

AFTER RECORDING RETURN TO:
Meritage Homes Corporation
8800 East Raintree, Suite 300,
Scottsdale, Arizona 85260
Attn: Legal Department

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

VILLAGE AT SOUTHGATE

(A Planned Community)

City of Brighton, County of Adams

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
VILLAGE AT SOUTHGATE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VILLAGE AT SOUTHGATE ("**Declaration**") is made on the date hereinafter set forth by Meritage Homes of Colorado Inc., an Arizona corporation ("**Declarant**").

PREAMBLE

WHEREAS, Declarant is the owner of certain real property located in the City of Brighton County of Adams, State of Colorado, as more particularly described on the attached **Exhibit A** (collectively, "**Property**");

WHEREAS, Declarant is also the owner of certain other real property located in the City of Brighton County of Adams, State of Colorado, as more particularly described and identified on the attached **Exhibit B** ("**Declarant Expansion Property**"), and Declarant is the contract purchaser of certain additional real property also as set forth on **Exhibit B** ("**Additional Declarant Expansion Property**") The Declarant Expansion Property together with the Additional Declarant Expansion Property is collectively the "**Expansion Property**";

WHEREAS, Declarant intends to create a planned community on the Property;

WHEREAS, Declarant (among other rights herein) reserves the right to annex all or portions of the Expansion Property into said planned community from time to time and subject to the provisions of Article XIII below;

WHEREAS, Declarant intends to provide for the operation, administration, use and maintenance of certain Common Areas (defined below) and other areas within the planned community; and

WHEREAS, Declarant will convey the Property subject to the protective covenants, conditions and restrictions as hereinafter set forth.

NOW THEREFORE, Declarant hereby submits the Property, together with all rights, appurtenances thereto and improvements thereon, to the terms and provisions hereof and of the Colorado Common Interest Ownership Act (C.R.S. 38-33.3-101 et seq.) ("**Act**") in order to form a planned community called "Village at Southgate." Declarant hereby declares that all of said Property shall be held and conveyed subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be for the protection of the value of the Property and for the benefit of any person having any right, title or interest in the Property. Said covenants, conditions and restrictions shall be deemed to run with the land and shall be a burden and a benefit to any person acquiring such interest, their grantees, heirs, legal representatives, successors and assigns, and acceptance of such interest by any such person shall constitute such person's agreement to be bound by the same.

ARTICLE ONE DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 “**Act**” means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et seq.*

1.2 “**Agency**” means any agency or corporation such as the U.S. Department of Housing and Urban Development (“**HUD**”), U.S. Veterans’ Administration (“**VA**”), Federal National Mortgage Association (“**FNMA**”) or the Federal Home Loan Mortgage Corporation (“**FHLMC**”) that purchases or insures residential mortgages.

1.3 “**Allocated Interests**” means the Common Expense Liability and the votes in the Association that are allocated to each of the Lots in the Project. The formulas used to establish the Allocated Interests are as follows:

(a) *Common Expense Liability.* Subject to Section 5.3 below, all Common Expenses shall be levied against the Lots on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots then within the Project.

(b) *Votes.* Owners shall be entitled to one (1) vote for each Lot owned within the Project.

1.4 “**Articles**” means the Articles of Incorporation of the Association.

1.5 “**Assessment(s)**” means the (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, (d) Fines, and (e) Costs of Enforcement, all as defined below.

1.6 “**Assessment Lien**” means the lien on a Lot for any Assessments levied against that Lot.

1.7 “**Association**” means the Village at Southgate Homeowners Association, Inc., a Colorado non-profit corporation, its successors and assigns. The Articles and Bylaws of the Association, along with this Declaration, shall govern the administration of the Project, the Members of which shall be all of the Owners of the Lots within the Project.

1.8 “**Board**” means the Board of Directors of the Association. The Board is the governing body of the Association and shall act on behalf of the Association.

1.9 “**Budget**” means the annual budget of the Association prepared and adopted in accordance with Section 4.7 below.

1.10 “**Bylaws**” means the Bylaws which are adopted by the Board for the regulation and management of the Association.

1.11 “**City**” means the City of Brighton, “**County**” means the County of Adams, State of Colorado.

1.12 “**Clerk and Recorder**” means the office of the Clerk and Recorder in Adams County, Colorado.

1.13 “**Common Areas**” means any real property interest (including all Improvements located thereon), other than the Lots, which is held or maintained for the common use, enjoyment and/or obligation of the Owners except as otherwise provided herein (e.g., Limited Common Areas defined below). Said Common Areas may be owned and/or maintained by the Association.

Notwithstanding the foregoing, certain of the Common Areas may be “**Limited Common Areas**” which are either limited to or reserved in this Declaration, in a recorded amendment to this Declaration executed by Declarant pursuant to Article Fourteen below, by authorized action of the Association, or as otherwise permitted in Article Fourteen, for the exclusive use of an Owner, or are limited to and reserved for the common use of more than one (1) but fewer than all Owners.

At such time that the initial Common Areas, if any, are annexed by Declarant hereunder, then the term “Common Areas” also refers to all stormwater drainage facilities serving the Property and/or the annexed Expansion Property except for any component thereof serving a single Lot.

1.14 “**Common Expense Assessments**” means the funds required to be paid by each Owner in payment of such Owner’s Common Expense Liability as more fully defined in Section 5.4(a) below.

1.15 “**Common Expense Liability**” means the liability for the Common Expense Assessments allocated to each Lot and determined in accordance with that Lot’s Allocated Interests as set forth in Section 1.3 above.

1.16 “**Common Expenses**” means expenditures made by or liabilities incurred by or on behalf of the Association, together with allocations to reserve funds.

1.17 “**Costs of Enforcement**” means all fees, late charges, interest and expenses, including receiver’s fees, reasonable attorneys’ fees and costs incurred by the Association in connection with the collection of Assessments, and the enforcement of the terms, conditions and obligations of the Governing Documents. Costs of Enforcement are collectible and enforceable as Assessments.

1.18 “**Declarant**” means Meritage Homes of Colorado, Inc., an Arizona corporation, and its successors and assigns. A Person shall be deemed a “successor and assign” of Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of the Declarant under this Declaration which are specifically designated in the recorded instrument.

1.19 “**Declarant Rights**” means the rights granted to or reserved by a Declarant as set forth in this Declaration.

1.20 “**Declaration**” means this Declaration, the Map and any supplements and amendments thereto recorded with the Clerk and Recorder.

1.21 “**Fines**” means those fines described in Section 5.4(c) below.

1.22 “**First Mortgage**” means a bona fide first mortgage encumbering a Lot as security for the performance of an obligation, which is held by a Mortgagee.

1.23 “**Governing Documents**” means this Declaration, the Map, the Articles, the Bylaws, the Design Guidelines (if any) (described in Article Eight below) and any other documents promulgated by the Board, as they may be amended or supplemented from time to time.

1.24 “**Guest**” means (a) any person who resides with an Owner within the Project, (b) a guest or invitee of an Owner, (c) an occupant or tenant of an Owner within the Project, and any members of his or her household, invitee or cohabitant of any such person, or (d) a contract purchaser.

1.25 “**Home**” means each residence constructed on a Lot within the Project and any replacement thereof.

1.26 “**Improvements**” means:

(a) all exterior improvements, structures and any appurtenances thereto or components thereof of every type or kind; and

(b) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, and change of drainage path; and

(c) all landscaping and hardscaping features, including, but not limited to, buildings, outbuildings, patios, patio covers, awnings, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, private drives, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, cooling, heating and water softening equipment; and

(d) any change, alteration, modification, expansion, or addition to any previously approved Improvement, including any change of exterior appearance, finish material, color or texture.

1.27 “**Lot**” means each lot shown on the Map which is subject to this Declaration, together with all appurtenances and improvements now or hereafter located thereon. “Lot” shall include any Home constructed thereon as the term Home is defined above.

1.28 “**Lots That May Be Created**” means Two Hundred (200) Lots, including those Lots which may be included if all of the real property described on **Exhibit B** is annexed into the Project and made subject to this Declaration.

1.29 “**Managing Agent**” means any one (1) or more persons employed by the Association who is engaged to perform any of the duties, powers or functions of the Association.

1.30 “**Map**” means, collectively, the Final Plat Village at Southgate Brighton recorded with the Clerk and Recorder on June 18, 2015 at Reception No. 2015000047350, as it may be amended and supplemented from time to time.

1.31 “**Member**” means each Owner as defined in Section 1.35 below.

1.32 “**Mortgage**” means any mortgage, deed of trust or other document conveying any Lot or interest therein to a Mortgagee, but only as security for payment of a debt or obligation and not intended to initially convey fee simple title thereof.

1.33 “**Mortgagee**” means any person or entity named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person or entity under such Mortgage.

1.34 “**Notice and Hearing**” means a written notice and an opportunity for a hearing before the Board in the manner provided in the Bylaws or otherwise in the Governing Documents.

1.35 “**Owner**” means the record owner of the fee simple title to any Lot which is subject to this Declaration.

1.36 “**Owner’s Agents**” means any agent, contractor, employee, Guest or licensee of an Owner.

1.37 “**Period of Declarant Control**” means that period of time as defined in Section 4.6 below.

1.38 “**Project**” means the common interest community created by this Declaration as shown on the Map consisting of the Property, and such additional property that may be annexed into the common interest community pursuant to Article Thirteen below.

1.39 “**Rules**” means any Rules and Regulations adopted by the Board for the regulation and management of the Project, as amended from time to time.

1.40 “**Special Assessments**” means those Assessments defined in Section 5.4(d) below.

In the event that additional real property is made subject to this Declaration in the manner provided for in Article Thirteen below, certain terms defined above shall be expanded to encompass said property from the date such additional real property is made subject to this Declaration.

ARTICLE TWO SCOPE OF THE DECLARATION

2.1 Property Subject to this Declaration. Declarant, as the owner of fee simple title to the Project, by recording this Declaration does hereby subject the Project to the provisions of this Declaration.

2.2 Conveyances Subject to this Declaration. All covenants, conditions and restrictions which are granted or created by this Declaration shall be deemed to be covenants appurtenant to and

running with the land, and shall at all times inure to the benefit of and be binding on any person or entity having any interest in the Project, their respective heirs, successors, personal representatives or assigns, except as otherwise provided herein.

Any instrument recorded subsequent to this Declaration and purporting to establish and affect any interest in the Project shall be subject to the provisions of this Declaration despite any failure to make reference thereto.

2.3 Owner's Rights Subject to Governing Documents. Each Owner shall own their Lot subject to the provisions of the Governing Documents.

2.4 Number of Lots. The initial number of Lots within the Project is two (2). Declarant reserves the right but not the obligation to create additional Lots by the expansion of the Project in accordance with Article Thirteen below.

2.5 Identification and Boundaries of Lots. The identification number and boundaries of each Lot is as shown on the Map.

ARTICLE THREE COMMON AREAS

3.1 Transfer of Title to the Common Areas. Upon the annexation of Common Areas into the Project, if any, Declarant will convey such Common Areas to the Association. Any property conveyed to the Association pursuant to the foregoing shall be conveyed free and clear of all monetary liens and monetary encumbrances (other than the lien of real estate taxes not then due and payable), but otherwise subject to all covenants, conditions, easements and restrictions of record.

3.2 Owner's Rights in the Common Areas. Subject to use restrictions contained herein or promulgated by the Association, every Owner and their Guests shall have the right and easement of use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with title to the Lot to such Owner; *provided, however*, that the right to use and enjoyment of any Limited Common Areas are limited to the Owners of the Lots to which such Limited Common Areas are allocated pursuant to this Declaration. An Owner's right to own and use their Lot and the Common Areas shall also be subject to the Declarant Rights reserved herein and the rights of the Board.

3.3 Delegation of Use. Any Owner may delegate their right of enjoyment of the Common Areas to their Guests subject to limitations created by the Board.

ARTICLE FOUR THE ASSOCIATION

4.1 Purposes and Powers. The Association, through its Board, shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Areas and keep the same in an attractive and desirable condition for the use and enjoyment of all Owners and their Guests. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management rights. The Board shall have all of the powers, authority and duties necessary

and proper to manage the business and affairs of the Association, including, but not limited to, the following:

(a) *Attorney-in-Fact.* The Board is hereby irrevocably appointed attorney-in-fact for each Owner in order (i) to manage, control and deal with the interest of each Owner in the Common Areas, so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, and (ii) to deal with the Project upon its destruction, condemnation or obsolescence as hereinafter provided.

Acceptance of any interest in any Lot shall constitute an appointment of the Board as attorney-in-fact as provided above and hereinafter. The Board shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Project and to perform all of the duties required of it.

(b) *Contracts, Easements, and Other Agreements.* Subject to Section 3.2 above, the Board shall have the right to enter into, grant, perform, enforce, cancel and vacate any contracts, leases, agreements, licenses, easements and rights-of-way for the use of Common Areas by Owners, Guests or any other person or entity, including, without limitation, the general public.

Any of such contracts, licenses, leases, agreements, easements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board, without the necessity of the consent thereto, or joinder therein, of the Owners or any other person or entity.

(c) *Other Association Functions.* The Board may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Owners on a self-supporting, Common Expense Assessment or Special Assessment basis.

(d) *Implied Rights.* The Board shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, including, without limitation, the Colorado Revised Nonprofit Corporation Act ("**Nonprofit Act**"), or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.2 Board/Managing Agent. The affairs of the Association shall be managed by the Board. The Board may delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws; provided no such delegation shall relieve the Board of final responsibility.

4.3 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to the Owner set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws.

4.4 Membership. Members of the Association shall be every record Owner of a Lot subject to this Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Where more than one (1) person or entity holds an ownership interest in any Lot, all such persons and entities shall be Members.

The membership of the Association shall at all times consist exclusively of all Owners or, following termination of the Project, of all former Owners, or their heirs, personal representatives, successors or assigns.

4.5 Voting Rights. The Association shall have one (1) class of voting membership. Owners shall be entitled to one (1) vote in the Association for each Lot owned within the Project.

4.6 Declarant Control of the Association.

(a) Subject to provisions of Section 4.6(b) below, there is a “**Period of Declarant Control**” during which period Declarant may appoint and remove any officer of the Association or any member of the Board. The Period of Declarant Control starts upon the recording of this Declaration and terminates no later than the earlier of:

(i) Sixty (60) days after conveyance of seventy-five percent (75%) of the Lots That May Be Created to Owners other than a Declarant;

(ii) Two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business to Owners other than a Declarant; and

(iii) Two (2) years after any right to add new Lots to the Project was last exercised.

Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the Period of Declarant Control in a recorded instrument executed by Declarant. In that event Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Board, as described in such recorded instrument, be approved by Declarant before they become effective.

(b) Not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Lots That May Be Created to Owners other than a Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant.

Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Lots That May Be Created to Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board must be elected by Owners other than Declarant.

Not later than the termination of the Period of Declarant Control, Owners shall elect a Board consisting of at least three (3) members, at least a majority of whom must be Owners other than Declarant. The Board shall elect the officers of the Association.

4.7 Budget.

(a) *Annual Budget.* Within sixty (60) days after the conveyance of a Lot to an Owner (other than Declarant), the Board shall cause to be prepared a “**Budget**” for the calendar year, and then for each calendar year thereafter. Within ninety (90) days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a

summary of the Budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the Budget within a reasonable time after delivery of the summary. Unless at that meeting Owners to which at least a majority of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. In the event the Budget is rejected, the Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget adopted by the Board.

(b) *Amended Budget.* If the Board deems it necessary or advisable to amend a Budget that has been ratified by Owners pursuant to Section 4.7(a) above, the Board may adopt a proposed amendment to the Budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall be a reasonable time after the delivery of the summary of the proposed amendment. Unless at that meeting Owners to which at least a majority of the votes in the Association are allocated reject the amended Budget, the amended Budget shall be deemed ratified whether or not a quorum is present.

4.8 Indemnification. Each officer of the Association and each director of the Board shall be indemnified by the Association against all expenses and liabilities including reasonable attorneys' fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been an officer of the Association or director of the Board, or any settlements thereof, whether or not he or she is an officer of the Association or director of the Board at the time such expenses are incurred, to the full extent permitted by Colorado law and as further set forth in the Bylaws. In the event of any conflict between the terms of this Section 4.8 and the Bylaws, the Bylaws shall control.

ARTICLE FIVE ASSESSMENTS

5.1 Obligation. Subject to Section 5.3 below, once a Budget is adopted, each Owner, including Declarant, shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, (d) Fines, and (e) Costs of Enforcement, which shall be a continuing lien upon the Lot against which each such Assessment is levied.

The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without notice or demand and without setoff or deduction. All Owners of each Lot shall be jointly, severally and personally liable to the Association for the payment of all Assessments attributable to their Lot.

Each Assessment against a Lot is the personal obligation of the person or entity who owned the Lot at the time the Assessment became due and shall also pass to successors in title. *By acceptance of a deed for a Lot, each Lot purchaser thereby consents to assume the foregoing joint obligation for all Assessments due against the Lot pursuant to this Section 5.1.*

The omission or failure of the Board to levy Assessments for any period shall not be deemed a waiver modification or a release of the Owners from their obligation to pay Assessments.

No Owner may waive or otherwise escape liability for the payment of Assessments by the non-use of the Common Areas or the abandonment of such Owner's Lot.

5.2 Purpose of the Common Expense Assessments. The Common Expense Assessments levied by the Association shall be used for the purpose of promoting the welfare and interests of the Owners including, but not limited to (a) providing for the administration and management of the Project, (b) providing for the upkeep, operation, improvement, repair, maintenance and reconstruction of the Common Areas, including, but not limited to, the maintenance required in Article Twelve below, (c) providing the insurance required by Article Ten below, (d) creating a reasonable and adequate contingency or other reserve or surplus funds for insurance deductibles and general, routine maintenance, repairs and replacement of the Common Areas on a periodic basis, as needed, and (c) satisfying any other purpose reasonable, necessary or incidental to such purposes.

5.3 Date of Commencement of the Assessments; Declarant's Right of Offset. Subject to the second paragraph of this Section 5.3, the Common Expense Assessment shall commence as to the Lots when decided by the Board but in no event more than 60 days after conveyance of a Lot to an Owner other than Declarant. Until commencement of the collection of the Common Expense Assessment, Declarant shall pay all of the expenses incurred and paid for by the Association. Declarant may at any time advance operating funds to the Association. Declarant shall be entitled to offset such amounts so paid or advanced as a credit against future Common Expense Assessments payable by Declarant.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE FIVE TO THE CONTRARY, UNTIL A CERTIFICATE OF OCCUPANCY HAS BEEN ISSUED FOR A HOME LOCATED UPON A LOT, THE LOT SHALL NOT BE ASSESSED BY THE ASSOCIATION.

5.4 Levy of Assessments.

(a) *Common Expense Assessments.* Common Expense Assessments shall be levied based upon the Budget's cash requirements. The Common Expense Liability shall be allocated among all Lots in accordance with each Lot's Common Expense Liability as set forth in Section 1.3 above and shall commence in accordance with Section 5.3 above.

(i) To the extent that any Common Expenses or a portion thereof benefit fewer than all Owners, such expenses may be assessed exclusively against the Lots benefited, as determined by the Board.

(ii) Charges for water, sewer, gas, electric, storm drainage and other utility services provided to the Common Areas may be billed to the Association ("Service Charges"). If any Service Charges are billed to the Association, the Association shall pay the same on or before the date they become due. In addition to the Common Expense Assessments, the

Association may, as and when determined by the Board in its discretion, apportion to and collect an Individual Assessment from each Owner in an amount which, together with all other Service Charges for such period, is sufficient to pay or reimburse the Association for all Service Charges for such period; *provided, however*, that the Association may elect to assess any or all of the Service Charges as part of the Common Expense Assessments. The manner in which Service Charges are apportioned among Owners shall be determined by the Board in its discretion from time to time. By way of example and not as a limitation, the Service Charges may be assessed based on Allocated Interests or based on actual usage by one (1) or more Lots. Non-payment of any Service Charges shall be subject to enforcement and collection by the Association in the same manner as Common Expense Assessments.

(iii) In the event that a utility provider will only provide a single bill for utility charges provided to more than one (1) Lot, that bill may be addressed to the Association, who shall pay the same on or before the date they become due ("**Lot Utility Charges**"). In addition to the annual Common Expense Assessments, the Association may, as and when determined by the Board in its discretion, apportion to and collect an Individual Assessment from each Owner in an amount which, together with all other Lot Utility Charges for such period, is sufficient to pay or reimburse the Association for all Lot Utility Charges for such period; *provided, however*, that the Association may elect to assess any or all of the Lot Utility Charges as part of the Common Expense Assessments. The manner in which Lot Utility Charges are apportioned among Owners shall be determined by the Board in its discretion from time to time. By way of example and not as a limitation, the Lot Utility Charges may be assessed based on Allocated Interests of each Lot affected as compared to the Allocated Interests of all Lot's affected, or based on actual usage by one (1) or more Lots. Non-payment of any Lot Utility Charges shall be subject to enforcement and collection by the Association in the same manner as Common Expense Assessments.

(b) *Individual Assessments.* The Board shall have the right to individually levy upon any Owner(s) amounts as provided for by this Declaration. Additionally, Individual Assessments may be levied by the Board upon any Owner or Owners for expenses incurred by the Association which the Board determines are attributable to such Owner(s) or for costs for services provided by the Association that benefit only such Owners. Individual Assessments may be levied at any time as required and are exempt from any voting requirement of the Owners required by other Assessments called for under this Declaration.

(c) *Fines.* The Board shall have the right to levy a Fine against an Owner for violations of the Governing Documents. No such Fine shall be levied until the Owner to be charged has been given a Notice and Hearing. Fines may be levied in a reasonable amount as determined from time to time by the Board in its discretion and uniformly applied. Fines may be levied at any time as required and are exempt from any voting requirements of the Owners required by other Assessments called for under this Declaration. The Board shall adopt a policy with respect to Fines, which may be included in the bylaws or elsewhere, as required by the Act.

(d) *Special Assessments.* In addition to the other Assessments authorized herein, the Board may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense, including, but not limited to, the cost of any construction, reconstruction, improvement, repair or replacement of the Common Areas, including fixtures and personal property relating thereto, or for the funding of any operating deficit incurred by the Association.

Any such Special Assessment shall be levied against each Lot in accordance with that Lot's Common Expense Liability determined in accordance with Section 1.3 above, subject to Section 5.3 above. Special Assessments may be levied at any time as required and are exempt from any voting requirement of the Owners required by other Assessments called for under this Declaration.

5.5 Due Date. Special Assessments, Individual Assessments, Costs of Enforcement and Fines shall be due and payable as established by the Board. Common Expense Assessments shall be due and payable in monthly installments, in advance, or in such frequency as the Board determines in its discretion from time to time. Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

5.6 Remedies for Nonpayment of Assessments. If any Assessment is not fully paid within five (5) days after the same becomes due and payable, then interest shall accrue at the default rate set by the Board on any amount of the Assessment in default accruing from the due date until date of payment, and the Board may also assess a late fee in an amount as determined in the Board's discretion. In addition the Board may in its sole discretion:

(a) Accelerate and declare immediately due and payable all unpaid installments of any Assessment payable for the balance of the fiscal year during which such default occurred;

(b) Bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due; and/or

(c) Proceed to foreclose its lien against the Lot pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving the Assessment Lien.

5.7 Assessment Lien. The Association is hereby granted a lien ("**Assessment Lien**") against each Lot for any Assessment levied by the Board. The Association may require reimbursement for Costs of Enforcement without the necessity of commencing a legal proceeding. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due. The Assessment Lien shall be superior to all other liens and encumbrances on a Lot except as set forth in §316 of the Act. No sale, deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve an Owner from continuing liability for any Assessment thereafter becoming due, nor from the lien thereof.

Recording of this Declaration constitutes record notice and perfection of the lien and no further recordation of any claim of lien for Assessments is required. However, the Board may prepare, and record with the Clerk and Recorder, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a claim of lien is filed, the cost thereof shall be considered a Cost of Enforcement.

The Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

Notwithstanding the foregoing provisions of this Section 5.7, in order to comply with §316(11)(a) of the Act, the Association may not foreclose the Assessment Lien against a Lot unless (a) the amount of Assessments and other amounts due to the Association is equal to or greater than six (6) months of the Common Expense Assessment, and (b) there is a recorded vote of the Board authorizing the foreclosure of the specific Lot being foreclosed. The authority to initiate a foreclosure cannot be delegated to the Managing Agent, an attorney or any other Person, nor can the Association have a policy of automatically requiring foreclosure when an Owner becomes six (6) months delinquent.

5.8 Surplus Funds. Any surplus funds of the Association remaining at the close of the Association's fiscal year after payment of the Association's expenses and funding reserves may be retained by the Association as unallocated reserves and need not be credited to the Owners to reduce their future Assessment liability.

5.9 Working Capital Fund. To provide the Association with sufficient working capital to cover the cost of initial expenses and any future expenses authorized by the Board for which there are insufficient budgeted funds, an initial "**Working Capital Fund**" will be established by the Association. At the closing of the initial sale of a Lot to an Owner (other than to Declarant), a non-refundable contribution shall be made by such Owner to the Working Capital Fund in an amount equal to two (2) months of Common Expense Assessments. Amounts contributed to the Working Capital Fund do not constitute advance payments of Common Expense Assessments and do not relieve an Owner from making regular payments of Common Expense Assessments as they become due. In the event that Declarant makes payment to the Working Capital Fund on behalf of any Owner, such amount shall be reimbursable to Declarant by such Owner upon the conveyance of title to the Lot to such Owner by Declarant.

5.10 Certificate of Assessment Status. The Association shall furnish to an Owner or such Owner's Mortgagee upon written request delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Managing Agent, if any, and if there is no Managing Agent to the Board, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding upon the Association, the Board and every Owner. If no statement is furnished to the Owner or Mortgagee, delivered personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party, then the Association shall have no right to assert an Assessment Lien upon the Lot for unpaid Assessments which were due as of the date of the request.

ARTICLE SIX
[Intentionally Deleted]

ARTICLE SEVEN RESTRICTIONS

7.1 Limitations and Restrictions. All Lots and Common Areas shall be used and enjoyed subject to the following limitations and restrictions. Notwithstanding the foregoing, so long as Declarant owns a Lot within the Project or retains the right to add Expansion Property to the Project, Declarant shall be exempt from the provisions of this Article Seven to the extent that it impedes, in Declarant's sole discretion, their development, construction, marketing, sales or leasing activities.

7.2 Residential Use. Each Lot shall be used and occupied primarily as a residence. No industry, business, trade, occupation, or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained or permitted in on any Lot except as expressly provided herein. The foregoing shall not, however, be construed in such a manner as to prohibit an Owner from (a) maintaining their personal professional library in a Home, (b) keeping their personal business or professional records or accounts in a Home, (c) handling their personal business or professional telephone calls or correspondence from a Home, (d) maintaining a computer or other office equipment within a Home, or (e) utilizing administrative help or meeting with business or professional associates, clients or customers in a Home. Any accessory business use of a Home, permitted by this Section 7.2, must be in compliance with all applicable statutes, ordinances and governmental regulations and must be conducted in accordance with the Governing Documents.

7.3 Animals and Pets. No household pet or animal shall be allowed in or about the Project at any time without close supervision by an Owner. Owners shall be responsible for strict compliance with all laws related to pet ownership, including any regulation wholly excluding or limiting the number or type or breed of pets allowed, and each such Owner shall ensure that their pet does not interfere with other Owners' quiet use and enjoyment of the Project. Owners will be held responsible for any litter, waste, mess, damage or offensive noises created by their pets. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pet(s).

7.4 Nuisances. No noxious or offensive activity shall be carried on upon: any part of Project, nor shall anything be done or placed on or in any part of the Project that is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Project and no Improvements shall be made or constructed on any part of the Project that are or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Project that is unreasonably loud or annoying. No Owner shall operate any machines, appliances, electronic devices, sound systems, accessories or equipment in such a manner as to cause an unreasonable disturbance to others, or cause any damage to or overloading of any mechanical, electrical, plumbing, or any other system serving the Project. No odor that is unreasonably noxious or offensive to others shall be emitted on any part of the Project. Habitually barking, howling or yelping dogs shall be deemed a nuisance.

7.5 No Hazardous Activities. No activity shall be conducted on any portion of the Project which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Project and

no open fires shall be lighted or permitted on any portion of the Project except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace designed to prevent the dispersal of burning embers.

7.6 Compliance with Insurance Requirements. Except as may be approved in writing by the Board, nothing shall be done or kept on the Project which may result in an increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

7.7 Owner-Caused Damages. If, due to the act or neglect of an Owner or such Owner's Agent, loss or damage shall be caused to any person or property within the Common Areas or any Lot, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board from such Owner as an Individual Assessment. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Section 7.7 shall be made by the Board and shall be final.

7.8 Lease of a Lot. An Owner shall have the right to lease his or her Lot upon such terms and conditions as the Owner may deem advisable, subject to the following:

(a) Any such lease or rental agreement must be in compliance with applicable local, state and federal laws;

(b) No Owner may lease or rent (i) less than his or her entire Lot, (ii) for transient or hotel purposes, or (iii) for a term of less than three (3) months in duration unless it is a lease extension;

(c) Any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of the Governing Documents;

(d) Such lease or rental agreement shall state that the failure of the lessee or renter to comply with the Governing Documents shall constitute a default and such default shall be enforceable by either the Board or the lessor, or by both of them to include, but not be limited to, eviction of the lessee from the Lot; and

(e) The Board shall be furnished with a copy of the lease or rental agreement upon its request.

The Board may adopt additional Rules regarding the foregoing provisions of this Article Seven.

ARTICLE EIGHT ARCHITECTURAL REVIEW

8.1 Alterations. No Improvements to the exterior portions of a Home or Lot shall be made unless first approved in writing by the Board. The Board shall exercise reasonable judgment to insure that all such Improvements conform to and harmonize with existing surroundings and structures. The Board has the absolute right to deny any requested exterior Improvements that the Board reasonably determines do not conform to and harmonize with existing surroundings

and structures. All construction activities shall be planned and carried out with a minimum of disruption, unsightliness and noise.

8.2 Architectural Review. The Board may establish and administer “**Design Guidelines**” to carry out the purposes and intent of this Declaration. The Board may seek the advice of design professionals or other professionals if the need should arise. The Board may adopt, establish, and publish from time to time the Design Guidelines for the Project and such Design Guidelines shall be a Governing Document, the terms of which shall be complied with by all Owners. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for the Project including, but not limited to, items such as color, texture, structure, size, design, appearance, window coverings, antennae, landscaping and site improvement standards. The Design Guidelines may be modified or amended from time to time by majority approval of the Board and shall be made available to all Owners and their representatives for review. Further, the Board, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Project’s design review process and design standards is not a substitute for compliance with applicable City building, zoning, and subdivision regulations and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. In the event of a conflict between the terms of this Declaration and the Design Guidelines, the terms of this Declaration shall control.

8.3 Requirement for Approval. No Improvements to the exterior portions of a Home or Lot shall be constructed, erected, placed, altered, maintained or permitted within the Project, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any part of the Project until plans and specifications with respect thereto satisfactory to the Board showing the proposed Improvements, site location of such Improvements, complete building plans and material specifications, and all exterior elevations, materials and colors, landscaping, grading, drainage, erosion control, easements and utilities, and such other information as may be requested by the Board have been submitted to and approved in writing by the Board. All Improvements to the exterior portions of a Home or Lot shall be constructed only in accordance with approved plans. If the Board has not responded to an Owner’s request for approval within forty-five (45) days of submission by the Owner of all information requested by the Board, then such Owner’s request shall be deemed approved by the Board. Alterations that are completely within an existing Home may be undertaken without such approval, by and at the cost of the Owner. All such Improvements shall be insured by and at the cost of the Owner. An Owner undertaking such Improvements shall indemnify the Association and the other Owners against any and all costs or damages attributable to the construction or existence of such Improvements. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of their Home.

8.4 Violation. The Association, upon the unanimous approval by the Board (excluding a Board member who is an offending Owner) and after reasonable notice to the offending Owner, may remove any Improvements constructed, reconstructed refinished, altered, or maintained in violation of these covenants, and such offending Owner shall immediately reimburse the Association for all expenses incurred in connection with such removal. Failure to timely

reimburse the Association shall be deemed an Individual Assessment with payment thereof subject to the provisions of Section 5.4(b) above.

8.5 Criteria for Approval. The Board shall approve any proposed Improvement to the exterior of a Home or Lot only if it deems in its reasonable discretion that (a) the Improvement in the location indicated will not be detrimental to the appearance of the surrounding areas of the Project as a whole, (b) that the appearance of the proposed Improvement will be in harmony with the surrounding areas of the Project, and (c) that the upkeep and maintenance of the proposed Improvement will not become a burden on the Association. Specific factors considered in approving plans include, among other things, conformity and harmony of exterior design, colors and materials with neighboring structures, relation of the proposed Improvements to the natural topography, adequacy of drainage, erosion control, easements and utilities, and such other information as may be requested by the Board have been submitted to and approved in writing by the Board.

8.6 Fees. An Owner seeking architectural review approval shall promptly pay to the Association any fees set by the Board in connection with the review process, and shall reimburse the Association for all of its costs relating to review and on-going monitoring of construction, including the costs of staff and independent consultant review and assistance, as determined by the Board. The Association may assess these fees and costs against the Owner as an Individual Assessment in the event the Owner fails to timely pay these fees and costs.

8.7 Exemption. Declarant shall be exempt from the provisions of this Article Eight until such time as the Declarant Rights expire pursuant to Section 14.3 below.

8.8 Committee. The Board may appoint an individual or a committee of individuals to provide architectural review on behalf of the Board and in accordance with this Article 8. The decisions rendered by any such individual or committee may be appealed to the full Board by the applying Owner in writing, in which event the Board shall, within a reasonable time after written request of the applying Owner, review the subject application for architectural review and approve or deny the application in accordance with this Article 8. Such approval or denial by a majority of the Board shall be final.

ARTICLE NINE EASEMENTS

9.1 Generally. The Project shall be subject to all easements as shown or created on the Map, those of record and those set forth in this Article Nine and in other provisions of this Declaration. The Association is hereby granted the right to establish from time to time utility and other easements, permits or licenses over the Common Areas for the best interest of the Association as a whole.

9.2 Utility Easements.

(a) There is hereby created and granted to Declarant, Owners, the Association and utility providers, a blanket easement on, over, in, under and through the Project (except for any buildings constructed thereon) for the installation, replacement, repair, operation and

maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity and satellite and cable systems. Said blanket easement includes future utility services not presently available to the Project that may be reasonably required in the future.

Should any utility company furnishing a service covered by the easement herein created request a specific easement by separate recordable document, Declarant shall have, and hereby reserves, the right and authority to grant such easement upon, across, over or under any part or all of the Project (except for any buildings constructed thereon) without conflicting with the terms hereof; *provided, however*, that such power shall cease upon termination of the Declarant Rights, at which time such reserved right shall vest in the Association.

(b) After any Common Area is annexed into the Project and until such time as all Expansion Property is annexed into the Project, the Expansion Property shall have an easement over the Common Areas for the use of stormwater detention and drainage facilities, for the installation, operation and maintenance of other utilities serving the Expansion Property, and for the use of any Common Area recreational facilities. Following such annexation, the owner of the Expansion Property shall bear a proportionate burden for the costs incurred by the Association in undertaking its responsibilities described in Section 12.1 below in the manner described in the immediately succeeding subparagraph.

The provisions of this Section 9.2(b) are for the express benefit of Declarant, and any other owners of the Expansion Property and may not be amended in whole or in part without the prior written consent of all owners of the Expansion Property.

The easements granted in this Section 9.2 shall in no way affect, void, extinguish or modify any other recorded easement(s) within the Project.

9.3 Easements for Association and Owners. The Board (its agents, employees, and contractors) is hereby granted an easement on, over, in, under and through each Lot (excluding any buildings situated thereon) to perform its obligations pursuant to this Declaration, including, but not limited to, maintenance, repair and replacement of any utilities for which the Association has such responsibilities. Each Owner, and such Owner's Agents, is hereby granted a perpetual non-exclusive easement for ingress to and egress from the Owner's Lot over and across the Common Areas, which right shall be appurtenant to the Owner's Lot, and which right shall be subject to limited and reasonable restrictions on the use of Common Areas set forth in writing by the Association, such as for closure for repairs and maintenance.

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

9.5 Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be deemed appurtenant to the Lot owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

ARTICLE TEN INSURANCE

10.1 Association Insurance.

(a) Required Coverage. The Association, acting through the Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance if reasonably available or, if not reasonably available, the most nearly equivalent coverages as are reasonably available. All policies of insurance purchased by the Association shall adhere to current Agency requirements, including, but not limited to, the carrier of such insurance meeting current Agency rating requirements.

(i) Blanket "all risk" property insurance coverage in an amount not less than one hundred percent (100%) of the current replacement cost of the Common Areas (including all Improvements located thereon). The Association's insurance may exclude land, excavations, foundations and other items normally excluded from such property insurance policies and may provide for a deductible in an amount not to exceed a reasonable amount as determined by the Board.

(ii) Commercial general liability insurance, insuring the Association and the Owners against damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. All Owners must be named as additional insureds for claims and liabilities arising in connection with the ownership use or management of the Common Areas. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury and property damage.

(iii) Workers' compensation insurance and employer's liability insurance to the extent required by law.

(iv) Directors' and officers' liability coverage in an amount determined by the Board providing coverage for the members of the Board.

(v) Fidelity insurance covering all persons responsible for handling Association funds in a reasonable amount determined by the Board but not less than three (3) months' Assessments plus all reserves on hand, and containing a waiver of all defenses based upon the exclusion of persons serving without compensation.

(vi) Such additional insurance as the Board determines advisable, which may include, without limitation, automobile insurance, flood insurance, boiler and machinery insurance and building ordinance coverage.

(b) Policy Requirements. All Association policies shall provide for a certificate of insurance to be furnished to the Association and upon request, to any Owner or Mortgagee. Premiums for all insurance maintained by the Association shall be Common Expenses and shall be included in the Common Expense Assessment. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable

insurance coverage. However, if the Board reasonably determines, after providing Notice and Hearing, that the loss is the result of the recklessness or willful misconduct of one or more Owners or such Owners' Agents, then the Association may specifically assess the full amount of such deductible against such Owners and their Lots as an Individual Assessment pursuant to Section 5.4(b) above. All insurance coverage obtained by the Association shall:

(i) Be written with companies authorized to do business in the State of Colorado;

(ii) Be written in the name of the Association as trustee for the Association and the Owners;

(iii) Be written as a primary policy, not contributing with and not supplemental to the coverage that any Owners, Guests or Mortgagees may carry individually;

(iv) Include an inflation guard endorsement, as applicable;

(v) Include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) Include an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer on account of any curable defect or violation or any act or omission of any Owner, without prior written demand to the Association to cure the defect, violation, act or omission and allowance of a reasonable time to effect such cure;

(vii) Include an endorsement precluding cancellation, invalidation or condition to recovery under the policy on account of any act or omission of any Owner, unless such Owner is acting within the scope of its authority on behalf of the Association; and

(viii) Include an endorsement requiring at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification or non-renewal.

(c) Other Policy Provisions. In addition, the Association may use reasonable efforts to secure insurance policies that provide:

(i) A waiver of subrogation as to any claims against the Board, the officers or employees of the Association;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) An endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) A cross liability provision; and

(v) A provision vesting in the Association exclusive authority to adjust losses; *provided, however*, no Mortgagee having an interest in such losses may be prohibited from participating in settlement negotiations, if any, related to such losses.

10.2 Separate Insurance. No Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation.

10.3 Owner Insurance. Each Owner, at their sole cost and expense (a) shall carry property insurance on all portions of their Lot in amounts not less than full replacement value of all Improvements thereon, and (b) shall carry general liability insurance providing coverage for bodily injury and property damage, for the benefit of the Owner in amounts and with coverage as are from time to time customarily maintained by prudent owners of similar property. To the extent that any Lots share Party Walls, the Owners of such Lots may cooperate to obtain blanket policies to cover such Party Walls and roofs provided that section (a) above remains fully applicable.

ARTICLE ELEVEN RESTORATION UPON DAMAGE OR DESTRUCTION/CONDEMNATION

11.1 Duty to Restore Common Areas. In the event of damage or destruction to any portion of the Common Areas which is covered by insurance carried by the Association, the insurance proceeds, if available, shall be applied by the Board to reconstruction and repair. The Common Areas must be repaired and restored in accordance with either the original plans and specifications, or other plans and specifications which have been approved by the Board.

11.2 Use of Insurance Proceeds. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage to the Common Areas, the Board shall levy a Special Assessment in the aggregate amount of such insufficiency pursuant to Section 5.4(d) above, and shall proceed to make such repairs or reconstruction. The amount of each Owner's Special Assessment shall be determined in accordance with such Owner's Common Expense Liability pursuant to Section 1.3 above.

11.3 Condemnation. If a part of the Common Areas are acquired by condemnation, that portion of any award attributable to the Common Areas taken must be paid to the Association as attorney-in-fact to be held in trust for the use and benefit of the Association, the Owners and their Mortgagees, as their interests may appear. No Owner or any other party shall be entitled to priority over Mortgagees with respect to any distribution of a condemnation award.

ARTICLE TWELVE MAINTENANCE

12.1 Maintenance of the Common Areas. The Association shall keep and maintain the Common Areas. As of the date of this Declaration, there are no Common Areas included within the Project. However, Declarant reserves the right to create or annex Common Areas in

accordance with this Declaration and applicable laws until expiration of Declarant Rights pursuant to Section 14.3 below.

12.2 Maintenance of Lots. All Lot maintenance, repair and reconstruction shall be the sole responsibility and at the sole expense of the Owner of the Lot, except as otherwise provided herein.

12.3 Owner's Failure to Maintain and Repair. In the event that a Lot is not properly maintained and repaired by an Owner, and if the maintenance responsibility for the unmaintained portion of the Lot lies with the Owner of the Lot, then the Board, after Notice and Hearing to the Owner (and after a determination by the Board that the condition of such Lot negatively impacts other Owners or the value of other Lots within the Project) shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot to a condition of good order and repair and charge the cost thereof to such Owner as an Individual Assessment.

12.4 Maintenance of the Grading/Drainage Pattern Erosion and Sediment Control. Except for changes resulting from the initial construction of Improvements undertaken by Declarant, there shall be no interference with the established grading and/or drainage pattern initially established over any portion of the Project, except as approved in writing by the Board. Approval shall not be granted unless a provision is made for adequate alternate grading and/or drainage. The established grading and/or drainage pattern may include the grading and/or drainage pattern from the Common Areas over any Lots within the Project and from any Lot within the Project over the Common Areas or from any Lot over another Lot. Each Owner shall be responsible for the maintenance, repair and replacement of those portions of the drainage system that solely serve an Owner's Lot. The Association shall be responsible for the maintenance, repair and replacement of those portions of the drainage system that serve more than one Lot. Determination of whether or not a particular portion of the drainage system serves one Lot or more than one Lot shall be made by the Board and shall be final.

Declarant will be responsible for erosion and sediment control on Lots that they own. As Lots are transferred to subsequent Owners by Declarant, such Owners shall assume responsibility for erosion and sediment control on their Lot. The Association will be responsible for erosion and sediment control on the Common Area. Builders of Homes within the Project will ensure that their Lots are fully landscaped within one year of issuance of a certificate of occupancy for the initial Improvements on the Lots.

12.5 Owner-Caused Damages. If, due to the act or neglect of an Owner or such Owner's Agents, loss or damage shall be caused to any person or property within the Common Areas or another Lot, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board, from such Owner as an Individual Assessment against such Owner in accordance with Section 5.4(b) above. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Section 12.5 shall be made by the Board and shall be final.

ARTICLE THIRTEEN EXPANSION

13.1 Reservation of Right to Expand. Declarant shall have the right (without in any way being bound) to enlarge the Project without the necessity of the consent or joinder thereto, by Owners, the Association, any Mortgagee or any other person or entity, by submitting to the Project any portion of the Expansion Property owned by Declarant. The Additional Declarant Expansion Property may submitted to the Project with the consent of the Declarant and the then owner of the Additional Declarant Expansion Property (if not then owned by the Declarant). In addition to the foregoing, Declarant shall have the right to annex real estate (in addition to the Declarant Expansion Property) to the Project from such locations as Declarant may elect in its sole discretion, so long as the total additional real state so annexed to the Project pursuant to this sentence, and not described on Exhibit A, and Exhibit B, does not exceed ten percent (10%) of the total area described Exhibit A, and Exhibit B.

13.2 Supplemental Declarations and Maps. Expansion of the Project pursuant to this Article Thirteen must be accomplished by the recording by Declarant with the Clerk and Recorder, a supplement or supplements to this Declaration (which shall be amendments to this Declaration) and/or the Map containing the legal description and depiction of the new real property to be included in such expansion and subjected to the terms of this Declaration. The expansion may be accomplished in stages, from time to time, by successive supplements or in one supplemental expansion.

13.3 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded. For example, "Lot," "Common Areas," "Property" and "Project" shall mean the Lots, Common Areas, Property and the Project described herein plus any additional Lots and Common Areas added by any supplement, and reference to this Declaration shall mean this Declaration as supplemented. The new Lots and Common Areas shall be subject to all the terms, covenants, conditions and restrictions of this Declaration, as amended and supplemented.

13.4 Interests on Enlargement. An Owner at the time of their purchase of a Lot which has been annexed into the Project by a supplement to this Declaration shall be a Member of the Association. Such Owner shall be entitled to the same non-exclusive use of the Common Areas and the same voting privileges as the Owners of the initial property brought into the Project through the original Declaration and shall be subject to the same Assessments, except as otherwise provided herein or in any supplement/amendment to this Declaration. Whenever any additional Lots are brought into the Project, the Common Expense Liability of each Owner after such addition will change and shall be reallocated in accordance with Section 1.3 above.

13.5 Termination of the Right of Expansion. Declarant's right to expand the Project pursuant to the provisions of this Article Thirteen shall terminate at the option of Declarant as set forth in a recorded instrument executed by Declarant, but in any event shall terminate without further act or deed in accordance with the limitations set forth in Section 14.3 below.

**ARTICLE FOURTEEN
DECLARANT RIGHTS**

14.1 Reservation. Notwithstanding any provision herein to the contrary, Declarant reserves for itself the following Declarant Rights which may be exercised, where applicable, from time to time, anywhere within the Project:

- (a) To complete any Improvements shown on the Map;
- (b) To exercise any Declarant Rights reserved or described herein;
- (c) To maintain business/sales offices, sales trailers, parking spaces, management offices, storage areas, construction yards, signage, advertisements and model homes upon any Lot owned by Declarant;
- (d) To amend the Declaration and/or the Map in connection with the exercise of any Declarant Rights;
- (e) To expand without in any way being bound, the Project in phases from time to time, by adding to the Project any of the Expansion Property and/or other unspecified property, which may consist of additional Common Areas and/or Lots, in accordance with Article Thirteen above;
- (f) To merge or consolidate the Project with a common interest community of the same form of ownership;
- (g) To appoint or remove any officer of the Association or a member of the Board during the Period of Declarant Control;
- (h) To modify, amend or revise plans for construction, location and design of any Common Area;
- (i) To grant and to have easements over the Common Areas to benefit any Lot and/or any property or portion of property that is contained within the Expansion Property whether or not such Expansion Property is annexed into the Project;
- (j) To transfer to the City, and special district, or the Association any Common Areas;
- (k) To withdraw any Lots or other property still owned by Declarant from the Association and this Declaration;
- (l) To construct Improvements upon the Lots; and
- (m) To exercise any other Declarant Right created or implied by any other provisions of this Declaration.

14.2 Rights Transferable. All or any of Declarant Rights created or reserved under this Article Fourteen for the benefit of Declarant may be transferred to any person or entity by Declarant by an instrument recorded with the Clerk and Recorder describing the Declarant Rights transferred. Such instrument shall be executed by the transferor Declarant and the transferee.

14.3 Limitations. Declarant Rights shall terminate at the option of Declarant as set forth in a recorded instrument executed by Declarant but in any event such Declarant Rights shall terminate without further act or deed twenty (20) years after the date of the recording of this Declaration. Notwithstanding the foregoing, neither Declarant nor anyone else may terminate the Declarant Rights held by Declarant. In the event that the process of entitlement for Declarant to obtain building permits is placed on "hold" (*e.g.*, moratorium, anti- growth legislation, etc.) for reasons beyond the control of Declarant, the time limitations set forth herein shall be extended for a period of time equivalent to the period of time such impediment to entitlement was in effect.

14.4 Interference with Declarant Rights. Neither the Association, the Board nor any Owner may take any action or adopt any rule or regulation that will interfere with or diminish Declarant Rights without the prior written consent of Declarant.

14.5 Declarant's Easements. Declarant reserves for itself the right to (a) perform warranty work, and repair and construction work on Lots and Common Areas, (b) store materials in areas upon the Common Areas and/or Lots owned by Declarant, and (c) to control and have the right of access to work and repair until completion. All work performed by Declarant shall not require the consent or approval of the Board, Owners, Mortgagees or any other person.

Declarant shall have an easement through the Common Areas as may be reasonably necessary for the purpose of discharging their obligations or exercising their rights, whether reserved in this Article Fourteen or reserved in other provisions of this Declaration. Notwithstanding any other provision of this Declaration (including, but not limited to, Section 14.3 above);the easements reserved herein shall remain in effect for the benefit of Declarant until the termination of all applicable warranty periods with respect to any particular Lot, Home or Common Area.

14.6 Exercise of Rights. The exercise of any or all of the rights reserved to Declarant shall be at the sole option and discretion of Declarant. No assurances are made with respect to the boundaries of the Project or the parcels of real property that may be subject to Declarant Rights nor the order in which Declarant Rights may be exercised. Subject to Section 14.3 above, Declarant Rights may be exercised at any time and from time to time and, if Declarant exercises any Declarant Rights, such rights may, but need not, be exercised as to all or any other portion of the Project.

Notwithstanding anything in this Declaration to the contrary, no consent or agreement of, or notice to, the Association, any Owners, any Mortgagee or any other person shall be required in order to allow Declarant to exercise any of its rights hereunder, provided such exercise otherwise complies with the applicable provisions of this Declaration.

**ARTICLE FIFTEEN
MORTGAGEE PROVISIONS**

15.1 So long as a Mortgagee has delivered a written request to the Association containing its name, address and legal description of the Lot encumbered by its Mortgage, such Mortgagee shall be entitled to timely written notice of:

- (a) any material condemnation loss or any casualty loss which affects a material portion of the Common Areas or the Lot in which the Mortgagee holds a Mortgage;
- (b) any sixty (60)-day delinquency in the payment of Assessments or charges owed by the Owner of the Lot upon which the Mortgagee holds a Mortgage;
- (c) any lapse, cancellation, or material modification of any mandatory insurance policy or fidelity bond maintained by the Association; and
- (d) any termination of the common interest community in accordance with Section 18.4 below.

**ARTICLE SIXTEEN
OWNER' S ACKNOWLEDGMENTS AND WAIVERS**

16.1 No View Easement. Notwithstanding anything contained in this Declaration to the contrary, each Owner, by acquiring a Lot, acknowledges and agrees that there is no easement or other right; express or implied, for the benefit of any Owner or Lot for light, view or air included in or- created by this Declaration or as a result of ownership of a Lot. Likewise, each Owner, by acquiring a Lot, acknowledges and agrees that any view, sight lines, or openings for light or air available from a Lot, or anywhere else on the Project, may be blocked or altered in whole or in part in the future by virtue of natural or unnatural causes, including, but not limited to, future construction or expansion of commercial or residential buildings or facilities. EACH OWNER, BY ACQUIRING A LOT, HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING EASEMENTS OR OTHER RIGHTS, WHETHER EXPRESS OR IMPLIED, FOR LIGHT, AIR, OR VIEW ON SUCH OWNER'S LOT AND/OR THE PROJECT EACH OWNER, BY ACQUIRING A LOT, HEREBY ACCEPTS SUCH DISCLAIMER, AND AGREES THAT DECLARANT WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND EACH OWNER WAIVES ANY CLAIM AGAINST DECLARANT AND ITS AFFILIATES, MEMBERS, CONTRACTORS AND/OR AGENTS, RELATED TO ANY LOSS OF LIGHT, AIR, OR VIEW THAT MAY AFFECT A LOT OR THE PROJECT.

16.2 Security. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY OF ITS AFFILIATES WILL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROJECT, AND NEITHER THE ASSOCIATION, DECLARANT, NOR ANY OF ITS AFFILIATES. WILL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY, INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, OR ACTS OF THIRD PARTIES. ALL OWNERS AND SUCH OWNER'S AGENTS ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD, DECLARANT, AND EACH OF THEIR RESPECTIVE AFFILIATES, ARE

NOT INSURERS OF SECURITY AT THE PROJECT AND THAT EACH OWNER AND SUCH OWNER'S AGENTS ASSUME ALL RISK OR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS, AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD, DECLARANT AND EACH OF THEIR RESPECTIVE AFFILIATES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER OR SUCH OWNER'S AGENTS RELIED UPON ANY REPRESENTATIONS OR WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

16.3 Other Properties. Each Owner, by acquiring a Lot, acknowledges that other properties are located adjacent to and in the general vicinity of the Project ("**Other Properties**") and that the Other Properties may be developed pursuant to the land uses permitted by the City's zoning ordinances, as well as any other governmental rules, regulations, or policies in effect now or in the future which are applicable to the Other Properties (collectively, "**Ordinances**"). Declarant, and its members, employees, agents, officers, directors and affiliates, do not make any representations concerning the planned uses of the Other Properties. Each Owner, by acquiring a Lot, further acknowledges that the zoning for the Project and the Other Properties is established and governed by the Ordinances. Any amendment to those Ordinances requires approval by the City. By acquiring a Lot, each Owner acknowledges that they have not relied upon any statements or representations regarding the Project or the Other Properties, including, without limitation, any representations made by Declarant or its agents or employees, or any real estate agency or any agent, except for those statements and representations expressly set forth in this Declaration.

16.4 Soils Condition and Radon Gas.

(a) *Acknowledgment*. THE SOILS WITHIN COLORADO CONSIST OF BOTH EXPANSIVE SOILS AND LOW-DENSITY SOILS WHICH MAY ADVERSELY AFFECT THE INTEGRITY OF A LOT OR COMMON AREA IF SUCH LOT OR COMMON AREA IS NOT PROPERLY MAINTAINED. EXPANSIVE SOILS CONTAIN CLAY MINERALS WHICH HAVE THE CHARACTERISTIC OF CHANGING VOLUME WITH THE ADDITION OR SUBTRACTION OF MOISTURE, THEREBY RESULTING IN SWELLING AND/OR SHRINKING SOILS. THE ADDITION OF MOISTURE TO LOW-DENSITY SOILS CAUSES A REALIGNMENT OF SOIL GRAINS, THEREBY RESULTING IN CONSOLIDATION AND/OR COLLAPSE OF THE SOILS.

(b) *Waiver of Liability of Declarant*. BY TAKING TITLE TO A LOT EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAS WAIVED AND WILL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF DAMAGES AGAINST DECLARANT AND ITS MANAGERS, MEMBERS, EMPLOYEES OR AGENTS FOR ANY LOSS OR DAMAGE TO ANY PORTION OF A LOT OR THE COMMON AREAS CAUSED BY, RESULTING FROM OR IN ANY WAY CONNECTED WITH, SOIL CONDITIONS ON OR UNDER ANY LOT AND/OR COMMON AREAS, INCLUDING SPECIFICALLY THE PRESENCE OF EXPANSIVE SOILS AND RADON GAS.

16.5 Mold. Molds, mildew, fungi, bacteria and microbiologic organisms (collectively, "Molds") are present in soil, air and elsewhere in the environment. Molds can proliferate in various environments, including, among others, damp areas such as bathrooms and within walls and partitions. Certain parties have expressed concerns about the possible adverse effects on human health from exposure to Molds. Due to various reasons, including the varying sensitivities of different individuals to various types of Molds and other contaminants, as of the date of this Declaration there currently exists no state or federal standards regarding acceptable levels of exposure to Molds. According to the Consumer Product Safety Commission and the American Lung Association, some diseases or illnesses have been linked with biological pollutants in the indoor environment, including some forms of Molds. However, it is believed that many of these conditions may also have causes unrelated to the indoor environment. Therefore, as of the date of this Declaration it is Unknown how many potential health problems relate primarily or exclusively to indoor air quality or Molds. By acquiring a Lot within the Project, each Owner acknowledges and agrees that Declarant is not qualified and has not undertaken to evaluate all aspects of this very complex issue. EACH OWNER ACKNOWLEDGES THAT DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING, THE PAST, CURRENT OR FUTURE, PRESENCE OR ABSENCE OF MOLDS IN OR IN THE VICINITY OF THEIR LOT, ANY WALL(S) LOCATED WITHIN THEIR HOME, OR ANY LIMITED COMMON AREAS ALLOCATED TO THEIR LOT OR IN ANY OTHER PORTION OF THE PROJECT. Declarant recommends that each Owner, at the Owner's expense, conduct their own investigation and consult with such experts as such Owner deems appropriate regarding the occurrence and effects of Molds, the potential sensitivity or special risk individuals who will occupy or use the Lot or any Limited Common Areas allocated to the Lot may have with respect to Molds, and methods to reduce or limit Molds within the Lot or any Limited Common Areas allocated to the Lot.

16.6 Noise Disturbances. The Lots and the Project are located near many land uses. Each Owner acknowledges that their Home may share a Party Wall with other Homes in the Project (if applicable). Due to these factors, there may be a certain amount of unpredictable noise disturbances within the Project ("Noise Disturbances"). The Noise Disturbances may include, without limitation: (a) street noise from pedestrians and automobiles; (b) noise from adjacent Lots and the Common Areas, including, but not limited to, voices, music, television, appliances, walking, running, opening and closing of doors, falling objects, cabinet and furniture operation, plumbing and HVAC operation; and (c) noise from busy streets and highways and ongoing construction.

Each Owner, by acquiring a Lot, acknowledges that the Noise Disturbances, and the impacts and disturbances generated by the Noise Disturbances, may occur in and around the Project, and may occur during daytime and nighttime and may be temporarily or permanently interrupted, discontinued or modified, in whole or in part, from time to time. Each Owner, by acquiring a Lot, forever waives and releases any actions or claims the Owner and its successors and assigns may have against Declarant and its successors and assigns, which in any way arise out of the existence, occurrence, or the temporary or permanent interruption, discontinuance or modification of the Noise Disturbances and such impacts and disturbances.

ARTICLE SEVENTEEN DISPUTE RESOLUTION

17.1 Definitions Applicable to this Article Seventeen. For purposes of this Article Seventeen only, the following terms have the following meanings:

- (a) “**Claimant**” means any Party having a Claim.
- (b) “**Claim**” means, except as excluded or exempted by the terms of this Article Seventeen (including Section 17.3 below), any claim, grievance or dispute between one Party and another, regardless of how it may have arisen or on what it might be based, including, without limitation, disputes arising out of or related to: (i) the interpretation, application or enforcement of this Declaration; (ii) the land development or the design, location, planning, or construction of Improvements, including, without limitation, the Lots and the Homes; and (iii) any statements, representations, promises, warranties, or other communications allegedly made by or on behalf of any Party.
- (c) “**Inspecting Party**” means a Party causing an inspection of the Subject Property to be made.
- (d) “**Party**” means each of the following: (i) Declarant, and its officers, directors, partners, members, employees, and agents; (ii) all persons subject to this Declaration, their officers, directors, partners, members, employees, and agents; and (iii) any person not otherwise subject to this Declaration who agrees to submit to this Article Seventeen.
- (e) “**Respondent**” means any Party against whom a Claimant asserts a Claim.
- (f) “**Subject Property**” means the property on which a Party contends a defect exists and/or property being inspected under the inspection right in Section 17.4 below.
- (g) “**Termination of Mediation**” means a period of time expiring thirty (30) days after a mediator has been agreed upon by the Parties (however, a mediator shall be selected no later than forty-five (45) days after the Claimant has given notice of the Claim and if the Parties are unable to agree on a mediator, one shall be chosen by JAMS, Inc.) and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent) and upon the expiration of which the Claimant and Respondent have not settled the Claim.

17.2 Intent of Parties; Applicability of Article; and Applicability of Statutes of Limitations.

(a) Each Party agrees to work towards amicably resolving disputes, without the emotional and financial costs of litigation. Accordingly, each Party agrees to resolve all Claims by using the procedures in this Article Seventeen. Further, each Party agrees that the procedures in this Article Seventeen shall be the sole and exclusive remedy that each Party shall have for any Claim. Should any Party commence litigation or any other action against any other Party in violation of this Article Seventeen, such Party shall reimburse all costs and expenses, including reasonable attorneys’ fees, incurred by the other Party in such litigation or action within ten (10) days after written demand.

(b) By accepting a deed for a Lot, each Owner agrees to be bound by and to comply with this Article Seventeen.

(c) The Parties agree that no Claim may be started after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

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

(a) Any action by the Association to enforce the provisions of the Governing Documents against an Owner or such Owner's Agents;

(b) Any action by the Association to assess or collect any Assessments or to enforce or foreclose any Assessment Lien;

(c) Any suit between or among Owners, which does not include Declarant as Party, if such suit raises claims independent of this Declaration and not in any way dependent on it;

(d) Any suit which requires any indispensable party, which is not a Party to this Declaration;

(e) Any claim, grievance or dispute related to a limited warranty given by Declarant to a consumer ("Limited Warranty"), or any claim, grievance or dispute addressed by a Limited Warranty, which claim, grievance or dispute shall be resolved in accordance with said Limited Warranty;

(f) Any action, suit or proceeding to compel arbitration of a Claim or to enforce any award or decision of an arbitration conducted in accordance with this Article Seventeen;

(g) Any action, suit or proceeding for declaratory relief, injunctive relief or other equitable relief, including, without limitation, a declaratory determination as to the interpretation or application of a provision in a Governing Document;

(h) Any action pursuant to the provisions of this Declaration concerning mechanics liens; and

17.4 Right to Inspect. Before any Party commences a proceeding involving another Party, including, without limitation, any alleged defect of any Lot or Home, the Respondent shall have the right to access, inspect, correct the condition of, or redesign any portion of any Improvement allegedly containing a defect or otherwise correct the alleged defect; *provided, however*, any correction to, or redesign of: an Improvement shall be made upon terms and conditions acceptable to all affected Parties. In exercising these inspection rights, the Inspecting Party shall:

(a) Act carefully to avoid unreasonable intrusion on, or harm, damage or costs to the other Party including using its best efforts to avoid causing any damage to, or interference with, any Improvements on the Subject Property at issue;

(b) Minimize any disruption or inconvenience to any person who occupies the Subject Property;

(c) Remove all debris caused by the inspection and remaining on the Subject Property; and

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

The Inspecting Party shall not permit any lien, claim or other encumbrance arising from the inspection to attach to the Subject Property. The Inspecting Party shall indemnify, defend, and hold harmless the affected Owners and such Owner's Agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and reasonable attorneys' fees, resulting from any Inspecting Party's breach of this Section 17.4.

17.5 Mandatory Procedures.

(a) Before proceeding with any Claim against any Respondent, each Claimant shall provide notice to everyone Claimant contends contributed to the alleged problem. The notice shall state plainly and concisely:

(i) The nature of the Claim, including all persons involved and each Respondent's role in the Claim;

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

(iii) The specific relief and/or proposed remedy sought.

(b) The Parties shall first make every reasonable effort to meet in person and confer to resolve the Claim by good faith negotiation. The Parties shall seek to understand clearly the Claim and resolve as many aspects or issues as possible. Any Party may be represented by attorneys and independent consultants to assist such Party, including by attending all negotiations.

(c) If the Parties cannot resolve the Claim through negotiations within thirty (30) days after submission of the Claim to the Respondent(s), Claimant shall have an additional thirty (30) days to submit the Claim to mediation under the auspices of JAMS, Inc.

(i) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, so that Respondent shall be released and discharged from all liability to Claimant for such Claim;

provided, however, nothing in this Section 17.5(c)(i) shall release or discharge Respondent from any liability to anyone other than Claimant.

(ii) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If mediation ends without a complete settlement, the mediator shall issue a notice of Termination of Mediation. This notice shall state that the Parties are at an impasse and the date that mediation was terminated.

(iii) Each Party shall pay its own costs of the mediation, including its own attorneys' fees. Each Party shall share equally all of the mediator's charges.

(iv) If the Parties resolve any Claim through negotiation or mediation hereunder and any Party later fails to comply with the settlement agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the above procedures in this Section 17.5(c). In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, reasonable attorneys' fees and costs.

(d) After receiving a Termination of Mediation, if Claimant wants to pursue the Claim, Claimant shall initiate final, binding arbitration of the Claim under the auspices of JAMS, Inc. and Claimant shall provide to Respondent a "Notice of Intent to Arbitrate" all within twenty (20) days after the Termination of Mediation. If Claimant does not initiate final, binding arbitration of the Claim and provide a Notice of intent to Arbitrate to Respondent within twenty (20) days after the Termination of Mediation, then Claimant shall be deemed to have waived the Claim, so that Respondent shall be released and discharged from all liability to Claimant for such Claim.

The following arbitration procedures shall govern each arbitrated claim:

(i) The arbitrator must be a single person qualified to consider and resolve the Claim with the appropriate industry and/or legal experience.

(ii) No person shall serve as the arbitrator where that person has any financial or personal interest in the arbitration or any family, social or significant professional acquaintance with any Party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the arbitration ("**Arbitrator Disclosure**"). If any Party objects to the service of any arbitrator with fourteen (14) days after receipt of the Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner as the initial arbitrator was selected.

(iii) The arbitrator shall hold at least one (1) hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in Denver County, Colorado unless the Parties otherwise agree.

(iv) The arbitration shall be presided over by a single arbitrator.

(v) No formal discovery shall be conducted without an order of the arbitrator or express written agreement of all Parties.

(vi) Unless directed by the arbitrator, there shall be no post-hearing briefs.

(vii) The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered no later than fourteen (14) days after the close of the hearing, unless otherwise agreed by the Parties. The arbitration award shall be in writing and shall be signed by the arbitrator.

(viii) The arbitrator determines all issues about whether a Claim is covered by this Article Seventeen. Notwithstanding anything herein to the contrary (including, but not limited to, Section 17.5(d)(ix) below), if a Party contests the validity or scope of arbitration in court, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party.

(ix) The arbitrator shall apply the substantive law of Colorado and may award injunctive relief or any other remedy available in Colorado but shall not have the power to award punitive damages, attorneys' fees and/or costs to the prevailing Party. Each Party is responsible for any fees and costs incurred by that Party. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court of competent jurisdiction.

(x) The Parties shall pay their pro rata share of all arbitration fees and costs, including, without limitation, the costs for the arbitrator and their consultants.

(xi) The arbitrator shall have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants.

(xii) Except as may be required by law or for confirmation of an arbitration award, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration without the prior written consent of all Parties to the arbitration.

17.6 Notice of Certain Claims. If a Claim includes a construction defect allegation, the Owner shall disclose the Claim and its details to his/her prospective purchasers and prospective Mortgagees.

17.7 Conflicts with Law. In the event that any provisions of this Article Seventeen conflict with any applicable federal or Colorado statutes which provide non-waivable legal rights, including, without limitation, the Colorado Construction Defect Action Reform Act or the Colorado Consumer Protection Act, then the non-waivable terms of such statute shall control and all other provisions herein remain in full force and effect as written.

**ARTICLE EIGHTEEN
DURATION, AMENDMENT AND TERMINATION OF
THE DECLARATION**

18.1 Duration. The covenants, restrictions and obligations of this Declaration shall run with and bind the Property in perpetuity until this Declaration is terminated in accordance with Section 18.4 below.

18.2 Amendments by Owners. Except in cases of amendments that may be executed by the Board and by Declarant pursuant to Article Thirteen and Article Fourteen above, and Section 18.3 below, this Declaration may be amended by the written agreement of Owners of Lots to which at least a majority of the votes in the Association are allocated. Any such amendment shall be effective upon the recording of the amendment with the Clerk and Recorder together with a notarized certificate of an officer of the Association certifying that the requisite number of Owners have given their written consent to the amendment.

18.3 Amendments by Declarant. Declarant has the right to amend, without the consent of any Owner, the Association, any Mortgagee or any other person, the Governing Documents at any time within the limitations set forth in Section 14.3 above, as follows:

- (a) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement;
- (b) To comply with any requirements, standards or guidelines of any Agency; and
- (c) To comply with the requirements of any governmental agencies or authorities.

18.4 Termination. Notwithstanding Section 18.2 above, the Project may only be terminated upon the written agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and Declarant during the Period of Declarant Control.

18.5 Consent of Declarant Required. Except as provided in Section 18.3 above, so long as Declarant has any rights or obligations under or pursuant to this Declaration or any of the other Governing Documents, any proposed amendment of any provision of the Governing Documents shall require Declarant's prior written consent to such amendment. Any amendment made without prior written consent as required herein shall be null and void and shall have no effect. The foregoing requirement for consent of Declarant to any amendment shall terminate without further act or deed in accordance with the limitations set forth in Section 14.3 above.

**ARTICLE NINETEEN
GENERAL PROVISIONS**

19.1 Right of Action. The Association and any aggrieved Owner shall have a right of action against an Owner for such Owner's failure to comply with the Governing Documents (or with decisions of the Board which are made pursuant thereto). Owners shall have a similar right of action against the Association.

19.2 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association and each Owner and their heirs, personal representatives, successors and assigns.

19.3 Severability. If any part of any provision of this Declaration shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Declaration.

19.4 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

19.5 Registration by Owner of Mailing Address; Notices. Each Owner shall register their mailing address with the Association. Except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail or as otherwise set forth in the Bylaws, all notices intended to be served upon an Owner pursuant to this Declaration, shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address or at the address of such Owner's Lot if there is no registered mailing address for such Owner on file at the Association.

All notices, demands or other notices intended to be served upon the Board or the Association shall be sent by certified mail, postage prepaid, to the Managing Agent, if any, and if there is no Managing Agent, then to the registered agent for the Association on file in the Office of the Secretary of State, State of Colorado.

19.6 Conflicting Provisions. The Governing Documents are intended to comply with the requirements of the Nonprofit Act. If there is any conflict between any provision of the Governing Documents and any mandatory provision of the Nonprofit Act, the mandatory provision of the Nonprofit Act shall control and Declarant shall not have any liability for actions taken in conformity with such Nonprofit Act. If there is any conflict between any provision of the Governing Documents and any permissive or non-mandatory provision of the Nonprofit Act, the provision of the Governing Documents shall control. In the event of any conflict between this Declaration and any other Governing Documents, this Declaration shall control, except as otherwise provided herein. In the event the Articles conflict with the Bylaws, the Articles shall control.

19.7 Captions. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

19.8 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this 30th day of APRIL, 2018.

DECLARANT:

Meritage Homes of Colorado Inc., an Arizona corporation

By: [Signature]

Name: Glenn Nier

Its: Vice President - Land Development

STATE OF Colorado)

) ss.

COUNTY OF ARAPAHOE)

The foregoing Declaration of Covenants, Conditions and Restrictions for Village at Southgate was acknowledged before me this 30th day of April, 2018, by Glenn Nier, as Vice President of Land Development of Meritage Homes of Colorado, Inc., an Arizona corporation.

Witness my hand and official seal.

My commission expires: 12-10-2021

(SEAL)

[Signature]

Notary Public

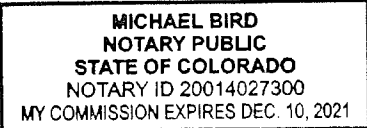


EXHIBIT A TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
VILLAGE AT SOUTHGATE

Lot 2 and Lot 3, Block 7
Village at Southgate Brighton,
County of Adams, State of Colorado

EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
VILLAGE AT SOUTHGATE

Declarant Expansion Property:

LOTS 1 THROUGH 34 INCLUSIVE, BLOCK 5;
LOTS 1 THROUGH 8 INCLUSIVE, BLOCK 6;
LOTS 1 AND LOTS 4 THROUGH 14 INCLUSIVE, BLOCK 7;
LOTS 1 THROUGH 16 INCLUSIVE, BLOCK 8;
LOTS 1 THROUGH 7 INCLUSIVE, BLOCK 9;
LOTS 1 THROUGH 17 INCLUSIVE, BLOCK 10;
LOTS 1 THROUGH 12 INCLUSIVE, BLOCK 12; AND
LOTS 1 THROUGH 9 INCLUSIVE, BLOCK 13 VILLAGE AT SOUTHGATE BRIGHTON,
COUNTY OF ADAMS, STATE OF COLORADO

Additional Declarant Expansion Property:

LOTS 35 THROUGH 42 INCLUSIVE, BLOCK 5;
LOTS 8 THROUGH 16 INCLUSIVE, BLOCK 9; AND
LOTS 1 THROUGH 16 INCLUSIVE, BLOCK 11;
VILLAGE AT SOUTHGATE BRIGHTON,
COUNTY OF ADAMS, STATE OF COLORADO.