

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF PALISADE LEGENDS  
SUBDIVISION**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PALISADE LEGENDS SUBDIVISION (“Declaration”) is effective the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by BOPA, LLC.

**RECITALS**

A. Declarant is the owner of certain real property in Mesa County, Colorado, known as Palisade Legends Subdivision, according to the plat thereof recorded at Plat Book \_\_\_\_\_, Page \_\_\_\_\_, in the Mesa County, Colorado real property records, a copy of which is attached and incorporated as Exhibit A, containing a maximum thirty-six (36) Lots, including the easements and licenses appurtenant to, or included in the Property as shown on the Plat, all as more specifically described on the attached and incorporated Exhibit B.

B. Declarant desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein pursuant to the provisions of the Colorado Common Interest Ownership Act for the purpose of protecting the value and desirability of the Property and for the purpose of furthering a plan for the improvements, sale and ownership of the Property.

THEREFORE, Declarant declares that the Property shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title, or interest in any Lot, the Property, or any part of it, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner.

**ARTICLE 1  
DEFINITIONS**

Section 1.1. “ACC” shall mean and refer to the architectural control committee appointed by Declarant or the Board of Directors, as more fully provided in Article 8.

Section 1.2. “Articles of Incorporation” shall mean the Articles of Incorporation of the Association, as they may be amended from time to time.

Section 1.3. “Assessment” shall mean and refer to any assessment levied against one or more Owner(s) or Lot(s) as permitted by this Declaration or applicable law, including without limitation annual assessments, special assessments and capital assessments.

Section 1.4. “Association” shall mean and refer to Palisade Legends Homeowners Association, Inc., a nonprofit corporation incorporated under Colorado law.

Section 1.5. “Board” or “Board of Directors” shall mean the board of directors of the Association.

Section 1.6. “Bylaws” shall mean the Bylaws of the Association, as they may be amended from time to time.

Section 1.7. “CCIOA” means the Colorado Common Interest Ownership Act, presently codified at C.R.S. §§ 38-33.3-101, *et seq.*, as it may subsequently be amended from time to time.

Section 1.8. “County” means Mesa County, Colorado.

Section 1.9. “Common Area” shall mean any and all real property, and the improvements and fixtures on it, owned, leased or controlled by the Association for the common use and enjoyment of the Members, including but not limited to the community center, pet hotel and grooming center, pet park, pool, picnic area, tot lot, basketball and pickle ball courts, pond, irrigation facilities, retention areas, detention areas, fences, pedestrian paths, landscaping, and street or lighting fixtures owned or controlled by the Association, as well as signage for the general benefit of the Subdivision or Owners, whether or not located on the real property owned or leased by the Association. The Common Area shall be as shown on the Plat.

Section 1.10. “Common Expenses” shall mean and include expenditures made, and liabilities incurred, by or on behalf of the Association.

Section 1.11. “Declarant” shall mean and refer to Bopa, LLC, a Colorado limited liability company, and its successors and assigns designated in writing to be the successor of Declarant, subject to any limitation on transfer contained in this Declaration, CCIOA or other applicable law.

Section 1.12. “Driveway has the meaning set forth in Section 7.2.

Section 1.13. “Lot” shall mean and refer to each numbered lot of the Property depicted on the Plat as recorded, supplemented and amended. Boundaries of a Lot shall be as shown and defined on the Plat.

Section 1.14. “Member” shall mean and refer to every person or entity that holds a membership in the Association.

Section 1.15. “Owner” shall mean and refer any person or entity holding a fee simple ownership interest in any Lot that is a part of the Property, including contract purchasers and lessees with enforceable options to purchase, but excluding mortgagees (unless and until a mortgagee acquires record fee ownership) and those having such interest merely as security for the performance of an obligation.

Section 1.16. “Plat” means the plat of the Property attached to this Declaration as Exhibit A pursuant to the requirements of CCIOA and the plat of the Property recorded in the real property records of the County, as it may be amended from time to time. In the event of a discrepancy between the attached plat and the recorded plat, or if the attached plat is illegible, the recorded plat shall control.

Section 1.17. “Property” shall mean and refer to that certain real property in Mesa County, Colorado, legally described in Exhibit B and as further shown and described on the Plat, together with such additions, if any, as may subsequently be brought within the jurisdiction of the Association by expansion or amendment of this Declaration.

Section 1.18. “Residence” means the single-family dwelling improvements located on a Lot.

Section 1.19. “Subdivision” shall mean all of the Property, and any improvements on it, subject to this Declaration or any amendment to this Declaration.

## **ARTICLE 2 PROPERTY RIGHTS AND LIMITATIONS**

Section 2.1. Owners’ Right of Enjoyment. Subject to Section 2.2, every Owner shall have a nonexclusive right to enjoy and use the Common Areas, irrigation facilities and easements located upon the Property, and such right shall be appurtenant to and shall pass with the title to every Lot.

Section 2.2. Extent of Owners’ Right. The right of enjoyment created in this Declaration shall be subject to the following:

- (a) The right of the Association to adopt and publish rules and regulations with which each Member shall strictly comply;
- (b) The right of the Association, as provided in its Articles of Incorporation and Bylaws, to suspend the voting rights of a Member for any period during which any Assessment against his or her Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations; and
- (c) The right of the Association to close or limit the use of any Common Area while maintaining, repairing or making replacements to it or in the event a Member has had his or her voting right suspended or has violated this Declaration or any rule or regulation adopted by the Association.

Section 2.3. Renting of Common Area. Portions of the Community Center and other Common Area may, in the Board’s discretion, be rented to Owner’s or their tenants for private parties and other gatherings pursuant to rules and regulations and a fee schedule adopted by the

Board. The terms, conditions and approval of any such use shall be in the Board's sole discretion, taking into consideration the impact on other Owners and residents in the Subdivision.

Section 2.4. Delegation of Use. Any Owner may delegate his or her right of use to his or her family members, tenants, or contract purchasers who reside on his or her Lot. Notwithstanding anything in this Declaration that may be construed to the contrary, the Association may delegate use and control of the pet hotel and grooming center to a third party to be used for commercial purposes, as it would not be economically feasible to provide such services to Owners without the operation being partially subsidized by income from customers who are not residents of the Subdivision.

Section 2.5. Easements. Easements for the installation and maintenance of utilities, irrigation, and drainage facilities are reserved as shown on the Plat, or any portion thereof, or other duly recorded instrument(s). Within these easements no structure, planting or other material shall be placed or permitted to remain which could damage or interfere with the installation and maintenance of utilities, or which could change the direction of flow of drainage channels in the easements. Declarant reserves the right to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 2.6. Easement for Encroachments. If any portion of a structure encroaches upon any Common Area or upon any adjoining Lot, or if any portion of any Common Area encroaches upon any Lot, including any future encroachments arising or resulting from the repair or reconstruction of a structure subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of the same, so long as it stands, shall and does exist.

Section 2.7. Governmental Consent. The preservation and maintenance of the Common Area may not be eliminated without the consent of any applicable governmental authority.

### **ARTICLE 3 THE ASSOCIATION**

Section 3.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Lot shall be entitled to one vote and the vote for such Lot shall be exercised by the Owner or Owners as they determine. If the Owners of the Lot are unable to agree on how their vote shall be cast, their vote shall not be counted.

Section 3.2. Directors. The affairs of this Association shall be managed by a board of three (3) directors initially. When Declarant relinquishes control of the Board to the Owners pursuant to Section 3.4, the Board shall be managed by at least three (3) directors, as more fully provided in the Bylaws. Directors shall meet the qualifications described in the Bylaws.

Section 3.3. Officers. The officers of the Association are set forth in the Bylaws.

Section 3.4. Management. From date of formation of the Association until the

termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of sixty (60) days after conveyance of two-thirds (2/3) of the Lots to Owners other than Declarant, three (3) years after the last conveyance of a Lot by Declarant in the ordinary course of business, or five (5) years after the first sale of a Lot to an Owner other than Declarant. 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's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of one-third (1/3) of the Lots to Owners other than Declarant, at least one member and not less than one-third (1/3) of the members of the Board will be elected by Owners other than Declarant. Not later than the termination of the period of Declarant's control as provided above, the Owners (including Declarant) shall elect a Board of at least three (3) Members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant. The Board shall elect the officers of the Association, with such Board members and officers taking office upon termination of the period of Declarant's control. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including without limitation those items specified in C.R.S. § 38-33.3-303(9) of CCIOA.

Section 3.5. Owner Education. So long as required by law, the Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and the Board of Directors, under Colorado law. The criteria for compliance with this Section 3.5 shall be determined by the Board.

#### **ARTICLE 4 ASSESSMENTS**

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner, including Declarant, by acceptance of a deed for their Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual Assessments or charges; and (b) special Assessments for maintenance and improvement of the Driveway or other Common Area, to be established and collected in accordance with this Declaration. The annual Assessments, together with interest, late charges, costs, and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such Assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without setoff or deduction. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney fees. The Board of Directors or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot, and a description of the

Lot. Such a notice shall be signed by one of the Board members or by the managing agent of the Association and may be recorded in the real property records of the County. The lien for each unpaid Assessment attaches to each Lot at the beginning of each Assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the Assessment for the Lot against which it is filed and collected as such. Each Assessment, together with interest, late charges, costs, and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass from them. The Association's lien on a Lot for Assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against such Assessment lien.

Section 4.2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Subdivision and, to the extent not performed by any applicable governmental entity, for the maintenance and operation of the Common Area and irrigation facilities serving the Property. The Association shall be financially responsible for the timely maintenance and repair, including parts, of the sanitary sewer lift station, as depicted on the Subdivision plans, as well as the irrigation facilities located in the easements on the north, east and west side of the Subdivision, as depicted on the Plat, benefitting the adjoining property at 3310 D ½ Road, Clifton, Colorado, subject to the burdens and benefits of that certain Easement Agreement recorded in Book \_\_\_\_, Page \_\_\_\_ of the real property records of the County.

Section 4.3. Annual Assessment. The Board shall fix the amount of the regular Assessment against each Lot based on a budget adopted by the Association as described in this Declaration. Written notice of the annual Regular Assessment shall be sent to every Owner. The due date(s) shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. Special Assessments and capital Assessments may be made by the Board at any time, except as limited by this Declaration, CCIOA or other applicable law.

Section 4.4. Rate of Assessment. Annual Assessments shall be fixed at a uniform rate for all Lots and shall be allocated to each Lot on the basis of a fractional share per Lot, the numerator of which shall be one and the denominator of which shall be the total number of Lots in the Subdivision, and shall be in an amount sufficient to meet the expected needs of the Association.

Section 4.5. Date of Commencement of Annual Assessments. The initial annual Assessment shall commence on the first day of the month following conveyance of the first Lot, and the second and each subsequent annual Assessment period shall correspond with the fiscal year of the Association. The annual Assessments shall be made due and payable with such frequency and on such dates as determined by the Board, but no more frequently than monthly, provided that the first annual Assessment shall be adjusted according to the number of months in

the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last installment due.

Section 4.6. Special Assessments for Common Area or Driveway. In addition to the annual Assessments authorized above, the Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any Common Area or the Driveway.

Section 4.7. Payment upon Purchase of Lot. The Board shall have the authority to charge each Owner that purchases a Lot (whether from Declarant or any subsequent Owner) a one-time, non-refundable payment to the Association in an amount equal to two (2) months of regular Assessments at the time of the closing of the sale, which shall be held in the Association's bank account for the use and benefit of the Association, including but not limited to for unforeseen expenses. The payment shall be collected and transferred to the Association at the time of closing of each sale of a Lot. The payment shall not be deemed to be prepayment of any Assessment but shall be deemed a payment to the Association's reserve account and shall not relieve an Owner from making the regular payment of Assessments as the same become due.

Section 4.8. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within ten (10) days after its due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Board, and may be subject to a late charge as determined by the Board. The Association may bring an action at law against the Owner personally obligated to pay the delinquent Assessment or foreclose the lien against such Owner's Lot. In the event a judgment is obtained, such judgment shall include interest on the Assessment and a reasonable attorney fee to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape liability for the Assessments provided for in this Declaration by nonuse or abandonment of his or her Lot.

Section 4.9. Creation of Lien for Assessments. Under CCIOA, the Association has a statutory lien on a Lot for any Assessments levied against that Lot and for fines imposed against its Owner from the time each Assessment or fine becomes due. In addition, fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration or CCIOA are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

Section 4.10. Priority of Lien for Assessments. The statutory lien for Assessments is prior to all other liens and encumbrances on a Lot except: (a) liens and encumbrances recorded before the recordation of this Declaration; (b) a lien of a first mortgage that was recorded before the date on which the Assessment sought to be enforced became delinquent; and (c) liens for real estate taxes and other governmental assessments or charges against the Lot. Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a first mortgage to the extent of an amount equal to the Assessments based on a periodic budget adopted by the Association which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution of an action to enforce the statutory lien. The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further

recording of any claim of lien or assessment is required; however, a claim may be recorded at the Association's option, in which event costs and attorney fees incurred in connection with the preparation and filing of such claim shall be assessed against the Owner's Lot as a default Assessment.

Section 4.11. Enforcement of Lien for Assessments. Subject to the adoption of a written policy by the Association in compliance with C.R.S. §§ 38-33.3-209.5(5) and 38-33.3-316.3, the Association may enforce payment of Assessments by any or all of the following remedies which shall not limit any other remedy permitted by law or CCIOA:

- (a) The Association may elect to accelerate and declare immediately due and payable the remaining balance of any Assessment payable in installments for such fiscal year;
- (b) The Association may bring a suit at law to collect delinquent Assessments, including any accelerated Assessment, and any judgment rendered in such action shall include a sum for costs of suit, including reasonable attorney fees;
- (c) All delinquent Assessments shall be and constitute a lien upon the Owner's Lot in addition to being the personal obligation of the Owner, and any such lien shall have the priority and shall be enforced in accordance with C.R.S. § 38-33.3-316 of CCIOA; and/or
- (d) Beginning with the second month of delinquency, a five percent (5%) penalty may, in the Board's discretion, be added each month to the total delinquent amount (which includes the penalties from prior months) until payments are brought current.

## **ARTICLE 5**

### **BUDGET AND RECORDS**

Section 5.1. Books and Records. Association policies and regulations regarding records, retention of records, and Member access to records are specified in the Bylaws.

Section 5.2. Annual Budget. The Board of Directors shall cause an operating budget, balance sheet, and cash flow statement for the Association to be prepared no less frequently than annually.

Section 5.3. Delivery of Budget. Within ninety (90) days after adoption of any proposed budget, the Board of Directors shall mail by ordinary first-class mail or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget which shall be within a reasonable time after mailing or other delivery of the summary.

Section 5.4. Ratification of Budget. Unless at the meeting Owners representing a majority of all Lots veto the budget, the budget is ratified, whether or not a quorum is present.

Section 5.5. Rejection of Budget. In the event that the proposed budget is vetoed, the budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

Section 5.6. Reserve Fund. As part of each annual budget, the Board of Directors may include an amount that, in its reasonable business judgment, will at least establish and maintain an adequate reserve fund for the repair or replacement of any personal property, fixtures and improvements required to be operated or maintained by the Association based upon age, remaining life, replacement cost and any other relevant factors. Any reserve funds may be deposited in such interest bearing account(s) as the Board of Directors deems appropriate.

Section 5.7. Audit and Review. Upon the request of at least one-third of the voting rights of the Members, the books and records of the Association shall be subject to a review, using statements on standards for accounting and review services, by an independent and qualified person selected by the Board. Such person need not be a certified public accountant (except in the case of an audit), but shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

Section 5.8. Fiscal Year. The fiscal year of the Association shall initially be the calendar year, but the Association may in its discretion adopt a different fiscal year, for Assessments or otherwise, if permitted by law.

## **ARTICLE 6 MAINTENANCE AND REPAIR**

Section 6.1. General. Except as otherwise provided in this Declaration, the maintenance and repair of each Lot, including but not limited to landscaping, the interior and exterior of the Residence and other structures and improvements on the Lot, and any fence on the boundary line of a Lot, shall be the responsibility of the Owner(s) of the Lot.

Section 6.2. Owner's Negligence. Notwithstanding anything to the contrary this Article 6, in the event that the need for maintenance or repair of any Common Area is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the Assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot as provided in Article 4. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's resulting liability, shall be determined by the Board at a hearing after notice to the Owner, provided that any such determination which assigns liability to

any Owner pursuant to the terms of this Section 6.2 may be disputed by the Owner in accordance with Article 10.

## **ARTICLE 7 BUILDING AND USE RESTRICTIONS**

Section 7.1. General. Lots shall be used only for residential purposes. Only one detached Residence may be constructed on any Lot.

Section 7.2. Driveway, Parking and Storage. The common area driveway right-of-way, as depicted on the Plat (the "Driveway"), shall be used only for ingress and egress in the Subdivision. Parking on the Driveway is expressly prohibited except in designated parking spaces or temporarily for loading or unloading purposes. If the Driveway is blocked by a vehicle or other obstruction the Association may have the vehicle towed or the obstruction removed and assess the Owner of the Lot who caused or permitted such vehicle or obstruction to remain on the Driveway for those costs. Each Lot shall have access to two (2) covered parking spaces assigned to their Lot by the Association, together with the associated storage unit for those spaces.

Section 7.3. Size. The dwelling area of each Residence shall be not less than 525 nor more than 975 square feet of heated space, by outside measurement, exclusive of open porches, patios and basements. All residences shall be single story. No multi-story Residences of any kind are permitted, including bi-levels and tri-levels. No garage of any nature, whether attached or detached, is permitted on a Lot.

Section 7.4. Building Envelope. The recorded Building Envelope Site Plan for the Subdivision contains a description of a building envelope for each Lot. Each Residence must be constructed entirely within the envelope unless a variance is granted by the ACC. Any detached accessory or storage building must be approved by the ACC, and shall be totally within the building envelope unless a variance is granted by the ACC. Construction shall be similar to that of the Residence on the Lot in color and style.

Section 7.5. Temporary Structures. No structure of a temporary nature, such as a tent, yurt, garage, trailer house, recreational vehicle, barn, or other outbuilding or basement shall be used on any Lot at any time as a residence, either temporarily or permanently. All structures shall be of new construction built on-site. No mobile, modular or manufactured housing shall be allowed.

Section 7.6. Re-Subdivision. No Lot shall be re-subdivided except for lot line adjustments where no additional Lots are created.

Section 7.7. Trash. No Lot shall be used or maintained as a dumping ground for rubbish or storage area for junk. All trash, garbage and other waste must be kept in sanitary containers. All equipment for the storage or disposal of refuse shall be kept in a clean and sanitary condition. No noxious or offensive activity is permitted on any Lot, nor shall anything be done or placed on any portion of the Property that is or may become a nuisance or cause embarrassment, disturbance or annoyance to others, or that may constitute a health hazard.

Section 7.8. Advertising and Flags. No sign, graphic, or advertising device of any kind shall be displayed on any Lot except: (a) one sign advertising the property for sale or rent; (b) signs used by the building contractor or lender for advertising during construction; (c) the American flag, displayed in accordance with 4 U.S.C. §§ 4 to 10 and rules and regulations adopted by the Association and not contrary to law; (d) the Colorado flag, subject to rules and regulations adopted by the Association and not contrary to law; (e) a service flag not to exceed nine (9) inches by sixteen (16) inches, subject to rules and regulations adopted by the Association and not contrary to law; and (f) political signs in support of candidates or ballot issues limited to the period forty-five (45) days immediately preceding the election date and seven (7) days after the election date on which the candidates or issues will be voted upon. Any permitted sign may be no more than eighteen (18) inches by twenty-four (24) inches. Signs used by Declarant are not subject to the restrictions in this Section 7.8 or any other restrictions.

Section 7.9. Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or within any Common Area except as provided in this Section 7.9. A maximum of two (2) dogs (or three (3) dogs with Board approval), cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes. The limitation on dogs may be exceeded by dogs of guests of Owners (or their tenants), but only if there are no more than two (2) dogs of guests on the Lot and all such dogs do not remain on the Lot more than fourteen (14) days (whether or not consecutive) in any one-month period. All pets must be controlled and contained so that they do not become a nuisance to other Owners or residents or guests in the Subdivision and do not run at large or endanger or harass other animals or wildlife. Any uncontained pet must be on a leash under the control of a responsible individual. Owners shall be responsible for the cleanup of all waste from their pet(s). Any dog that uses the pet hotel and grooming center or the pet park must be vaccinated for distemper, parvovirus, rabies and Bordetella (kennel cough). An Owner's right to keep household pets shall be coupled with the responsibility to pay for any costs to the Association for any damages caused by such pets.

Section 7.10. Screening. All clotheslines, implements, recreational vehicles, snowmobiles, ATVs, boats, go-carts, golf carts, equipment, service yards, wood piles, storage piles, and other stored items shall be kept screened by adequate vegetation or fencing to conceal them from the view of the public and adjoining property or shall be stored wholly within the enclosed storage unit assigned to the Lot. All screening plans shall be submitted to the ACC for approval prior to construction.

Section 7.11. Roofs. Permitted roof coverings shall include only metal or single-ply membrane roofing as originally installed. No substitutions shall be permitted. Only shed or flat roofs shall be permitted, and must be approved by the ACC. Roof styles not matching the original design intent of the Subdivision will not be approved.

Section 7.12. Exterior Materials and Colors. Exterior finishes shall be as originally designed and constructed; materials shall match the original metal, wood, stone or stone veneer on the Residence. No bright or garish colors, including white, shall be permitted on the exterior of any Residence or other improvement.

Section 7.13. Height Restriction. No Residence or any other structure on a Lot shall exceed the specified Finished Floor Elevation designated on the approved site plan for the Subdivision. Building height shall be measured from the finished primary entry floor level to the highest point of the structure, except that chimneys, flues, vents or similar structures may extend two (2) feet above the maximum height of eighteen (18) feet.

Section 7.14. Antennas. No towers or antennas shall be erected on any Lot that are higher than three (3) feet above the roofline of the highest structure on the Lot. Satellite dishes shall be allowed if they are fewer than twenty-four (24) inches in diameter, provided, that the location of such dishes must be approved by the ACC, taking into account reception considerations.

Section 7.15. Tanks. No elevated or underground tanks of any kind are permitted.

Section 7.16. Lighting. All exterior lights and lighting standards must be downward directional and shall be subject to approval by the ACC for harmonious development and the prevention of lighting nuisances.

Section 7.17. Powered Vehicles. Except as provided in Section 7.10, no recreational vehicles, snowmobiles, ATVs, boats, go-carts or golf carts may be stored or used on the Property. Motorcycles, scooters, electric bikes, and any similar powered vehicles may only be operated on the Property in compliance with applicable law and rules and regulations adopted by the Association.

Section 7.18. Hazardous Activities. No activities shall be conducted in the Subdivision, and no improvements shall be constructed on any Lot or Common Area, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged in the Subdivision, and no open fires shall be lighted or permitted anywhere on the Property (including burning of vegetation, trash or rubbish) except: (a) in a contained barbeque unit or grill while attended and in use for cooking purposes; (b) within a safe and well-designed fireplace approved by the ACC; or (c) within a firepit surrounded by hardscaping approved by the ACC.

Section 7.19. Utilities. All utilities shall be buried underground from their primary source adjacent to the Lot line at the Owner's sole expense.

Section 7.20. Wildlife. No hunting, shooting, trapping or other killing or harming of wildlife shall be permitted on the Property, it being the intent to conserve and protect all wildlife to the fullest extent possible. The Board, however, may allow the control of nuisance animals upon prior approval.

Section 7.21. Drainage. No modifications or alterations shall be made in such manner that will obstruct, divert or otherwise alter the natural water drainage courses and patterns in the Subdivision, and no landscaping or changes to the existing terrain shall be made which will obstruct, divert or otherwise alter such drainage except as approved by the ACC. Release of contaminants or hazardous materials into Subdivision drainage is prohibited.

Section 7.22. Landscaping. The ACC shall review all landscaping and site plans as more fully provided in Article 8. Landscaping plans must be submitted for ACC approval within one year after home construction is complete and must include a schedule of completion for not more than one year after approval. The landscape objective for the Subdivision is to protect and preserve the existing rural, pastoral and natural character of the Property.

Section 7.23. Fencing. All fencing shall be subject to the review and approval of the ACC. No fence of any kind shall be taller than six (6) feet. All privacy and screening fences, including ornamental types, shall be within the building envelope for the Lot. Fencing styles and height shall be as originally designed and constructed. Fences not matching the original design intent of the Subdivision or the existing fencing on the Property are not allowed. Chain link fencing is not permitted for any reason.

Section 7.24. Mining. No Lot or Common Area may be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

Section 7.25. Easements. Easements for the installation and maintenance of utilities, irrigation, and drainage facilities are reserved as shown on the Plat.

Section 7.26. Plants. No Owner shall permit anything to exist upon his or her Lot that shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 7.27. Noise. The Subdivision is intentionally designed with small Lots and with residents living in close proximity. To allow for the peaceful enjoyment of Lots and the Common Area by all residents and guests, no sound shall be emitted in the Subdivision that is unreasonably loud or annoying, and no odor shall be emitted in the Subdivision that is noxious or offensive to others, as determined by the Board.

Section 7.28. Leases and Rental Agreements. The term "lease," as used in this Section 7.28 and in Section 7.29, shall include any agreement for the leasing or rental of a Lot or any portion thereof, and shall specifically include, without limitation, any overnight rental, month-to-month rental, short-term rental and long-term rental. Any Owner shall have the right to lease his or her Lot under the following conditions:

- (a) All leases shall be in writing and shall be administered and managed by the Association, and the Association shall be entitled to a management fee for such services, payable by the Owner; and
- (b) All leases shall provide that the terms of the lease and the lessee's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and rules and regulations of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

Section 7.29. Short Term Rentals. Short-term rentals (such as VRBO and similar programs) shall be permitted under the following circumstances:

- (a) All short-term leases shall be subject to the conditions set forth in Section 7.28;
- (b) Every Lot to be included in the short-term rental pool must meet minimum quality and aesthetic standards established by the Board before being accepted into the short-term rental pool;
- (c) All Lots in the short-term rental pool shall be subject to at least bi-annual (every two (2) years) inspection, as determined by the Board, to ensure that the minimum quality and aesthetic standards adopted by the Board are maintained; and
- (d) The Board shall have the right, in it's sole and absolute discretion, to remove any Lot from the short-term rental pool that fails to meet the minimum quality and aesthetic standards adopted by the Board.

The foregoing requirements shall not apply, however, to the residential living space owned by the Association located in the community center. The Board shall have the right to lease such space, either short-term or long-term, at its discretion.

Section 7.30. Rules and Regulations. Rules and regulations concerning and governing the Property or any portion of it may be adopted, amended or repealed, from time to time, by the Board, and the Board may establish and enforce penalties for the infraction thereof, including without limitation the levying and collecting of fines for the violation of any such rules and regulations. Fees for use of any Common Area may be adopted by the Board. Failure to pay any fine or fee may result in the Assessment and lien set forth elsewhere in this Declaration and the loss of the offending Owner's (and/or their tenant's) right to use the Common Area, as determined by the Board.

Section 7.31. Management Agreement and Other Contracts. The Association may utilize professional management in performing its duties under this Declaration. Any agreement for professional management of the Association's business or any contract providing for the services of Declarant shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon thirty (30) days prior written notice. Any contracts, licenses or leases entered into by the Association while Declarant controls the Association shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, at any time after termination of Declarant's control or the Association, upon thirty (30) days prior written notice.

Section 7.32. Irrigation. Due to concerns regarding water conservation and the geologic integrity of the Subdivision, the Association shall have the exclusive right to control the irrigation within the Subdivision. There is no separate irrigation water for the Lots. Irrigation shall be controlled by the Association under rules and regulations adopted by the Board which shall

encourage xeriscape principles.

Section 7.33. Street Lighting. Unless street lighting and its cost is provided by a governmental entity or utility, all Lots shall be subject to and bound to tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting in the Subdivision, together with rates, rules and regulations provided and subject to all future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

## **ARTICLE 8 ARCHITECTURAL CONTROL COMMITTEE**

Section 8.1. Composition of Committee. The Architectural Control Committee (“ACC”) shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided, however, that until Declarant has conveyed all Lots to Owners other than Declarant, or until five (5) years after the date of recording of this Declaration in the real property records of the County, whichever occurs later, Declarant shall appoint the ACC. A majority of the ACC may, from time to time, designate a representative to act for it. Reasonable effort shall be made to have a licensed architect as an ACC member. The power of Declarant to “appoint” shall include without limitation the power to: initially constitute the membership of the ACC, appoint member(s) to the ACC upon the occurrence of any vacancy, remove any member of the ACC, with or without cause, at any time, and to appoint a successor; and each such appointment may be made for such term(s) of office, subject to the foregoing power of removal, as may be set from time to time in Declarant’s discretion. All improvements within the Property constructed by Declarant, its affiliates, or its approved builders during the period in which it appoints the ACC shall be deemed approved by the ACC without the issuance of any writing evidencing such approval. The ACC may adopt architectural control guidelines to assist Owners in applying for ACC approval.

Section 8.2. Prior Approval. No Residences or exterior improvements of any kind shall be constructed, remodeled or altered in any fashion on any Lot, nor may any vegetation be altered or destroyed, nor any landscaping performed, unless two (2) complete sets of plans and specifications for such construction or alteration or landscaping are submitted to and approved by the ACC prior to the commencement of such work. All applications shall be submitted to the ACC in writing. The ACC shall approve or disapprove all requests for ACC approval within thirty (30) days after the complete submission of copies of all plans, specifications, and other materials that the ACC may require. If the ACC fails to take any action within thirty (30) days after submittal, then all such submitted plans and specifications shall be deemed to be approved if they otherwise comply with the building restrictions in Article 7. The ACC may adopt rules and regulations for processing such applications, including a reasonable processing fee.

Section 8.3. Plans. Plans and specifications submitted to the ACC shall show the nature, kind, shape, height, materials, floor plans, location, exterior color scheme, alterations, grading, drainage, erosion control, plant types, and all other matters necessary for the ACC to properly consider the application. Submittals shall include a minimum of:

- (a) A 1" = 10' scale site plan showing property boundaries, setbacks, building

envelope, principal and accessory buildings, driveway location and width, surface drainage, fencing and conservation zones;

- (b) Building elevations (four views) and floorplans;
- (c) Engineered foundation plans by a licensed engineer; and
- (d) Samples of roof and exterior materials, together with exterior and trim and accent colors for the principal and any accessory buildings; and
- (e) For landscape plans, a 1" = 10' scale plan that shall include plant quantity and types, fencing, drainage, irrigation and other site improvements.

The ACC shall deny any plans and specifications submitted to it that are insufficient for it to make a determination in accordance with this Declaration.

Section 8.4. Vote and Appeal. A majority vote of the ACC is required to approve a request for architectural approval pursuant to this Article 8. An Owner may appeal the decision of the ACC to the Board of Directors if the Board is composed of different members than the ACC, and, in such event, the decision of the Board shall be final.

Section 8.5. Variance. The ACC may grant reasonable variances or adjustments from any conditions or restrictions imposed in this Declaration in order to overcome practical difficulties and prevent unnecessary hardships arising from any such conditions or restrictions. Such variances or adjustments shall be granted only if they will not be materially detrimental or injurious to any other Lots or the Property or the improvements in the Subdivision and will not contradict the general intent and purpose of this Declaration.

Section 8.6. Waivers. The approval or consent of the ACC to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the ACC as to any application or other matter subsequently or additionally submitted for approval or consent under this Article 8.

Section 8.7. Best Judgment. The ACC shall exercise its best judgment to ensure that all improvements, structures, landscaping and alterations on the Property conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siding, height, topography, grade, drainage, erosion control, and finished ground elevations.

Section 8.8. Liability. No member of the ACC, Declarant, or any Owner shall be liable in damages to any Owner or other person or entity submitting plans and specifications by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any such plans and specifications. Any Owner submitting or causing to be submitted any plans and specifications to the ACC agrees and covenants that he or she will not bring any action or suit to recover damages against the ACC, Declarant, or any Owner or any of its or their individual members, advisors, employees or agents.

Section 8.9. Time of Completion of Work. After approval of any plan by the ACC, the work described in the plan shall be completed with due diligence in conformity with any conditions of approval. Failure to adhere to any term of approval shall automatically revoke the approval, and the ACC may require the Lot and/or improvement to be restored as nearly as possible to its previous state. The time for completion of any such work may be extended by the ACC in its discretion.

Section 8.10. Records. The ACC shall maintain written records of all applications submitted to it and all actions taken by it, and such records shall be available to Owners for inspection at reasonable business hours.

## **ARTICLE 9 INSURANCE**

Section 9.1. General. To the extent not provided by any applicable governmental entity, the Association shall acquire and maintain insurance covering all insurable improvements located or constructed upon the Common Area in accordance with this Article 9, specifically including but not limited to the pool, the community center, the recreation courts, the pet park and the tot lot, to the extent such insurance is reasonably available considering the cost and risk coverage provided by such insurance. The costs of all such insurance shall be paid by the Association and treated as a Common Expense.

Section 9.2. Property Insurance. The Association shall acquire and maintain a policy of property insurance covering all insurable improvements located on the Common Area, except for land, foundations, excavations and other matters normally excluded from coverage, in an amount not less than the full insurable replacement cost of such insurable improvements, less deductibles. Such insurance shall afford protection against: (a) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and (b) such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

Section 9.3. Liability Insurance. The Association shall acquire and maintain a comprehensive policy of public liability insurance covering all of the Common Area, insuring the Association in an amount not less than \$1,000,000.00 covering bodily injury, including death to persons, personal injury, and property damage liability arising out of a single occurrence.

Section 9.4. Fidelity Insurance. To the extent reasonably available and affordable, the Association shall acquire and maintain a policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to the estimated maximum of funds, including reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than three (3) months aggregate Assessments on all Lots, plus such reserve funds. Such fidelity coverage or bonds shall name the Association as an obligee and contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar terminology. If the Association delegates some or all of its responsibility for the handling of funds to a managing agent, the

Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this Section 9.4.

Section 9.5. Flood Insurance. If the Common Area, or any portion of it, is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on the Common Area has been made available under the National Flood Insurance Program, then the Association shall acquire and maintain a policy of flood insurance on the Common Area in an amount at least equal to the lesser of: (a) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or (b) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

Section 9.6. Other Insurance. The Association may obtain insurance against any other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

Section 9.7. General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of any Owner where such Owner is not under the control of the Association.

Section 9.8. Deductibles. No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount greater than the greater of \$1,000 or one percent (1%) of the face amount of the policy. Any loss falling within the deductible portion of such policy shall be borne by the person or entity (or jointly if more than one person or entity) who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event there is no identifiable party responsible for the repair and maintenance of the property which is damaged or destroyed, then the deductible shall be borne by the Association. Notwithstanding the foregoing, after notice and hearing, the Board may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon such determination by the Board, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from such Owner in the same manner as an annual Assessment; provided, however, that any such determination which assigns liability to an Owner pursuant to the terms of this Section 9.8 may be disputed by the Owner in accordance with Article 10.

Section 9.9. Insurance Trustee. The Association may authorize a representative to act for it, including a trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance. Such insurance trustee shall act as attorney-in-fact for the purpose of purchasing and maintaining insurance, including the collection and appropriate

disposition of the proceeds of any payment, the negotiation of losses and execution of releases of liability, the execution of documents, and the performance of any other act necessary to accomplish such tasks. Such party may also receive, hold or otherwise properly dispose of any proceeds of insurance in trust for the Owners and their first mortgagees as their interest may appear.

Section 9.10. Association Insurance as Primary Coverage. If at the time of any loss under any policy that is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by the Association policy, the Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from such Owner in the same manner as an annual Assessment. Any such Owner's policy shall also contain waivers of subrogation.

Section 9.11. Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of B/VI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to transact business within the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 9.12. Insurance to be Maintained by Owners. Insurance coverage on the structures located upon a Lot, as well as the furnishings and other items of personal property belonging to an Owner, shall be the responsibility of such Owner. Owners shall also be responsible for obtaining such policies of public liability insurance and title insurance related to any sale of a Lot other than the purchase by the initial Owner from Declarant.

Section 9.13. Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to assure that the coverage provided by such policies adequately covers those risks insured by the Association.

## **ARTICLE 10 DISPUTE RESOLUTION**

Section 10.1. General. Except for collection and lien foreclosure actions against Owners, specifically including but not limited to actions under Article 4, all actions, disputes, claims or controversy between any Owner, the ACC, the Association, Declarant, and their respective agents, contractors, successors and assigns, whether in contract, tort or otherwise, shall be resolved by the procedures set forth in this Article 10 or as set forth in any applicable limited warranty, or any applicable agreement between Declarant and any Owner or his or her heirs, successors or assigns.

Section 10.2. Initial Notification; Negotiation. For each claim governed by this Article 10

(a “Claim”), the claimant (“Claimant”) shall give notice to the other party or parties against whom the claim is asserted (“Respondent”), setting forth: the nature of the Claim; the basis or reason for the Claim; any other material information regarding the Claim; the specific relief and/or proposed remedy sought; and the intent to invoke this Article 10 (the “Notice of Claim”). Claimant and Respondent shall use good faith efforts to resolve the Claim through negotiations following delivery of the notice, pending mediation pursuant to Section 10.3.

Section 10.3. Mediation. The Claim shall first be mediated before a mediator jointly selected by the parties. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute formally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The mediation shall occur within thirty (30) days following delivery of the Notice of Claim (the “Mediation Period”). Mediation shall be a condition precedent to the filing of a lawsuit. In the event Claimant does not appear for mediation, Claimant shall be deemed to have irrevocably waived the Claim, and Respondent shall be released from any and all liability to Claimant on account of such Claim. If mediation is successful, the resolution shall be documented in writing and signed by the parties. Thereafter, if either party violates the resolution, the other party may apply immediately to a court for relief. The mediation, unless otherwise agreed, shall terminate in the event that the entire dispute is not resolved before the expiration of the Mediation Period. In the event that mediation is unsuccessful, then Claimant may bring an action in a court of proper jurisdiction in the County within sixty (60) days following the expiration of the Mediation Period. If no action is filed within the specified time, Claimant irrevocably waives the Claim and any and all right to proceed to litigation regarding the Claim. If the matter is settled through the mediator, the Claimant and Respondent shall share equally in the mediation costs and pay their own attorney fees, if any. If the matter is not settled by mediation and proceeds to litigation, the losing party in the litigation shall pay the prevailing party’s portion of the mediation costs and its attorney fees, if any.

Section 10.4. Standards of Construction. If any Claim regarding defects in construction is made, the Claim shall be specified with particularity. Each location of any claimed defect must be identified and all evidence supporting each Claim, along with all repair methodologies and costs of repair, must be provided by the claimant in advance of mediation under Section 10.3. In any proceeding, it shall be rebuttably presumed that any construction done by the builder or Declarant was not defective, that the builder or Declarant adequately performed its obligations under its contract, and that the builder or Declarant was not negligent if the builder or Declarant’s performance was, at the time of construction, substantially in accordance with: (a) the standards of trade in the County; (b) any applicable building code in the County; or (c) any applicable national association of home builders residential construction guidelines. In any such proceedings, evidence of any scientific, engineering, or technical advancements or other knowledge or techniques, or any design theory or philosophy, or any construction or testing knowledge or techniques, where such advancements were discovered subsequent to the time of construction, shall not be admissible for any purpose. If any of Claimant’s Claims relate, in any way, to any work completed by any of Declarant’s or a builder’s subcontractors or any materials and/or equipment provided by any suppliers, Declarant or the builder, as applicable, in its sole discretion, may join such subcontractors and/or suppliers to any proceeding with Claimant. The sole manner which may be used to establish breach of any obligations under this Declaration, any obligations which may exist by law or reason of any statute, any applicable industry standards, and/or

Claimant's damages, including but not limited to appropriate repair costs, shall be through the testimony of a homebuilder with experience in the County. The court shall completely exclude the testimony of any tendered expert who does not meet the foregoing qualifications.

Section 10.5. Limitation of Remedies. Every party subject to this Declaration disclaims and waives any claims for the following remedies and damages for any matters related to any Claim, whether a Claim is made on the basis of contract, tort or any other theory or basis at law or in equity: (a) punitive or exemplary damages; (b) claims for emotional distress or pain and suffering, and (c) claims for incidental and/or consequential damages (except as otherwise provided in this Declaration). Claimant further agrees that, subject to the other limitations in this Declaration, Respondent's total liability to Claimant shall be limited to, and in no event exceed, the amount of any insurance proceeds actually available with respect to any and all Claims, whether in contract, tort or otherwise.

Section 10.6. Attorney Fees and Jury Waiver. In the event of any dispute, the substantially prevailing party shall be entitled to recover its reasonable costs and attorney fees, including post-judgment collection costs, in addition to actual damages. All parties subject to this Declaration waive the right to a jury in any action or proceeding concerning their Lot, Common Area, the Property, the Subdivision, and/or any other Claims arising under or related to this Declaration, to the maximum extent permitted by applicable law.

## **ARTICLE 11 GENERAL PROVISIONS**

Section 11.1. Damage or Destruction of Common Area. In the event of damage or destruction to any improvement installed by the Association within the Common Area due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Area, the Association may levy a reconstruction Assessment in the aggregate amount of such deficiency, and shall proceed to make such repairs or reconstruction, unless:

- (a) The planned community is terminated;
- (b) Repair or replacement would be illegal under any state or local statute or ordinance;
- (c) Eighty percent (80%) of the voting rights of the Members, including the voting rights of every Member whose Lot will not be rebuilt, oppose rebuilding; or
- (d) Prior to the conveyance of any Lot to a person other than Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Common Area rightfully demands all or a substantial part of the insurance proceeds.

The reconstruction Assessment provided for in this Article 11 shall be a debt of each Owner and a lien on his or her Lot and the improvements on it, and may be enforced and collected in the same manner as any Assessment lien provided for in this Declaration.

Section 11.2. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions in this Declaration, the Articles of Incorporation, the Bylaws, or the rules and regulations of the Association, as amended, shall be by a proceeding brought in accordance with Article 10 against any person or persons, including without limitation the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceeding, and the Association shall further have the right to levy and collect fines for the violation of any provision of the aforesaid documents in any action instituted or maintained under this Section 11.2. Failure by the Association or any Owner to enforce any covenant or restriction in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.3. No Rights Given to the Public. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose, except for the easements dedicated to the public on the Plat.

Section 11.4. Duration. Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each.

Section 11.5. Amendment. This Declaration may be amended by an instrument approved in writing by not less than sixty-seven percent (67%) of the voting rights of the Members. Such amendment shall be effective when duly recorded in the real property records of the County in accordance with CCIOA. Notwithstanding the foregoing, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or the Bylaws are necessary for existing or future mortgages, deeds of trust, or other security instruments to be acceptable, Declarant shall have and is specifically granted the right and power to make and execute any such amendments without obtaining the approval of any Owners or first mortgagees. Each such amendment of this Declaration or the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to termination of Declarant's control of the Association. Declarant also reserves and is granted the right and power to record technical amendments to this Declaration, the Articles of Incorporation, or the Bylaws at any time prior to the termination of Declarant's control of the Association, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of any such document.

Section 11.6. Rights of Declarant Incident to Construction. An easement is retained by and granted to Declarant and its successors and assigns for access, ingress and egress over, in, upon, under, and across any Common Area, including but not limited to the right to store materials on it and to make such other use of it as may be reasonably necessary or incidental to Declarant's

or its designees' construction on the Property; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner or his or her family members, guests, or invitees, to or of that Owner's Lot. Declarant, for itself and its successors and assigns, retains a right to store construction materials on Lots owned by Declarant and to make such other use of Declarant's Lots as may be reasonably necessary or incidental for the purpose of the completion or improvement of the Property, the performance of Declarant's obligations, and the sale of the Lots. Any special declarant rights created or reserved under this Declaration for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the real property records of the County. Such instrument shall be executed by Declarant and its transferee. The rights granted to Declarant under this Declaration shall expire on the date which is ten (10) years after the recording date of this Declaration, unless otherwise provided by law.

Section 11.7. Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association and, except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. If, however, an Owner fails to notify the Association of his or her registered address, then any notice or demand may be sent to such Owner at the address of such Owner's Lot.

Section 11.8. Construction. Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa; and the masculine gender shall include the feminine and neuter genders, and vice versa.

Section 11.9. Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 11.10. Section Headings. The article and section titles and headings used in this Declaration are for identification purposes only and shall not be utilized to interpret or construe the provisions of this Declaration, which shall remain in full force and effect.

Section 11.11. Governing Clause; Conflicts. This Declaration shall control and govern over any conflicting provision of CCIOA, except to the extent that such conflicting provision in CCIOA is mandatory according to the terms of C.R.S. §§ 38-33.3-105 through 107. This Declaration shall further control any conflicting term in the Articles of Incorporation, Bylaws or any rule or regulation promulgated by the Association or the ACC. In case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

BOPA, LLC

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Nathalie Ames, Manager



**EXHIBIT A**  
**PLAT TO BE ATTACHED**

**EXHIBIT B**  
**LEGAL DESCRIPTION**