent Lots, property in or adjacent to the Community Area, or public property.

3.3 Fences. The Operating District, Owners, and Occupants (and any Association or Subdistrict if so provided in a Supplemental Declaration) shall maintain Fences ("Fences") in the Community Area as follows:

(a) Community Fences. The Operating District shall maintain, repair, and replace all Community Fences in accordance with Applicable Law and the Design Standards provided that (i) if an Owner or any member of the family of an Occupant or an Owner damages, injures, or removes a Community Fence, then the Owner shall repair or replace the Community Fence and (ii) if a Supplemental Declaration assigns to an Association or a Subdistrict the responsibility for maintaining Community Fences for Lots and Common Area subject to such Supplemental Declaration, then such Association or Subdistrict rather than the Operating District shall be responsible for and shall maintain, repair, and replace the Community Fences for Lots and Common Area subject to such Supplemental Declaration.

(b) Lot Fences. Each Owner of a Lot shall be responsible for maintaining, repairing, and replacing in accordance with Applicable Law and the Design Standards any Fence on an Owner's Lot that is not a Community Fence or a Shared Fence. Owners having Permitted Pets in their Lot or Residence shall maintain the Fences on its Lot as may be necessary to confine their pet to their Lot and such fencing may include an invisible fencing on or within the perimeter boundary of a Lot if such invisible fencing is adequate to confine such pet.

(c) Shared Fences. The Owners of Lots sharing a Fence (a "Shared Fence") located on a lot line between their respective Lots shall jointly maintain and share the expense of such Shared Fence if the Declarant or a Principal Builder installed such Shared Fence. If an Owner other than the Declarant or a Principal Builder installs a Shared Fence in accordance with this Section 3.3(c), then, at its cost and expense, the Owner installing such Shared Fence shall maintain, repair, and replace it as needed from time to time. Any Owner constructing, erecting, installing, modifying, or replacing a Fence shall obtain the prior Approval of the Design Review Committee in accordance with Article 5 below. New or replacement Fences shall comply with the Design Standards. An Owner shall not modify or replace a Fence adjoining the Lot of another Owner without the prior Approval of the Owner of the affected Lot and the Design Review Committee.

(d) Installation of Fencing by Owner. Any Owner constructing, erecting, installing, modifying, or replacing a Fence shall obtain the prior Approval of the Operating District in accordance with the provisions of this Declaration. New or replacement Fences shall comply with the Design Standards which may be adopted by the Operating District. An Owner shall not modify or replace a Community Fence adjoining its Lot without prior Approval from the Operating District.

3.4 Landscaping. Following the completion of a Residence on a Lot and the conveyance by a Principal Builder to the initial Owner thereof, each Owner of a Lot, at its cost and expense, shall install and maintain landscaping on its Lot in accordance with the following:

(a) Landscaping (Initial Installation). Each Owner shall (i) submit landscape plans for such landscaping to the Design Review Committee by within sixty days after closing on the purchase of a Lot from a Principal Builder and (ii) install such landscaping within one-hundred twenty days after Approval of an Owner's landscape plan (an "Approved Landscape Plan") by the Design Review Committee (or within such longer period of time as may be approved by the Design

Review Committee based upon consideration of weather conditions and other factors beyond the control of the Owner).

(b) Maintenance and Replacement. After the initial installation of the landscaping in accordance with the Approved Landscape Plan ("Approved Landscaping") for a Lot, the Owner shall, at its cost and expense, (i) take such steps as reasonably necessary to maintain such Approved Landscaping in an attractive, clean, neat, sightly, and trim condition and in accordance with all Applicable Laws, the Approved Landscape Plan, and the Design Standards, (ii) remove dead or dying landscape materials on a Lot and replace such materials as soon as possible, taking into account weather conditions affecting the planting of replacement landscaping, and (iii) keep each Lot free from brush or other growth or trash that is unsightly or might cause undue danger of fire.

(c) Irrigation Systems. At its cost and expense, each Owner shall maintain, operate, repair, and replace automatic irrigation systems on a Lot in a manner sufficient to maintain the Approved Landscaping in accordance with the requirements of this Declaration, but at all times in compliance with Applicable Law (including restrictions on watering), the Approved Landscape Plan for such Lot, the Design Standards, and in such a fashion as to conserve water to the maximum extent practicable.

3.5 Limitations and Restrictions. Each Owner shall hold, lease, and occupy such Lot and the Residence constructed thereon subject to, and in accordance with, all Applicable Laws, this Declaration, and the following limitations and restrictions:

(a) Air Conditioning and Heating Equipment. An Owner shall (i) not allow, locate, maintain, or place any heating, air conditioning, evaporative coolers, solar collectors, or refrigeration equipment anywhere on a Lot or structure other than on or within a structure or on the ground and (ii) screen such equipment from public view in accordance with the Design Standards.

(b) Animals. An Owner shall not breed, keep, kennel, or raise animals, livestock, or poultry of any kind on any Lot except in accordance with the following:

(i) An Owner may keep Permitted Pets in their Residences or their Lots provided that an Owner shall not (A) allow, breed, keep, kennel, or raise Permitted Pets for a commercial purpose or use, (B) have more than two Permitted Pets to live in a Residence or be on a Lot at any one time, (C) allow any Permitted Pets to make an unreasonable amount of noise or odor, chase or otherwise harass Persons, the Community Area, Improvements, other Permitted Pets, or wildlife or otherwise create a nuisance, or (D) allow any Permitted Pet off the Owner's Lot unless such Permitted Pet is properly leashed and accompanied by the pet Owner or his representative.

(ii) Each Owner of a Permitted Pet shall (A) be financially responsible and liable for any damage, injury, or loss of life caused by such Owner's Permitted Pet to Persons, the Community Area, Improvements, other Permitted Pets, Residences, or wildlife, to Lots owned by any other Persons, injuries to any Persons, injuries to other Permitted Pets, or otherwise and (B) regularly clean all animal waste and immediately remove all animal waste left by an Owner's Permitted Pet in any portion of the Community Area outside of an Owner's Lot.

(c) Annoying Sounds or Odors. An Owner shall not emit any odor or sound from any property within the Community Area that is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no Owner shall use or permit the use of any exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes. An Occupant and/or an Owner of a Lot shall immediately remove all materials located thereon that create or cause an odor. Notwithstanding the foregoing and if the event has been Approved by the Design Review Committee and is permitted under all Applicable Laws, special gatherings of residents within the community and their invited guests (family parties, block parties, community garage and similar activities) may utilize outdoor speakers provided that, as a condition of its Approval, the Design Review Committee may impose conditions on the location, hours, noise level, number of participants, and other matters.

(d) Antennae, Pipes, Transmitters, and Utility Lines. Each Owner shall keep and maintain, to the extent possible, (i) screened from view from streets and adjacent Lots, aerials, antennae (including antennae for shortwave or HAM radio operation), satellite dish, or other facilities for the transmission or reception of audio or visual signals (except those located entirely inside a Residence) in accordance with Applicable Law (including the requirements of the Federal Telecommunications Act of 1996) and the Design Standards and (ii) underground or within an enclosed structure, (A) pipes for water, gas, sewer, drainage, or other purposes and (B) poles, wires, and other facilities for the transmission of electricity, and (iii) utility meters and similar utility facilities.

(e) Construction Type and Building Height. All construction shall be new. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling or structure may be moved onto a Lot, except as expressly hereinafter provided for temporary buildings. No building shall exceed in height the maximum height set forth in the Design Standards unless Approved by the Town, the Declarant during any period during which the Declarant owns a Lot in the Community Area, and the Design Review Committee. Notwithstanding the foregoing, normal construction activities carried out by Declarant or a Principal Builder within the Community Area or carried out by an Owner or Owner's contractor in connection with Improvements Approved by the Operating District or the Design Review Committee shall not be a violation of any of the Use Restrictions provided that all contractors (including a Principal Builder) engaged in construction activities within the Community Area shall ensure that (i) all construction activities comply with all Applicable Laws, (ii) construction debris is removed from the Community Area on a regular basis, (iii) streets are cleaned of mud, dirt, and debris caused by such contractor or its subcontractors, and (iv) any contractor (or its subcontractors) must repair any damage to Common Areas, curbs, sidewalks, streets, Utilities, and other Improvements in a timely manner.

(f) Hazardous Activities. An Owner shall not carry on, conduct, permit, or otherwise allow on its Lot any activity that is, or might be, unsafe or hazardous to any Person or property, including (i) burning, lighting, or setting of open fires except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers, (ii) the discharge of firearms, (iii) the discharge, explosion, or ignition of fireworks unless and only to the extent that Applicable Law permits such discharge, explosion, or ignition of fireworks, (iv) causing or permitting any part of the Community Area or a Lot to be used as a site for the discharge, disposal, generation, manufacture, release, storage,

transportation, treatment, use, or otherwise permit the presence of any materials that, under Applicable Law, constitute hazardous materials except to the extent that (A) such materials are typically used in the maintenance and ownership of a single-family Residence similar to the Residences and (B) are used in amounts and quantities permitted by Applicable Law, and (v) storage of explosives, gasoline, or other volatile or incendiary materials or devices provided that an Occupant and/or an Owner may store gasoline or fuel for an Owner's lawnmower, snow blower, and similar equipment on an incidental basis on a Lot if the amount so kept does not exceed five gallons and is kept in UL approved containers.

(g) No Mining or Drilling. Except for prior rights of Owners set forth in Attachment 3 to this Declaration, neither an Owner nor an Owner Party shall use any portion of the Community Area for boring, drilling, exploring, extracting, mining, quarrying, or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth.

(h) No Unsightliness. Owners and Occupants shall not allow any unsightly condition, equipment, facility, object, structure, or similar item and shall enclose all equipment (including snow removal equipment and garden or maintenance equipment when not in actual use) in a structure. The Operating District may specify in the Design Standards what conditions and objects constitute "unsightliness" for this provision.

(i) Noxious or Offensive Activity. An Owner shall not carry on, conduct, permit, or otherwise allow on its Lot (i) any noxious or offensive activity that is or may become a nuisance or cause an unreasonable annoyance, disturbance, or embarrassment to others or (ii) store equipment, facilities, structures, or similar objects (including snow removal equipment and garden or maintenance equipment) except to the extent such objects are within a structure and except when in actual use.

(j) Playground Equipment. An Owner shall not erect, install, locate, maintain, permit, or otherwise allow on its Lot any (i) playground equipment that is above nine feet in height, as measured from the rear ground level porch of any Residence built on any Lot, (ii) basketball backboards attached to an Improvement or a Residence, (iii) freestanding basketball backboards that are not made of standard manufacturers materials and colors, or (iv) temporary, portable basketball backboards and poles within a public street or not stored out of view from adjacent properties and streets except when in use.

(k) Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on any Lot, the Owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced in a timely manner to its original condition or such other condition as may be Approved in writing by the Operating District, or the Owner shall cause the damaged or destroyed Improvement to be demolished and the Lot to be suitably landscaped, subject to the Approval of the Operating District, so as to present a pleasing and attractive appearance. The Association may exercise the obligations of an Owner under this Section 3.5(i) when authorized in a duly Approved and Recorded Supplemental Declaration.

(l) Restriction on Further Subdivision of Lots. The Owner of a Lot shall not subdivide that Lot without the Approval of the Declarant. The Declarant may condition its Approval upon Approval of the Town and compliance with all Applicable Laws.



(m) Sewage Disposal and Water Systems. Except with the prior Approval of the Declarant during any period in which Declarant owns a Lot in the Community Area, the Design Review Committee, and any applicable Government Authority, an Owner shall not erect, install, locate, maintain, permit, or otherwise allow on its Lot or any part of the Community Area any (i) cesspool, septic tank or other sewage disposal system or (ii) any individual water supply or water softener system. If an Owner receives the requisite Approvals for a sewage disposal or water system, the Owner shall construct, design, equip, and locate such system in accordance with all Applicable Laws and the recommendations, requirements, and standards of the Town.

(n) Signs and Advertising. Subject to the provisions hereof permitting signs by the Declarant and/or a Principal Builder, an Owner shall not allow, erect, install, locate, maintain, or permit any advertising device, billboard, poster, sign, poster, or display of any kind anywhere within the Community Area subject to public view except for (i) political and other signs permitted by the Act or other Applicable Law and (ii) a sign advertising a Lot for sale or for lease may be placed on such Lot provided that the standards relating to color, dimensions, location, and style of such signs shall be subject to Applicable Law and the Design Standards.

(o) Temporary Structures. Except for building materials stored and temporary structures used by the Declarant or a Principal Builder on a Lot in connection with the construction of a Residence thereon, an Owner shall not (i) allow, erect, install, locate, maintain, or permit any playhouse, shack, storage shed, tent, playhouse, temporary building, or temporary structure upon any property within the Community Area or (ii) store building materials on any Lot except temporarily during continuous construction of an Improvement on such Lot or inside a Residence being constructed on such Lot.

(p) Trailers, Campers, and Vehicles. An Owner shall not park any boat, camper (on or off supporting vehicles), disabled, junk or abandoned vehicles, mobile home, motor home, motorcycle, recreational vehicle, snowmobiles, towed trailer unit, trailer, tractor, truck (other than a three-quarter ton or smaller pick-up truck not used for commercial purposes), or any other vehicle, the primary purpose of which is commercial, recreational, or sporting use in, on, or about any Lot or street within the Community Area except within the attached garage or unless such vehicles are concealed from view in a location Approved by the Design Review Committee. An Owner shall not dismantle, maintain (other than washing and polishing vehicles), paint or repaint, repair, service, or repair any type of boat, machine, trailer, vehicle, or other device on or within the Community Area, except within a completely enclosed structure that screens the sight and sound of the activity from the street and from other Lots, Community Area, and public property.

(q) Trash. Each Owner shall (i) dispose of all garbage, grass clippings, leaves, lumber, metal, plant waste, scrap, shrub or tree clippings, or debris of any kind in containers designated for trash by the Town, (ii) dispose of recyclable bottles, glass, paper, plastic, and other recycled materials in accordance with Town requirements and in receptacles designated for recycled materials, (iii) on the days designated by the Town for pick-up and removal, cause the receptacles for recycled materials and trash to be carried out to a publicly dedicated street by the times for such pickup, as designated by the Town, and (iv) after the Town has picked up such recycled materials and trash, cause the receptacles to be taken from the publicly dedicated street to such Owner's

Residence. Owners shall dispose of bulk materials in accordance with the Town requirements for the pick-up of such materials.

3.6 Use of Lots. An Owner shall use a Lot for residential purposes as permitted under all Applicable Laws in accordance with the following:

(a) Residential Use. An Owner shall not construct, improve, lease, manage, occupant, operate, or rent a Residence within the Community Area for any purpose other than for residential use as a (i) a single-family detached dwelling or single-family attached dwelling in those areas of the Community Area designated by Declarant or zoned for such use or (ii) a multifamily dwelling in those areas of the Community designate for mixed-use purposes that allow multifamily residential use.

(b) Permitted Business Uses. Notwithstanding the foregoing and subject to any conditions that the Operating District may impose, an Owner may conduct the following business activities in the Community Area:

i. Construction and Sale of Residences. The construction, improvement, and sale of Lots or Residences constructed thereon (including construction trailers, sales offices, and model homes used by Declarant or a Principal Builder) provided that all construction trailers and sale offices of a Principal Builder shall comply with all Applicable Laws and with the regulations and rules established for such offices and trailers by the Town, Declarant, and the Operating District; and

ii. In-Home Businesses. An in-home business (including in-home day care services) not involving the use of employees other than an Occupant, an Owner, or their respective family members if (A) permitted under all Applicable Laws and Approved by the Operating District, (B) the operator of such business obtains all Approvals required by Government Authorities to conduct such business, (C) such activities are conducted solely within the Residence, and (D) such in-home business does not (1) create or result in any offensive or noxious activities, (2) constitute a nuisance, or (3) result in clients, customers, or employees (a) coming to the Residence for purposes related to the business or (b) parking in the public streets.

3.7 Enforcement of Covenants, Limitations, and Restrictions. Each Owner, by its acceptance of title to a Lot, hereby assigns and delegates to the Operating District, in its own name as an Owner of property within the Community Area and on behalf of all Owners of Lots, the authority, power, right, and responsibility to enforce the covenants, limitations, and restrictions contained in this Article 3 and the other covenants, limitations, and restrictions set forth in this Declaration (collectively, the "Use Restrictions"). The Operating District shall conduct the enforcement of the Use Restrictions in accordance with Applicable Law and the following:

(a) Entry Onto Lot. Each Owner, by its acceptance of title to a Lot, hereby grants the Operating District permission to enter the Lot of the Owner and cure a breach or violation of a Use Restriction or cause compliance with this provision and to recover the costs and expenses incurred in so doing provided that (i) there shall be no entry into the interior of an Improvement intended for human occupancy without the Approval of the Owner unless a clear emergency exists

and (ii) the Operating District shall provide reasonable notice to the Owner before entering such Improvement. The Operating District may enter a Lot without Notice in emergency situations if the Owner each affected Lot are warned of impending emergency entry as early as is reasonably possible.

(b) Non-Liability for District Action or Inaction. Neither the District nor any of the Benefited Parties shall be liable for any Disputes arising from, based upon, or otherwise relating to the performance of the duties imposed upon the Operating District or any Association or Subdistrict pursuant to this Declaration. Neither the Operating District nor any Association or Subdistrict shall be responsible for reviewing (nor shall its Approval of an Improvement be deemed Approval of), any aspect of the ownership or use of a Lot from the standpoint of either (i) safety, whether structural or otherwise, or (ii) conformance with building codes or other Applicable Laws.

(c) No Implied Waiver or Estoppel. No action or failure to act by the Operating District or Declarant shall constitute a waiver or estoppel with respect to future action by the Operating District or Declarant with respect to any Limitation and Restriction.

(d) Delegation and Termination of Rights. The enforcement of the Use Restrictions hereof may be delegated in whole or in part by Declarant and the Operating District to one or more committees created by Declarant or by the Board of the District or to an Association or Subdistrict with respect to a portion of the Community Area described in a deed or Notice of Inclusion; provided that any such delegation shall not relieve the District of its obligations and rights to enforce the Use Restrictions in its own name. Notwithstanding the foregoing, the Operating District may resign its duties with respect to the Limitation and Restrictions at any time following the termination of the Facilities Construction Agreement by Recording a Notice of resignation in which the Operating District (i) assigns to another District its right to enforce the Use Restrictions and its rights pursuant to the easement established hereby (subject to the right of Declarant to Approve such District while it owns any Lots in the Project Area) and (ii) resigns from its duties to enforce the Use Restrictions. Upon the Recording of a Notice resignation by the Operating District, a designated District by the Declarant may assume such duties directly, in which event it shall have and enjoy all of the rights granted to the Operating District pursuant to this Article 3 (including the right to delegate one or more of such duties to a third party).

(e) Attorneys' Fees and Costs. If Declarant or the Operating District commences an action or arbitration proceeding to enforce any of the Use Restrictions and the arbitrator or judge in such proceeding determines that Declarant or the Operating District is the substantially prevailing party, then, as a part of any award or judgment which such arbitrator or judge may award, the Arbitration Panel or court, as the case may be, shall also award the Declarant or the Operating District its costs and reasonable attorneys' fees incurred in such proceeding.

#### ARTICLE 4 Easements

4.1 Easements. The Declarant hereby creates, declares, establishes, and grants the following nonexclusive, perpetual easements for the purposes set forth in and for the benefit of the Declarant, the Design Review Committee, Government Authorities, the Operating District, Owners,

and any Government Authorities, together with their respective agents, contractors, employees, and licensees:

(a) Access Easement. There shall be an easement (an "Access Easement") across each Lot for the purpose of (i) accessing a Lot to provide utility and other services to a Lot and (ii) maintaining, repairing, replacing Community Fences and Utilities.

(b) Drainage. There shall be an easement (a "Drainage Easement") for drainage and drainage facilities across the five rear feet and five side feet of each Lot provided that if a Residence is located upon any of the areas described in this Section 4.1(b), then such Drainage Easement shall be reduced in width to the width of the distance from the nearest Lot line to the exterior wall of the dwelling unit on such Lot that is nearest to such Lot line. Except for Residences as provided in this Section 4.1(b), no Improvements shall be placed or permitted to remain on any Lot, nor shall any change in grading be permitted to exist that might change the direction of flow, obstruct or retard the flow, or increase the rate of discharge from a Lot of water or other moisture through channels or swales within such rear and side yard drainage. The Declarant reserves to itself and to the Design Review Committee the right to enter in and upon each five-foot rear and side yard Drainage Easements, at any time, to alter, change, construct, improve, repair, or replace drainage structures or drainage ways or to perform such corrective work, drainage, or grading as the Declarant or the Design Review Committee may deem necessary or desirable, in their sole discretion and from time to time.

(c) Encroachments. Subject to Applicable Law, there shall be an easement (an "Encroachment Easement") for the encroachment to the extent that any Improvement on a Lot encroaches on any easement or Lot provided that (i) the encroachment shall not exceed one-foot into such other easement or Lot, (ii) the encroachment does not materially and adversely affect the use of the easement or the full enjoyment by the owner of the other Lot, and (iii) the Encroachment Easement shall terminate when the encroaching Improvement is removed or replaced.

(d) Established Drainage Patterns. There shall be an easement (an "Established Drainage Pattern Easement") for the Established Drainage Patterns in the Community Area. The Declarant reserves to itself, its assigns, and successors and the Design Review Committee the right to enter in and upon each five-foot rear and side yard drainage easements established pursuant to this Section 4.1, at any time, to alter, change, construct, improve, repair, or replace drainage structures or drainage ways or to perform such corrective work, drainage, or grading as the Declarant or the Design Review Committee may deem necessary or desirable, in their sole discretion and from time to time to maintain drainage in accordance with the Established Drainage Pattern.

(e) Utilities. There shall be an easement (a "Utility Easement") across, in, on, and over each Lot to the extent necessary to alter, improve, install, maintain, provide, and repair facilities providing Utility Service to Lots in the Community Area.

4.2 Limitations on Easements. Notwithstanding anything to the contrary contained herein, the easements declared, established, granted, and reserved in this Article 4 (a) shall not affect, avoid, extinguish, or modify any other Recorded covenants, easements, limitations, reservations, or restrictions affecting all or part of the Community Area, (b) may be amended, limited, modified, restricted, or terminated by the Declarant by means of a Recorded instrument, and (c) shall not be

interpreted or construed as preventing or precluding the construction, operation, and use of any structure or use on any Lot which is otherwise permitted by the terms of this Declaration or which is otherwise approved by the Design Review Committee.

4.3 Recorded Easements. In addition to the conditions, covenants, equitable servitudes, limitations, and restrictions established hereby, all or part of the Community Area may be subject to the conditions, covenants, easements, limitations, and restrictions as set forth on the Plat and Attachment 3 to this Declaration.

## ARTICLE 5

### Design Review Committee

5.1 Approval of Improvements Required. An Owner shall not make an Improvement to a Lot without the prior Approval of the Design Review Committee of the Operating District except (a) for any Improvement made by Declarant, a District, or a Principal Builder and (b) if the Operating District has waived in writing prior Approval of an Improvement.

5.2 Design Review Committee. The Operating District shall establish and appoint the members of the Design Review Committee to perform the design review, inspection, and other functions set forth in this Article 5 as follows:

(a) Membership. The District shall appoint members of a design review committee and any other agent, Officer, committee, or subcommittee to which the District delegates design review functions (collectively, the "Design Review Committee"). Members of the Design Review Committee need not be members of the Board of the Operating District or Owners, and agents appointed by the Operating District or the Design Review Committee to perform design review functions need not be members of the Board of the Operating District or Owners.

(b) Procedures. The Operating District and the Design Review Committee shall establish procedures for the operation of the Design Review Committee and such other agents, committees, and subcommittees as the Operating District may determine provided that the Board of the Operating District may revoke any delegation of authority to an agent, committee, or subcommittee at any time. These procedures may include (i) content of applications ("Applications") for the review of the Proposed Plans for Improvements as set forth in Section 5.3 below, (ii) payment of Fees as set forth in Section 5.2(c) below, and (iii) policies and procedures for appealing, enforcing, and reviewing decisions of the Design Review Committee.

(c) Review and Other Fees. The Operating District and/or the Design Review Committee may establish fees ("Fees") reasonably related to (i) the review and consideration of Applications and Proposed Plans and (ii) the inspection of Improvements to ensure compliance with the Approved Plans for proposed Improvements. Fees shall be uniform for similar types of any proposed Improvement provided that the Operating District and/or the Design Review Committee may determine fees in any other reasonable manner (for example, based upon the estimated cost of the proposed Improvement, the complexity of the Improvements and plans being reviewed, and the anticipated costs that the Design Review Committee will incur in reviewing the application and/or inspecting the Improvements as set forth herein).

(d) Standards. The Operating District and/or the Design Review Committee shall establish and issue guidelines, policies, standards, and rules ("Design Standards") for Improvements and landscaping in the Community including (i) design requirements (including recommended elevations, heights, layouts, materials, nature, quality, and type of construction), (ii) recommended building, construction, and landscaping materials, and (iii) such other matters as Declarant, the Design Review Committee, or the Operating District deems desirable or necessary to enhance and protect the aesthetic nature, attractiveness, desirability, quality, and value of the Community Area, the Improvements, and the Residences. The Design Review Committee may amend the Design Standards from time to time in order to better achieve the general planning and development objectives set forth in the Design Standards.

### 5.3 Application Process.

(a) Application; Proposed Plans. Before beginning the work (the "Work") necessary to complete a proposed Improvement, the Person proposing to make such Improvement ("Applicant") shall submit to the Design Review Committee at its offices or at such place as it may designate for such purpose an Application containing such construction plans and specifications, descriptions, designs and colors, drainage plans, elevation drawings, materials, plot plans, sketches, surveys, samples of materials and colors, specifications, and other information (collectively, the "Proposed Plans") as the Design Review Committee may reasonably request to demonstrate and show the color, height, kind, nature, shape, width, and location of the proposed Improvement. The Design Review Committee may require submission of additional plans, specifications, or other information as a condition to the Approval of Proposed Plans. The Design Review Committee may postpone review of any Proposed Plans submitted for Approval until it has received all required documents and Fees.

(b) Accelerated Review. The Design Standards may prescribe the circumstances under which the Design Review Committee, on a case-by-case basis, may waive strict application of the Design Standards because such application will be unreasonable or unduly harsh under the circumstances or waive the requirement for Approval of certain Improvements or exempt certain Improvements from the requirement for Approval, if such Approval is not reasonably required to carry out the purposes of this Declaration. The Design Review Committee may adopt a streamlined or accelerated review and Approval schedule and procedure to grant quicker Approval for such minor improvements as awnings, basketball backboards, exterior house painting, play structures, swing sets, or similar minor structures and changes, which procedure may include review and Approval by an agent of the Design Review Committee.

(c) Criteria for Approval. The Design Review Committee shall Approve the Proposed Plans submitted by an Applicant only if it determines, in its reasonable discretion, that (i) the Improvements comply with the Design Standards, (ii) the Proposed Plans and in the location indicated will not be detrimental to the appearance of the surrounding areas of the Community Area as a whole, (iii) the appearance, exterior design, materials, and colors of the Improvements set forth in the Proposed Plans will be in harmony with the surrounding areas of the Community Area, (iv) the Improvements set forth in the Proposed Plans will not detract from the beauty, wholesomeness, and attractiveness of the Community Area or the enjoyment thereof by Owners, (v) changes in topography, if any, set forth in the Proposed Plans properly relate to adjacent Lots and the

Community Area as a whole, (vi) the Improvements set forth in the Proposed Plans will not interfere with or unduly change the Established Drainage Pattern, (vii) the Improvements set forth in the Proposed Plans will comply with all Applicable Law, the Use Restrictions, and the conditions, covenants, equitable servitudes, limitations, restrictions, and terms established hereby and including those set forth in the Final Plat and any development Approval by the Town, and (viii) the upkeep and maintenance of the Improvements set forth in the Proposed Plans will not become a burden on the Operating District. Once the Design Review Committee has Approved Proposed Plans, such Proposed Plans will be "Approved Plans" and the Applicant will complete the Work construct the proposed Improvements in accordance with the Approved Plans, as hereinafter provided.

(d) Limitation on Nature of Review. The Design Review Committee shall review Applications for the limited purpose of determining, in its discretion, whether the Proposed Plans comply with the Design Standards and meet the criteria set forth in Section 5.3(c) above. Approval by the Design Review Committee shall not constitute Approval of Proposed Plans or satisfy any Approval requirements of Applicable Law with respect to the Improvements, the issuance of a building permit, or the occupancy of Improvements following the completion of the Work.

(e) No Implied Waiver or Estoppel. No action or failure to act by the Design Review Committee, including the granting of a variance, shall constitute an estoppel or waiver with respect to future action by the Design Review Committee. Specifically, the Approval of the Design Review Committee of any Improvement or granting of a variance shall not be deemed a waiver of any right or an estoppel to withhold Approval for any similar Improvement on the same Lot or any other Lots or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement on the same Lot or any other Lot.

#### 5.4 Design Decisions.

(a) Decisions. Any decision of the Design Review Committee shall be made within the time period specified in the Design Standards, but in no event later than the following period (the "Design Review Period"): (i) thirty business days after receipt by the Design Review Committee of the Application, together with payment of all Fees, the Proposed Plans, and any other documents or information requested by the Design Review Committee pursuant to Section 5.3(a) above or (ii) such time period as the Applicant and the Design Review Committee may agree upon in writing. The Design Review Committee's decision shall be in writing, and the Design Review Committee shall promptly give Notice of its decision to the Applicant at the address furnished by the Applicant to the Design Review Committee.

(b) Failure of Design Review Committee to Act on Plans. Any request for Approval of a Proposed Plans for a proposed Improvement shall be deemed Approved after the expiration of the Design Review Period unless the Design Review Committee has give Notice of its disapproval or, by Notice to the Applicant, requested additional information or materials. If Design Review Committee requests additional fees, information, or materials within the Design Review Period, the Design Review Period shall automatically extend to a date thirty days after the Design Review Committee receives the requested fees, information, or materials.

(c) Variances. The Design Review Committee may authorize variances from compliance with any of the provisions of this Declaration, including restrictions upon height, size,

floor area, or placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental consideration may require provided that any such variance must be in writing to be effective. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted provided that the granting of a variance shall not (i) waive any of the provisions of this Declaration except as to the particular property and particular provision hereof covered by the variance or (ii) affect in any way the Owner's obligation to comply with all Applicable Laws, including zoning ordinances and setback lines or requirements of any Government Authority having or exercising jurisdiction over the Improvements.

5.5 Prosecution of Work; Inspections; Noncompliance.

(a) Performance and Completion of Work. After Approval of any proposed Improvement, an Applicant shall perform the Work and complete the Improvements in a diligent manner and in accordance with the Approved Plans. Upon completion of the Work, the Applicant shall give Notice of completion of the Work to the Design Review Committee. Until the date of such Notice is given, the Design Review Committee shall not have notice of completion of such Work for the purposes of this Section 5.5.

(b) Inspection of Work. The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion provided that the right of inspection shall terminate sixty days after the Design Review Committee shall have received a Notice of completion from Applicant pursuant to Section 5.5(a) above. The Design Review Committee shall inspect Work solely for compliance with any Approvals given by it hereunder and compliance with the Declaration. The Design Review Committee shall not inspect the Work or the Improvements for compliance with Applicable Law (including building codes, building permits, or occupancy requirements).

5.6 Failure to Comply with Approval or Approval Requirements.

(a) Noncompliance. The following failures shall constitute noncompliance with the Approval of the Design Review Committee and this Declaration: (i) failure to obtain Approvals from the Design Review Committee in accordance with this Article 5, (ii) failure to commence of the Work within thirty days after Approval from the Design Review Committee, (ii) failure to prosecute Work to completion in a diligent manner after Approval from the Design Review Committee, (iv) failure to complete Work within twelve months after the date of Approval (or such other period or extension of the initial twelve-month period as specified in a Notice from the Design Review Committee) and (v) failure to complete Work in accordance with the Approved Plans.

(b) Notice of Noncompliance. Following its determination of noncompliance by an Owner, the Design Review Committee may give Notice that an Owner is not in compliance with the Design Review Committee finds that any Improvement has been done without obtaining the Approval of the Design Review Committee, was not done in complete conformity with the Approved Plans, the Design Review Committee, or was not completed within twelve months after the date of Approval by the Design Review Committee, the Design Review Committee shall give Notice to the Owner of such noncompliance in which the Design Review Committee specifies the



particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy such noncompliance.

(c) Correction of Noncompliance. If the Design Review Committee determines noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five days from the date of receipt by the Applicant of Notice of Noncompliance from the Design Review Committee. If the Applicant does not comply with the Committee ruling within such period, the Design Review Committee may follow the procedures for noncompliance Record a Notice of Non-compliance against the real property on which the non-compliance exists, may enter upon such property and remove the non-complying Improvement, or may otherwise remedy the non-compliance, and the Applicant shall reimburse the Design Review Committee, upon demand, for all expenses, including attorneys fees, incurred therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Design Review Committee, the Design Review Committee may bring an action in the District Court for the Weld County, Colorado, to obtain a judgment for such costs and expenses, which shall include all attorney fees and costs incurred by the Design Review Committee in connection with such action. The right of the Design Review Committee to remedy or remove any non-compliance shall be in addition to all other rights and remedies that the Design Review Committee may have at law, in equity, or under this Declaration. The Applicant and Owner of the Lot shall have no claim for damages or otherwise resulting from the entry upon the property and removal of the non-complying Improvement.

(d) Failure of Design Review Committee to Act. Failure of the Design Review Committee to inspect Work or to give Notice of noncompliance shall not relieve the Applicant from its obligations to comply with this Declaration or all conditions of Approval or prevent the Design Review Committee from pursuing all remedies available to it in the event of any non-compliance.

(e) Additional Noncompliance Enforcement Procedures. In addition to the foregoing provisions, the Design Review Committee may establish additional procedures for noncompliance, including establishing a procedure for levying fines, assessing penalties, recording liens for nonpayment of fines, and commencing actions (including foreclosure actions and similar procedures) against Owners for noncompliance with this Declaration and the Design Standards.

5.7 Design Review Committee Actions. The Design Review Committee shall review Applications and inspect Improvements to determine whether Proposed Plans and Improvements comply with the Design Standards established by the Design Review Committee. An Approval by the Design Review Committee is not intended to and shall not constitute compliance with the requirements by an Applicant or an Owner with the Applicable Laws (including those governing the issuance of building permits and certificates of occupancy, building codes, and safety codes) regarding Improvements, and it shall be the responsibility of all Applicants and all Owners to obtain building permits, construct the Improvements in compliance with applicable building codes, obtain certificates of occupancy, and otherwise comply with all Applicable Laws relating to Improvements.

5.8 Non-Liability for Design Review Action. Neither the Design Review Committee, its members, any member of the Board, any agent of the Design Review Committee, or any committee or subcommittee appointed by the Design Review Committee or Operating District, any member of such committee or subcommittee, any Principal Builder, or Declarant (or their respective owners, officers, directors, managers and employees) shall be liable or responsible for any damage, liability,

injury, or loss arising out of or in any way connected with the performance of the duties of the Design Review Committee pursuant to this Article 5. In reviewing any matter, the Design Review Committee shall not be responsible for reviewing, nor shall its Approval of an Improvement be deemed Approval of, the Improvement from the standpoint of safety, whether structural or otherwise, or conformance with any Applicable Laws (including building codes or other governmental laws or regulations).

5.9 Records: Certificate Regarding Action. The Design Review Committee shall, upon the reasonable request of any interested Person and after confirming any necessary facts, furnish a certificate with respect to the Approval or disapproval of any Improvement or with respect to whether any Improvement made in compliance herewith. The Design Review Committee shall maintain copies of (a) all Applications for five years after receipt and (b) Approvals, disapprovals, and Notices of action taken for five years after any action taken with respect to an Application. After the expiration of such period, the Design Review Committee may retain or dispose of such matters and records as it, in its discretion, deems advisable.

5.10 Construction Period Exception. During the course of actual construction of any permitted structure or Improvement, the provisions contained in this Declaration as to the Lot upon which the construction is taking place shall be deemed to have been suspended temporarily to the extent necessary to permit such construction provided that (a) construction is proceeding with due diligence, (b) nothing is done which will result in a violation of any of the provisions of this Declaration upon completion of construction, and (c) nothing is done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

## ARTICLE 6

### Delegation of Authority to District

6.1 Approval of Improvements Required. Declarant, for itself and its successors (including all Owners of Lots and Improvements in the Community Area) hereby assigns and delegates to the District the authority and power to (a) enforce the conditions, covenants, easements, provisions, and terms of this Declaration, including but not limited to the Design Standards, (b) the Design Review Committee to perform on its behalf the duties and obligations of the Design Review Committee, as set forth herein (including Article 5) with respect to the Community Area, Lots, Improvements, and Residences and (c) pursuant to CRS § 32-1-1004(8)(a)(II), designates the District as the entity responsible for enforcement of the conditions, covenants, easements, provisions, and terms established by this Declaration.

6.2 Authority and Powers of District. In addition to the authority and powers vested in the District by Applicable Law, the District shall have the following authority and powers:

(a) Adoption of Regulations and Rules. In accordance with and subject to Applicable Law, the District shall adopt, establish, and promulgate appropriate policies, procedures, regulations, and rules as the District deems appropriate, desirable, or necessary regarding (i) the enforcement of this Declaration, (ii) maintenance of, and repair of damage to, the easements established hereby, and (iii) maintenance, repair, and replacement, as necessary, of the Common Areas.

(b) Enforcement of Supplemental Covenants and Easements. Subject to Applicable Law and in its discretion, the District shall have the authority, duty, power, and right to do the following with respect to this Declaration:

(i) Fines. Establish and levy fines against Owners who do not comply with the conditions, covenants, equitable servitudes, limitations, restrictions, and terms set forth in this Declaration; and

(ii) Remedies Pursuant to Special District Act. Enforce the conditions, covenants, equitable servitudes, limitations, restrictions, and terms set forth in this Declaration by such remedies as may be available to special districts established pursuant to Title 32, Article 1 of Title 32 of the Colorado Revised Statutes, as amended from time to time, including the following:

(A) The commencement of civil actions against Owners to collect such fines and specifically enforce the conditions, covenants, equitable servitudes, limitations, restrictions, and terms set forth in this Declaration against such Owners by injunction or otherwise;

(B) The recordation and enforcement by foreclosure of liens against the Lots and Improvements of Owners who fail to comply with this Declaration, and

(D) After reasonable prior Notice to an Occupant, enter upon a Lot for the purpose of maintaining and repairing damage to Community Fences.

(c) Right to Contract for Supplemental Services. Subject to Applicable Law, the District shall have the authority and power, but not the obligation, to contract, on behalf and in the name of the Owners, with one or more contractors to supplement the following services to the extent they are not provided by the Town ("Supplemental Services"): (i) snow removal in Common Areas, (ii) maintenance and repair of paving in Common Areas, (iii) the pick-up and removal of recyclables, garbage and trash from Lots and Common Areas in the Community Area, and (iv) the Water Billing Services. If the District contracts with a contractor to provide the Supplemental Services, then the District shall determine, in its discretion, the conditions and terms of such contracts, the nature and type of the Supplemental Services needed, and the extent, manner, and times at which such contractors will provide such Supplemental Services.

(d) Right to Contract with Management Company. The District shall have the authority and right to contract with a professional management company to perform some or all of its duties hereunder and/or to provide the Supplemental Services provided that any agreement for professional management of the business of the District or any other contract providing for services of a Declarant shall (i) have a maximum term of one year and (ii) provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than thirty days' prior Notice.

(e) Right to Contract with Other Districts, Subdistricts, and Associations. The District shall have the authority to enter into agreements with another District, Subdistrict, or Association to (i) enforce all or any part of this Declaration, (ii) maintain, and repair damage to,

Common Areas established hereby, and (iii) maintain, repair, and replace, as necessary, the Community Fences

(f) Right to Supplement Design Standards. From time to time and in its discretion, the District may establish additional Design Standards for Improvements in the Community Area that will supplement the Design Standards. Before commencing work on any proposed Improvements, an Owner will comply with the procedures set forth in Article 6 of the Declaration.

(g) Right to Use Easements. The District shall have the benefit and use of all of the easements, rights, and rights of way established and reserved by Declarant.

6.3 License to Enter Lot. By accepting title to a Lot or occupying an Improvement, each Owner and Occupant (a) grants the District, together with its agents, assigns, contractors, employees, licensees, representatives, and subcontractors, the authority and irrevocable license to enter upon a Lot, during business hours and upon reasonable notice, for the purpose of exercising its rights and performing its duties under this Declaration and (b) releases the District from all claims, damages, liabilities, and losses arising under or relating to such entry, exercise of its rights, and performance of its duties hereunder.

6.4 District Designation. By accepting title to a Lot or occupying a Improvement, each Owner and Occupant (a) accepts the designation by Declarant of the District as the entity responsible for enforcement of the Declaration, (b) accepts the authority and powers granted to the District in Section 6.2 above, and (c) agrees to comply with (i) the Declaration and (ii) the policies, procedures, regulations, and rules that the District adopts, Approves, establishes, and promulgates from time to time regarding the Declaration.

## ARTICLE 7

### Declarant's Rights and Reservations

7.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain, and reserve certain rights as hereinafter set forth with respect to the Lots, which rights shall continue in full force and effect until (a) the time that the last Lot that may be included within the Community Area has been sold and conveyed by Declarant to Persons other than Declarant, a Successor Declarant, or a Principal Builder and a certificate of occupancy has been issued for the residence constructed thereon or (b) the date which is ninety-nine years from the execution hereof, whichever event occurs first. Whether or not specifically stated in a deed from Declarant, Declarant hereby reserves, and each Owner accepts, the rights, reservations, and easements granted and reserved in Sections 7.2 to 7.8 below. Declarant may exercise these rights with respect to all parts of the Community Area, which rights are prior and superior to any other provisions of this Declaration, and the prior Approval of Declarant is a condition to the effectiveness of any amendment, modification, rescission, or termination of the Declarant Rights. Declarant may assign and convey any of the rights, reservations, and easements hereinafter set forth to a Successor Declarant or a Principal Builder complying with the covenants, provisions, and terms of this Declaration.

7.2 Right to Complete Development of Community Area. Declarant reserves the right to develop such number of Lots (including individual units which are part of multifamily residential

buildings that may be constructed on a single Lot), and other types of Lots as may be designated by Declarant hereunder and as may be Approved by the Town within the Community Area. No provision of this Declaration shall be construed to prevent or limit the rights of Declarant or a Principal Builder to (a) complete development of property within the boundaries of the Community Area or elect not to complete development of any part of the Community Area, (b) construct or alter Improvements on any property owned by Declarant or a Principal Builder within the Community Area provided that all such construction is Approved by Declarant and conforms to the requirements of this Declaration, (c) maintain model homes, offices for construction, construction storage yards and staging areas, Principal Builder and Declarant offices, sales offices, parking areas, or similar facilities on any property owned by Declarant, a Principal Builder, Persons affiliated with Declarant or a Principal Builder, or on any portion of the Common Area that has not been developed and completed as a Common Area Facility, or (d) post signs or do any other act or thing incidental to development, construction, offer, promotion, marketing, or sales of property within the boundaries of the Community Area.

7.3 Construction Rights. Nothing contained in this Declaration shall limit the right of Declarant or a Principal Builder or require Declarant or a Principal Builder to obtain Approvals from the District, the District, or any other Owners to (a) excavate, cut, fill, or grade any property owned by Declarant or by a Principal Builder with Approval of Declarant, (b) construct, alter, demolish, or replace any Improvements on any property owned by Declarant or a Principal Builder, (c) use any structure on any property owned by Declarant or a Principal Builder as a construction office, model home, Principal Builder office, Declarant office, or real estate sales office in connection with the development and sale of any property within the boundaries of the Community Area, (d) store construction materials, supplies, equipment, tools, waste or other items on property within the Community Area that is owned by Declarant or a Principal Builder, or (e) seek or obtain the Approval of the District or the District for any such activity or Improvement on any property owned by Declarant or a Principal Builder. Nothing in this Declaration shall limit or impair the rights reserved by Declarant or granted to Principal Builders as elsewhere provided in this Declaration.

7.4 Right to Construct Additional Improvements on Common Areas. Declarant and the District shall have and hereby reserve the right, but shall not be obligated to, construct additional Improvements on Common Areas at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Owners.

7.5 Right to Determine Use of Lots. Subject to compliance with Applicable Laws (including, but not necessarily limited to, the ordinances, regulations, and rules of the Town and the development agreement between the Town and the District), Declarant reserves the right to determine whether a Lot will be a Commercial Lot or a Residential Lot and designate additional categories or types of Lots (such as Lots intended for use as a church, school, or other use permitted by Applicable Laws). If a Lot is included into or made a part of the Community Area and no specific designation is made regarding the nature, type, or use of such Lot, then (a) the primary use of such Lot shall determine its character (*i.e.*, a Lot primarily used for residential purposes shall be considered a Residential Lot for the purposes of this Declaration even though no such designation was made in connection with its inclusion) and (b) Declarant may subsequently Record a designation of the use of such Lot.

7.6 Right to Create, Grant, and Use Easements. Declarant shall have and hereby reserves the right to create, grant, and use temporary or permanent easements for access, drainage, Utilities, and other purposes incident to development and sale of the Community Area located in, on, under, over, and across Lots owned by Declarant or a Principal Builder and Common Areas.

7.7 Right to Use Common Areas and Lots in Promotion and Marketing of Community Area. Declarant shall have and hereby reserves the right to reasonable use of the Common Areas and Lots owned by Declarant or a Principal Builder in connection with the promotion and marketing of the Community Area. Without limiting the generality of the foregoing, Declarant and with the prior Approval of Declarant, a Principal Builder, may (a) erect and maintain on any part of the Common Areas and Lots owned by Declarant or a Principal Builder such signs, temporary buildings, and other structures as Declarant or such Principal Builder may reasonably deem necessary or proper in connection with the promotion, development, and marketing and sales of real property within the Community Area, (b) use vehicles and equipment on Common Areas and Lots owned by Declarant or a Principal Builder for promotional purposes, (c) permit prospective purchasers of property within the boundaries of the Community Area who are not Owners to use Common Areas at reasonable times and in reasonable numbers, and (d) refer to the Common Areas in connection with the development, promotion, and marketing of property within the boundaries of the Community Area. Notwithstanding the foregoing, neither Declarant nor a Principal Builder shall have the right to use for the purposes described in this Section 7.7 any portion of the Common Areas that have been developed and completed as a Community Area Facility.

7.8 Successor Declarant. Declarant may designate as a "Successor Declarant" any Person that acquires some or all of the remaining interest of Declarant in the Community Area or the Includible Property in a Recordable Instrument. Upon execution and delivery of such instrument by Declarant, the Person designated as Successor Declarant therein shall accede to all of the rights and obligations of Declarant under this Declaration with respect to the property acquired by such Successor Declarant and all references to Declarant contained herein shall refer to such Successor Declarant.

## ARTICLE 8 Supplemental Declarations

### 8.1 Supplemental Declarations.

(a) Right to Record a Supplemental Declaration. Declarant and any Principal Builder may execute and Record a Supplemental Declaration that encumbers a portion of the Community Area, whether before or after Declarant has conveyed Lots within the Community Area or the area affected by the Supplemental Declaration to a third party provided that Declarant must obtain the prior Approval of any First Mortgagee on a Lot affected by a Supplemental Declaration and if Declarant is not the Owner of Lots affected by a Supplemental Declaration, the Owner(s) of such Lot(s).

(b) Inclusion in Community Area. Declarant may add Lots to the Community Area subject to this Declaration through a Supplemental Declaration provided that the Supplemental Declaration provides for such addition and complies with the requirements for a Notice of Inclusion set forth in Article 2 above.

(c) Contents of Supplemental Declaration. Each such Supplemental Declaration shall refer to this Declaration and may (i) create an Association or designate a Subdistrict having the duties and responsibilities of the District hereunder with respect to such portion of the Community Area, (ii) impose additional requirements on the Lots and Common Areas subject to such Supplemental Declaration (but shall have no effect on other property subject to this Declaration, but not such Supplemental Declaration), and (iii) provide its own procedure for amendment of any provisions thereof provided that no additional requirements imposed by the Supplemental Declaration may amend or be in conflict with the provisions of this Declaration unless Approved as an amendment to this Declaration pursuant to the provisions of Article 9 of this Declaration and (B) must provide for procedures are consistent with the provisions of the Act if the Supplemental Declaration is otherwise subject to the requirements of the Act.

(d) Effect of Recording of Supplemental Declaration. All Lots subjected to the provisions of any such Supplemental Declaration shall automatically be subject to the provisions of this Declaration and the Supplemental Declaration without the necessity of a specific reference to this Declaration in any deed, notice, Supplemental Declaration, or other instrument. In the event of any conflict between the provisions of this Declaration and the provisions of any Supplemental Declaration, the provisions of this Declaration shall control.

(e) Delegation of Authority to Association or Subdistrict. The Operating District may, but shall not be required to, delegate certain functions and authority of the Operating District under this Declaration to an Association, a Subdistrict, or a design review committee or similar body created under a Supplemental Declaration; provided that any such delegated authority may be exercised by such Association, Subdistrict, or design review committee or similar body only with respect to the property made subject to the Supplemental Declaration. Any such delegation of authority shall be in a Recorded instrument executed by an Officer of the Operating District and an Officer of the Association or Subdistrict. The Operating District may modify or revoke any such delegation of authority at any time by a duly Recorded written instrument executed by the chair or president of the District.

8.2 Associations. Any Supplemental Declaration may create an Association, the members of which are the Owners of Lots that are subject to such Supplemental Declaration. The Supplemental District shall provide that (a) any Association created thereby shall be a nonprofit corporation organized in accordance with the provisions of the Act and the Colorado Non-Profit Corporation Act and (b) any Association shall have all of the powers granted to associations under the Act, including the power to impose and collect assessments from its members solely with respect to common areas to be owned solely by such Association and used by and benefiting any of the members of such Association. Such powers granted to an Association shall not subject the provisions of this Declaration to the provisions of the Act.

8.3 Subdistrict. Any Supplemental Declaration may designate a Subdistrict that has as its boundaries the boundaries of the real property subject to the terms of the Supplemental Declaration. A Supplemental Declaration shall provide that the Subdistrict shall be a metropolitan or district organized in accordance with all Applicable Laws governing such districts.

8.4 Requirement for Approval of Declarant. Until such time as Declarant no longer owns any Lots that are or may be included within the Community Area, any Supplemental Declaration or

Association created pursuant to the provisions of the Declaration or any Subdistrict designated pursuant to the provisions of the Declaration or otherwise with respect to Lots which also are subject to this Declaration shall be Approved and executed by Declarant prior to Recording or, with respect to an Association, prior to filing the Articles of Organization with the Colorado Secretary of State or, with respect to a Subdistrict, prior to the designation of such Subdistrict hereunder. Any Supplemental Declaration, Association, or Subdistrict not Approved by Declarant shall be void and have no effect on any part of the Community Area or on any Owners. Upon the conveyance of all Lots that are or may be included within the Community Area by Declarant to a Principal Builder or other Owner (other than Declarant or a Successor Declarant), the provisions of this Section 8.4 shall terminate and any Supplemental Declaration or Association or both may be created by a Principal Builder or, if a Principal Builder has conveyed all Lots to purchasers other than another Principal Builder, by the vote of the Owners of two-thirds of the Lots to be subject to such Supplemental Declaration.

8.5 Compliance with Common Interest Ownership Act. The Owners may create a new Supplemental Declaration or Association under the Act (a) in the manner provided herein and in the Act and (b) subject to the conditions and limitations contained herein and in the Act. Any Supplemental Declaration and any delegation of authority to an Association or design review committee (or similar body) shall not act as an amendment or repeal of any condition, covenant, equitable servitude, limitation, provision, restriction, or term of this Declaration unless the Owners comply with the requirements of Article 9 below.

## ARTICLE 9

### Term, Amendment, and Termination

9.1 Term of Declaration; Extension of Term. Unless amended as herein provided, each provision contained in this Declaration shall (a) continue and remain in full force and effect for a primary term of forty years after the Recording of this Declaration and (b) thereafter automatically extend for successive extension terms of ten years each unless terminated by the Approval of Owners holding title to at least ninety percent of the Lots in the Community Area. If the requisite percentage of Owners Approves termination of this Declaration at the end of the primary term or an extension term, such Owners shall evidence the termination of this Declaration by Recording a termination agreement executed by the requisite percentage of Owners and the termination of this Declaration shall be effective upon such Recording.

9.2 Amendment of Declaration by Members. Except as otherwise provided in this Declaration, Owners may amend the conditions, covenants, equitable servitudes, limitations, provisions, restrictions, and terms contained in this Declaration with the prior Approval of Owners holding title to at least seventy-five percent of the Lots within the Community Area provided that, at any time during which (a) Declarant or a Principal Builder owns a Lot subject to this Declaration or any portion of the Includible Area, any amendment to this Declaration must have the prior Approval of Declarant, the District, and Owners holding title to at least ninety percent of the Lots within the Community Area and (b) HUD or VA has insured or guaranteed a Mortgage on any Lot, any amendment must have the prior Approval by HUD and/or VA, as the case may be. Any amendment of this Declaration shall be effective only upon the Recordation of an amendment executed by the



requisite percentage of such Owners and, if applicable, the Approval of Declarant, the District, HUD, and/or VA, as the case may be.

9.3 Member and First Mortgagee Approval. Notwithstanding any other provisions of this Declaration to the contrary, the Owners shall not:

(a) Abandon, Terminate, or Amend Declaration. Unless they have obtained the prior Approval of at least seventy-five percent of the Owners and the Approval of sixty-seven percent of the First Mortgagees of Lots (based on one vote for each First Mortgage held) and either the VA and/or HUD if either agency has insured or guaranteed a First Mortgage, (i) seek to abandon or terminate the Declaration, whether by act or omission or (ii) amend any provisions of this Declaration which are for the express benefit of First Mortgagees.

(b) When First Mortgagee Disapproval Deemed Given. Unless a First Mortgagee or a guarantor/insurer of such First Mortgage gives Notice to the District of its disapproval of any of the matters requiring Approval as provided herein within sixty days after the giving of Notice given in accordance with Section 11.10 below, the Approval of such First Mortgagee or guarantor/insurer of such First Mortgage shall be deemed to have been given.

9.4 Special Rights of First Mortgagees. Any First Mortgagee encumbering any Lot in the Community Area that has submitted a written request to the District to receive Notice of any proposed action requiring First Mortgagee Approvals, shall be entitled to (a) receive Notice from the District of any default by the Mortgagor of such Lot in the performance of the Mortgagor's obligations under this Declaration, which default is not cured within sixty (60) days after the District learns of such default, (b) examine the books and records of the District during normal business hours, and (c) receive Notice at least sixty days before the effective date of any proposed material amendment to this Declaration requiring Approval of a certain percentage of First Mortgagees.

9.5 First Mortgagee Exemption from Right of First Refusal. Any First Mortgagee who obtains title to any Lot pursuant to the remedies provided in the Mortgage held by it (including any foreclosure of such Mortgage or by deed or assignment in lieu of foreclosure) shall be exempt from any right of first refusal if any such right of first refusal is ever contained in this Declaration or any Supplemental Declaration.

9.6 Amendment Required by Government Mortgage Agencies. Notwithstanding anything to contrary contained herein, to the extent permitted under the Act, and without the prior Approval of any Person, Declarant may amend or repeal any condition, covenant, equitable servitude, limitation, provision, restriction, or term contained in this Declaration to the extent that a Government Mortgage Agency has required such amendment or appeal provided that Declarant must first obtain the Approval of such amendment or repeal from FHA and/or VA if either or both have guaranteed or insured a Mortgage on a Lot. Declarant's rights under this Section 9.6 shall terminate on the earlier of (a) thirty-years after the date of Recordation of this Declaration or (b) the sale of the last Lot owned by Declarant or a Successor Declarant in the Community Area. Any such amendment or repeal shall be effective upon the Recordation of a certificate, executed by Declarant, setting forth the amendment or repeal in full.

**ARTICLE 10**  
Alternative Dispute Resolution

10.1 Intent of Article. It is the intent of Declarant to encourage the amicable resolution of disputes in the Community without the emotional and financial costs of litigation. Accordingly, by acceptance of title to (or occupancy of) a Lot and/or the any of the benefits or rights accorded to a Bound Party by this Declaration, each Bound Party covenants and agrees to submit any Disputes to the procedures set forth in, and to abide by and comply with, this Article 10. Any applicable statute of limitation shall apply to the alternative dispute resolution procedures set forth in this Article.

10.2 Persons Entitled to Enforce Declaration. Subject to and in the manner set forth in Section 10.5 below, the Declarant, the District, any Principal Builder, any Association, any Subdistrict, and any Owner or Occupant of a Lot shall be Bound Parties and shall have the right to enforce any or all of the conditions, covenants, equitable servitudes, limitations, provisions, restrictions, or terms contained in this Declaration against any property within the Community Area and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision hereof in the manner set forth in Section 10.5 below.

10.3 Condition Precedent. Before any Bound Party commences any proceeding to which another Bound Party is a party, including any alleged defect of any improvement, a Responding Party shall have the right to be heard by the Disputing Party and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute.

10.4 Disputes. Unless specifically exempted below and subject to Section 10.6 below, all Disputes between any of the Bound Parties shall be subject to, and resolve in the manner set forth in, Section 10.5 below. Notwithstanding the foregoing, unless all Disputing Parties thereto otherwise agree, the following shall neither be Disputes nor subject to the provisions of Section 10.5 below: (a) any action brought by a District to enforce the conditions, covenants, equitable servitudes, limitations, provisions, restrictions, or terms of this Declaration, (b) any suit between or among Owners that does not include the Declarant, the District, a Principal Builder, any Subdistrict, or any Association, and (c) any suit in which any indispensable party is not a Bound Party.

10.5 Dispute Resolution Procedures. Subject to Section 10.6 below, the Disputing Parties shall resolve Disputes between them as follows:

(a) Disputes; Dispute Notice. If a Dispute arises among or between Bound Parties, one of the Bound Parties (a "Disputing Party") shall give a Notice (a "Dispute Notice") to the other Bound Party (the "Responding Party"). In the Dispute Notice, the Disputing Party shall (i) state that a Dispute exists, (ii) set forth in reasonable detail the basis, nature, and type of Dispute, and (iii) state whether the Disputing Party is requesting Mediation pursuant to Section 10.5(b) below, in which event the Dispute Notice shall also be a Mediation Request.

(b) Mediation of Disputes. If the Disputing Party makes a Mediation Request in its Dispute Notice, then the Disputing Party and the Responding Party (collectively, the "Disputing Parties") shall first attempt to resolve a Dispute through mediation ("Mediation") as set forth in this

Section 10.5(b). If the Disputing Party does not request Mediation, the Responding Party may request Mediation within five business days after the giving of the Dispute Notice by requesting Mediation (a "Mediation Request").

(i) Mediation. If either Disputing Party makes a Mediation Request, then, within ten business days after making the Mediation Request, the Disputing Parties shall (A) agree upon a mediator ("Mediator") and (B) request the Mediator to establish the place, time, and procedures for the Mediation.

(ii) Failure of Mediation. The Disputing Parties will proceed to Arbitration of a Dispute if (A) the Disputing Parties cannot agree upon a Mediator or the place and time or procedures for the Mediation, (B) a Disputing Party does not wish to Mediate a Dispute, or (C) the Disputing Parties attempt, but are unsuccessful in resolving a Dispute through Mediation.

(iii) Successful Resolution of Mediation. If the Disputing Parties conduct a Mediation and amicably resolve a Dispute, then they shall execute and deliver a memorandum (a "Settlement Memorandum") summarizing the resolution of the Mediation and thereafter abide by its terms. If there is a subsequent Dispute regarding the conditions, provisions, or terms of a Settlement Memorandum or the compliance by a Disputing Party with the Settlement Memorandum, the Disputing Parties shall proceed to Arbitration of that Dispute as provided in Section 10.5(c) below.

(iv) Reservation of Rights; Confidentiality of Mediation. Participating in Mediation, requesting Mediation, making an offer during Mediation, and/or making a statement during Mediation shall not constitute an admission of any fact or liability or the waiver of any right or defense in any subsequent Arbitration or litigation. All statements made in the course of Mediation shall be confidential, and neither Disputing Party shall disclose any statements made during the course of Mediation.

(c) Arbitration of Disputes. If the Disputing Parties cannot resolve a Dispute by mutual agreement or by Mediation, any Disputing Party may refer the Dispute for binding arbitration ("Arbitration") by Notice (an "Arbitration Notice") as follows:

(i) Arbitration Rules. The Non-Administered Arbitration Rules and Procedures of the International Institute for Conflict Prevention & Resolution ("CPR") shall govern all Arbitrations. References herein to any arbitration rules or procedures mean such rules or procedures as amended from time to time, including any successor rules or procedures, and references herein to the CPR include any successor thereto. This Arbitration provision, and the Arbitration itself shall be governed by the Federal Arbitration Act, 9 USC §§ 1-16.

(ii) Arbitration Panel. Following the giving of an Arbitration Notice, the Disputing Parties shall follow the CPR Rules in selecting an arbitration panel (the "Arbitration Panel") that shall consist of three Arbitrators ("Arbitrators"). Owner and Developer shall designate one Arbitrator in accordance with the "screened" appointment procedure provided in Rule 5.4 of the CPR Rules. The two Arbitrators appointed by the

Disputing Parties will select the third, who will serve as the chair or president of the Arbitration Panel. All three Arbitrators shall have experience in commercial disputes within the real estate industry and the application of the Laws of the State of Colorado.

(iii) Place of Arbitration. The place of the Arbitration shall be in the City and County of Denver, Colorado (United States of America), and the Disputing Parties shall conduct the Arbitration in the English language.

(iv) Discovery. The Disputing Parties shall limit discovery to the mutual exchange by the Disputing Parties of documents relevant to the dispute, controversy, or claim. The Disputing Parties shall submit all requests for such documents to the other Disputing Party within forty-five days after the third Arbitrator is appointed. Each Disputing Party shall have thirty days to respond to such requests. The Disputing Parties shall complete all discovery within ninety days following the appointment of the Arbitrators. The Disputing Party requesting the retrieval, review, and production of electronic discovery shall pay costs and/or fees relating to retrieval, review, and production. At its discretion, the Arbitration Panel may further limit document production. At the request of a Disputing Party, the Arbitrators shall have the discretion to order examination by deposition of witnesses to the extent the Arbitrator deems such additional discovery relevant and appropriate. There shall be no more than five depositions per Disputing Party, and the Disputing Parties shall hold all depositions within forty-five days of the request for a deposition and no deposition shall last longer than seven hours, unless the Arbitrators order otherwise or the Disputing Parties stipulate otherwise. The Disputing Parties may schedule additional depositions only with the permission of the Arbitration Panel and only for good cause shown. The Disputing Parties shall reserve all objections for the Hearing (as defined below) except for objections based on privilege and proprietary or confidential information.

(v) Hearings; Discovery; Depositions. The Disputing Parties shall request the Arbitration Panel conduct a Hearing (a "Hearing") that shall last no longer than eight business days and hold the Hearing within one hundred twenty days after the appointment of the third Arbitrator. The Disputing Parties shall submit post-Hearing briefs within ten days after the end of such Hearing, and the Arbitration Panel shall render its Arbitration Award (the "Arbitration Award") no later than thirty days after the end of such Hearing. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the Arbitration Panel, which determination shall be conclusive. The Arbitrators may proceed to an Arbitration Award notwithstanding the failure of the other Disputing Party to participate in the proceeding.

(vi) Limitations on Arbitration Panel. The Arbitration Panel shall have no power to award non-monetary or equitable relief of any kind. The Arbitrators are not empowered to award damages in excess of compensatory damages, and each Disputing Party expressly waives and foregoes any right to recovery of any exemplary, punitive, special, or similar damages or lost profits. The Arbitrators shall have no power or authority, under the CPR Rules for Non-Administered Arbitration or otherwise, to relieve the Disputing Parties from their agreement hereunder to arbitrate or otherwise to amend or disregard any provision of this Agreement including the provisions of this Article 10.

(vii) Arbitration Award. The Arbitration Award of the Arbitrators shall be final, binding and the sole and exclusive remedy to the Disputing Parties. A Disputing Party may seek to confirm and enforce any final Arbitration Award entered in Arbitration, in any court of competent jurisdiction. The Disputing Parties shall request the Arbitration Panel to (A) determine which Disputing Party prevailed in the Arbitration and (B) award the cost of the Arbitration, including the fees of the Arbitration Panel, to the prevailing Disputing Party.

(viii) Civil Proceedings. If Applicable Law does not permit the arbitration of a Dispute arising hereunder, the Disputing Parties may commence a civil action in a court of appropriate jurisdiction in the United States of America (including those located in the City and County of Denver, Colorado). The Disputing Parties may commence an action for specific performance to compel a Disputing Party to perform its obligations at a Closing. If an Arbitration Award does not impose an injunction on the losing Disputing Party or contain a money damages Arbitration Award in excess of USD \$2,500,000, then the Disputing Parties shall not appeal the Arbitration Award, and the Arbitration Award shall only be subject to such challenges as would otherwise be permissible under the Federal Arbitration Act, 9 USC §§ 1-16. If the Arbitration does result in an Arbitration Award that imposes an injunction or a monetary Arbitration Award in excess of USD \$2,500,000, the Disputing Parties may appeal such Arbitration Award to a tribunal of appellate Arbitrators via the CPR Arbitration Appeal Procedure. Except as may be required by law, neither a Disputing Party nor an Arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of all Disputing Parties.

(d) Resolution of Disputes by Mutual Agreement. Nothing contained in this Article 10 shall prevent the Disputing Parties from, by mutual agreement, settling any Dispute at any time or varying the Arbitration and Mediation procedures established hereunder.

10.6 Construction Defect Action Reform Act. The Declarant does not intend that the provisions of this Declaration shall act as a limitation on, or waiver of, the rights of a property to damages, protections, or remedies set forth in (a) the Construction Defect Action Reform Act or (b) the Colorado Consumer Protection Act. The Declarant does not intend that any provision of this Declaration shall impair or restrict the Buyer's ability to enforce such legal rights, remedies, or damages within the time provided by applicable statutes of limitation or repose.

## ARTICLE 11

### General Provisions

11.1 Binding on Successors. The agreements, covenants, and obligations of the Owners, their assigns, heirs, representatives, and successors as set forth in this Declaration shall (a) run with the Community Area and the Lots located therein, (b) bind all Owners, Occupants, and successor Owners or transferees of all or any portion of the Community Area, (c) increase by the addition of Included Property to the Community Area in accordance with the provisions of Article 2 above (including the respective Owners of Lots in the Included Area), and (d) inure to the benefit of Declarant, Principal Builders, the Districts, any Association, any Subdistrict, and their respective assigns, representatives, and successors.

11.2 Common Area Risks. Portions of the Community Area and the Includible Area adjoin, are adjacent to, border, or near the Common Area Facilities and are subject to the Common Area Facilities Risks. By acceptance of a deed to a Lot or the use or occupancy of an Improvement within the Community Area, each Owner and each Occupant, hereby (a) acknowledges that portions of the Community Area adjoin, are adjacent to, border, or are otherwise in the vicinity of the Common Area Facilities and are subject to the Common Area Facilities Risks, (b) assumes and agrees to accept the Common Area Facilities Risks, and (b) discharges and releases the Benefited Parties from, and waives, all Disputes arising directly or indirectly from or otherwise in connection with the design, development, or construction by Declarant, a District, or a Principal Builder of a Common Area Facility.

11.3 Covenant Not to Sue. Except as provided in Article 10 above and to the extent permitted by Applicable Law, each Owner, by acceptance of a Lot, and each Resident, by the use or occupancy of a structure within the Community Area agrees that it will not assert, institute, maintain, or prosecute any action, civil action, suit at law, claim in equity, arbitration, or other proceeding against the Benefited Parties or any of them.

11.4 Disclaimer Regarding Safety. Declarant, Districts, Principal Builders, any Subdistrict, and any Association hereby disclaim any obligation regarding the safety or security of any persons or property within the Community Area. Any Owner or Occupant within the Community Area acknowledges that any Board, Declarant, Districts, Principal Builder, Subdistrict, and Association and their respective agents and officers are only obligated to do those acts specifically enumerated herein, and are not obligated to do any other acts with respect to the safety or protection of persons or property within the Community Area.

11.5 Enforcement by Self-Help. Declarant, any District, Principal Builder, Subdistrict, or Association (or any authorized agent of any of them) may enforce by self-help or otherwise any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration. All other Owners of Lots (a) grant Approval to the exercise by Declarant, any Principal Builder, any District, or Declarant (or any authorized agent of any of them) of the right to enforce by self-help or otherwise the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration and (b) waive the right to enforce this Declaration by self-help.

11.6 Governing Law. The laws of the State of Colorado shall govern the construction, enforcement, and interpretation of this Declaration.

11.7 Liberal Interpretation. Any Arbitration Panel, Mediator, or court construing, enforcing, or interpreting the provisions of this Declaration shall give a liberal interpretation as a whole to effect the purpose of this Declaration.

11.8 Limitation on Liability. The Boards, Declarant, District, Officers, Operating District, the Principal Builders, and any agent, employee, manager, manager, owner, partner, or shareholder of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

11.9 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by any Board, Declarant, District,

Officer, Principal Builder, or their respective agent, employee, manager, manager, owner, partner or shareholder in connection with any portion of the Community Area, or any Improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

11.10 Notices. Unless specified otherwise herein, any Approval, demand, notice, or other communication (collectively, a "Notice") permitted or required to be given pursuant to this Declaration may be given in writing either personally or by email, mail, overnight delivery, or telephone. If the Notice is given personally, it shall be deemed given the date and time received by the recipient of the Notice. If the Notice is served by mail or overnight delivery, then it shall be sent postage or delivery charges prepaid, addressed to any Person at the address of the Lot owned by such Person (or such other address as the recipient may designate in advance for such purposes) and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the day after it is deposited with an overnight delivery service and the second day after it is deposited in a regular depository of the United States Postal Service. If the Notice is served by email, then it shall be sent to any facsimile number designated in writing by the recipient of the Notice for such purpose and shall be deemed given the date that it is transmitted provided that a written copy is deposited the same day in a regular depository of the United States Postal Service sent postage or delivery charges prepaid, addressed to any Person at the address of the Lot owned by such Person (or such other address as the recipient may designate in advance for such purposes).

11.11 Persons Entitled to Enforce Declaration. Subject to Article 10 above, Declarant, District (as an Owner), any Principal Builder, the Operating District, any Owner of a Lot (all of whom shall be aggrieved Persons with respect to any alleged violation of this Declaration), and Subdistrict (as an Owner) shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration against any property within the Community Area and the Owner thereof.

11.12 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

11.13 Severability; Interpretation. Each of the provisions of this Declaration is independent and severable, and the invalidity, unenforceability, partial validity, or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.

11.14 Violations Constitute a Nuisance. Any violation of any condition, covenant, equitable servitude, limitation, provision, restriction, or term contained in this Declaration, whether by act or omission, is a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

11.15 Violations of Law. Any violation of any Applicable Law pertaining to the ownership, occupation, or use of any property within the Community Area is a violation of this Declaration and shall be subject to the procedures for enforcement of this Declaration set forth in Article 10 above.

*[The signature and attestation of Declarant follow this page]*

DECLARANT has executed and delivered this Declaration of Covenants, Conditions, and Restrictions for Erie Highlands as of the date set forth below.

**OAKWOOD HOMES, LLC,**  
a Colorado limited liability company

Date: 7/21/14

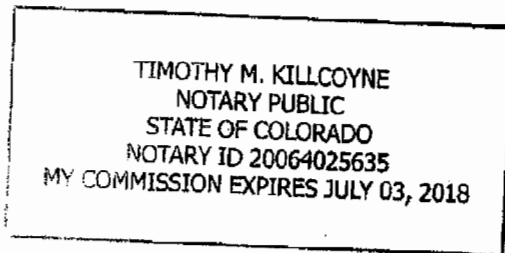
By: *Robert J. Sanderman*  
Robert J. Sanderman, Executive Vice President

STATE OF COLORADO     )  
CITY AND                     ) ss.  
COUNTY OF DENVER     )

The foregoing instrument was acknowledged before me this 21<sup>ST</sup> day of July, 2014, by Robert J. Sanderman as Executive Vice President of Oakwood Homes LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

*Timothy M. Killcoyne*  
Notary Public  
My Commission Expires: \_\_\_\_\_





**ATTACHMENT 1**  
**(Community Area)**

The following described real property located in the County of Weld, State of Colorado:

A PARCEL OF LAND BEING A PART OF THE NORTH HALF OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHWEST CORNER OF SAID SECTION 20, AND CONSIDERING THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 20 TO BEAR NORTH 88°48'39" EAST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE ALONG SAID NORTH LINE, NORTH 88°48'39" EAST, A DISTANCE OF 2,648.08 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 20;

THENCE ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 20, NORTH 88°48'06" EAST, A DISTANCE OF 33.01 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 01°11'54" EAST, A DISTANCE OF 70.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 30.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 01°11'54" EAST;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°59'28", AN ARC LENGTH OF 47.12 FEET;

THENCE TANGENT TO SAID CURVE, SOUTH 01°11'21" EAST, A DISTANCE OF 111.26 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 377.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°08'30", AN ARC LENGTH OF 73.31 FEET;

THENCE TANGENT TO SAID CURVE, SOUTH 12°19'51" EAST, A DISTANCE OF 86.09 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 523.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 22°00'02", AN ARC LENGTH OF 200.82 FEET;

THENCE TANGENT TO SAID CURVE, SOUTH 09°40'12" WEST, A DISTANCE OF 102.30 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 277.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 10°51'33", AN ARC LENGTH OF 52.50 FEET;

THENCE TANGENT TO SAID CURVE, SOUTH 01°11'21" EAST, A DISTANCE OF 19.26 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 20.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 31.42 FEET;

THENCE NON-TANGENT TO SAID CURVE, SOUTH 01°11'21" EAST, A DISTANCE OF 70.00 FEET;

THENCE SOUTH 88°48'39" WEST, A DISTANCE OF 207.93 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 265.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 63°18'20", AN ARC LENGTH OF 292.80 FEET;

THENCE TANGENT TO SAID CURVE, SOUTH 25°30'19" WEST, A DISTANCE OF 174.67 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 440.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°42'58", AN ARC LENGTH OF 197.49 FEET;

THENCE TANGENT TO SAID CURVE, SOUTH 00°12'39" EAST, A DISTANCE OF 168.02 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 365.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°09'17", AN ARC LENGTH OF 13.73 FEET;

THENCE NON-TANGENT TO SAID CURVE, SOUTH 87°38'04" WEST, A DISTANCE OF 70.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 20.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 87°38'04" WEST;

THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 87°50'43", AN ARC LENGTH OF 30.66 FEET;

THENCE TANGENT TO SAID CURVE, SOUTH 89°47'21" WEST, A DISTANCE OF 960.32 FEET;

THENCE SOUTH 00°12'39" EAST, A DISTANCE OF 110.00 FEET;

THENCE SOUTH 89°47'21" WEST, A DISTANCE OF 736.93 FEET;

THENCE SOUTH 00°23'47" EAST, A DISTANCE OF 29.61 FEET TO THE BEGINNING OF A NONTANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 150.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 02°41'58" WEST;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 57°07'55", AN ARC LENGTH OF 149.57 FEET;

THENCE NON-TANGENT TO SAID CURVE, SOUTH 89°38'17" WEST, A DISTANCE OF 202.88 FEET TO A POINT ON THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 20;

THENCE ALONG SAID WEST LINE, NORTH 00°21'43" WEST, A DISTANCE OF 1,653.54 FEET TO THE POINT OF BEGINNING.

Legal description created by

Derek S. Brown, PLS No. 38064  
For and on behalf of Aztec Consultants, Inc.  
8000 S. Lincoln Street, Suite 201  
Littleton, Colorado 80122  
Job No. 81313-01  
Dated: November 21, 2013.

**ATTACHMENT 2**  
(Includible Area)

The following described real property located in the County of Weld, State of Colorado:

THE NORTH HALF OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, EXCEPT (A) THOSE PARCELS AS CONVEYED BY INSTRUMENTS RECORDED IN BOOK 509 AT PAGE 79 AND IN BOOK 814 AT PAGE 251 AND IN BOOK 1179 AT PAGE 541 AND UNDER RECEPTION NO. 1983198 IN BOOK 1044 AND NOVEMBER 8, 2005, AT RECEPTION NO. 3338315, COUNTY OF WELD, STATE OF COLORADO, AND EXCEPT FOR ANY PORTION OF THE FOREGOING PROPERTY DESCRIBED IN ATTACHMENT 1 AND INCLUDED IN THE COMMUNITY AREA BY THE DECLARATION TO WHICH THIS DESCRIPTION IS ATTACHED.

THE ABOVE-DESCRIBED REAL PROPERTY IS ALSO DESCRIBED AS:

A PARCEL OF LAND BEING A PART OF THE NORTH HALF OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 20, AND CONSIDERING THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 20 TO BEAR NORTH 00°21'37" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE SOUTH 44°24'15" WEST, A DISTANCE OF 42.88 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF WELD COUNTY ROAD NO. 5 AND THE POINT OF BEGINNING;

THENCE SOUTH 00°00'29" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1695.42 FEET TO A POINT ON THE NORTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 509 AT PAGE 79;

THENCE SOUTH 78°55'29" WEST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 400.27 FEET TO A POINT ON THE NORTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 1179 AT PAGE 541;

THENCE NORTH 89°59'31" WEST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 27.20 FEET TO THE NORTHWEST CORNER THEREOF;

THENCE SOUTH 00°00'29" WEST, ALONG THE WESTERLY LINE OF SAID PARCEL, A DISTANCE OF 5.33 FEET TO A POINT ON THE NORTHERLY LINE OF THE PARCEL OF LAND DESCRIBED IN SAID BOOK 509 AT PAGE 79;

THENCE SOUTH 78°55'29" WEST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 769.23 FEET TO THE NORTHEASTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 814 AT PAGE 251;

THENCE ALONG THE NORTHERLY, WESTERLY AND SOUTHERLY LINES OF SAID PARCEL THE FOLLOWING THREE (3) COURSES:

1. CONTINUING SOUTH 78°55'29" WEST, A DISTANCE OF 250.00 FEET;
2. SOUTH 11°04'31" EAST, A DISTANCE OF 125.00 FEET;
3. NORTH 78°55'29" EAST, A DISTANCE OF 250.00 FEET TO THE SOUTHWESTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN SAID BOOK 509 AT PAGE 79;

THENCE CONTINUING NORTH 78°55'29" EAST, ALONG THE SOUTHERLY LINE OF SAID PARCEL, A DISTANCE OF 744.75 FEET TO THE WESTERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN SAID BOOK 1179 AT PAGE 541;

THENCE SOUTH 00°00'29" WEST, ALONG SAID WESTERLY LINE, A DISTANCE OF 76.02 FEET TO THE NORTHERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 1044 UNDER RECEPTION NUMBER 1983198;

THENCE SOUTH 89°05'16" WEST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 225.19 FEET TO THE NORTHWESTERLY CORNER THEREOF;

THENCE SOUTH 00°00'29" WEST, ALONG THE WESTERLY LINE OF SAID PARCEL, A DISTANCE OF 650.48 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 20;

THENCE SOUTH 89°05'16" WEST, ALONG SAID SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 20, A DISTANCE OF 1962.78 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 20;

THENCE SOUTH 89°05'29" WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 20, A DISTANCE OF 2610.98 FEET;

THENCE NORTH 00°21'37" WEST, PARALLEL WITH THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 20, A DISTANCE OF 2598.72 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF WELD COUNTY ROAD NO. 8;

THENCE NORTH 88°48'44" EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 2617.94 FEET;

THENCE NORTH 88°48'01" EAST, CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 2618.25 FEET TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION DEDICATED FOR RIGHT-OF-WAY ON NOVEMBER 8, 2011, AND UNDER RECEPTION NO. 3338315 AND EXCEPT FOR ANY PORTION OF THE FOREGOING PROPERTY DESCRIBED IN ATTACHMENT 1 AND INCLUDED IN THE COMMUNITY AREA BY THE DECLARATION TO WHICH THIS DESCRIPTION IS ATTACHED.

Legal description created by :

Carroll & Lange-Manhard  
7442 South Tucson Way, Suite 190-A  
Centennial, CO 80112  
Job No. OHWCC/2175  
Dated October 17, 2012.

**ATTACHMENT 3**  
(Exceptions to Title)

1. Rights of way for County Roads 30 feet on either side of Section and Township lines, as established by the Board of County Commissioners for Weld County, Colorado, Recorded October 14, 1889, in Book 86 at Page 273.
2. An undivided full interest in all oil, gas and other minerals as reserved by The Boulder Valley Coal Company in Deed Recorded September 27, 1945, in Book 1162 at Page 31, and any and all assignments thereof or interests therein.
3. An undivided full interest in all minerals conveyed to William H. Peltier by Executor's Deed Recorded in Book 589 at Reception No. 1511171, and any and all interests therein or assignments thereof.
4. An Oil and Gas Leases, from William H. Peltier as Lessor(s) to T. S. Pace as Lessee(s) dated May 6, 1970, Recorded March 23, 1976, in Book 762 at Reception No. 1684120, as amended June 25, 2012, at Reception No. 3854517 and Union Pacific Resources and Vessells Oil and Gas Company Recorded August 2, 1995, at Reception No. 2449610, and any and all assignments thereof or interests therein.
5. An easement for a pipeline and incidental purposes granted to Panhandle Eastern Pipe Line Company by the instrument Recorded February 10, 1982, in Book 960 at Reception No. 1882642.
6. Notice of general description of area serviced by Panhandle Eastern Pipe Line Company concerning underground facilities Recorded June 26, 1986, in Book 1117 at Reception No. 2058722.
7. Notice concerning underground facilities of United Power, Inc., formerly Union Rural Electric Association, Inc., Recorded January 24, 1991, in Book 1288 at Reception No. 2239296.
8. An easement for a pipe line and incidental purposes granted to K N Front Range Gathering Company by the instrument Recorded May 3, 1993, in Book 1381 at Reception No. 2331355, as shown on that certain Survey prepared by Carroll & Lange, Inc., as Job No. 120728.
9. Notices of Right to Use Surface of Lands Recorded December 26, 1996, in Book 1583 at Reception No. 2526511 and in Book 1583 at Reception No. 2526512.
10. Declaration of Unitization Recorded November 16, 1998, at Reception No. 2653906.
11. Notice of Right to Use Surface of Lands Recorded August 3, 1999, at Reception No. 2711405.
12. Notice of Oil and Gas Interests and Surface Use Recorded January 23, 2001, at Reception No. 2820923.

13. An easement for road improvements, access, maintenance, and repair purposes, and incidental purposes granted to K B Home Colorado and Town of Erie by the instrument Recorded February 15, 2002, at Reception No. 2925868.
14. An easement for storm drain improvements, access, maintenance, and repair purposes, and incidental purposes granted to K B Home Colorado and Town of Erie by the instrument Recorded March 28, 2002, at Reception No. 2937484.
15. Request for Notification of Surface Development Recorded May 28, 2002, at Reception No. 2954714.
16. An easement for electric facilities and incidental purposes granted to United Power, Inc. by the instrument Recorded April 2, 2003, at Reception No. 3048212.
17. An easement for an electric transmission line and incidental purposes granted to the United States of America by the instrument Recorded June 1, 1951, in Book 1304 at Page 181, as shown on that certain Survey prepared by Carroll & Lange, Inc., as Job No. 120728.
18. Request for Notification of Surface Development Recorded April 21, 2006, at Reception No. 3381087.
19. Notice of Right to Use Surface of Lands Recorded December 13, 2005, at Reception No. 3346989.
20. Request For Notification of Surface Development Recorded October 15, 200,7 at Reception No. 3511023.
21. Request for Notification of Surface Development Recorded December 21, 2007, at Reception No. 3525268.
22. Right of Way Agreement Recorded December 9, 2011, at Reception No. 3810941.
23. Conditions, easements, and restrictions as shown, and created by, all Recorded Plats in the Community Area.
24. Ordinance No. 35-2013 Recorded November 25, 2013, at Reception No. 3980216.
25. Ordinance No. 36-2013 Recorded November 25, 2013 at Reception No. 3980217.