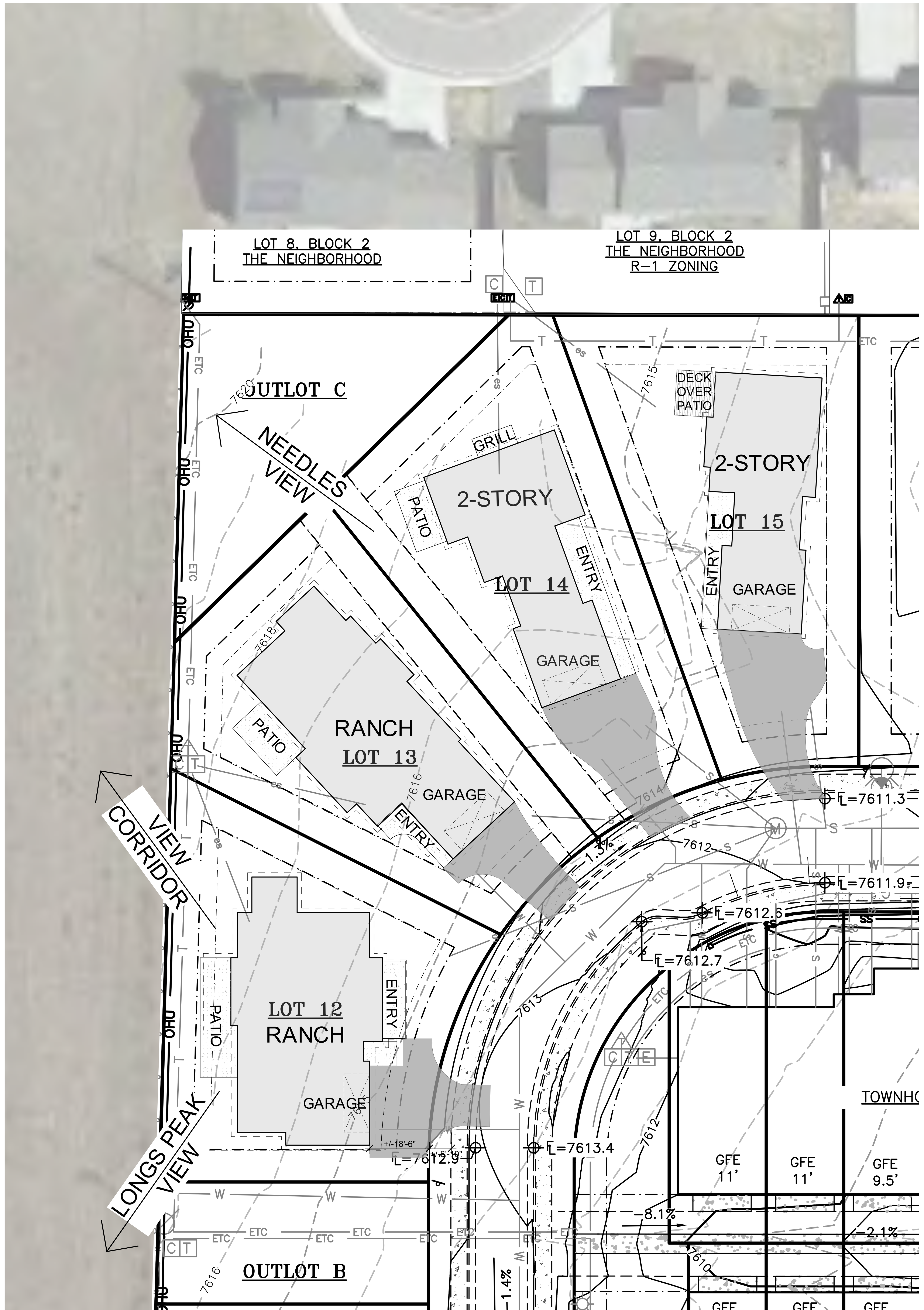


1 Site Layout

1" = 20'

1 Site Layout

1" = 20'

BAS1S
ARCHITECTURE P.C.
1695 Big Thompson Ave, Suite 100
Estes Park, Colorado 80517
970.586.9140
BAS1S.com

Issue: Schematic

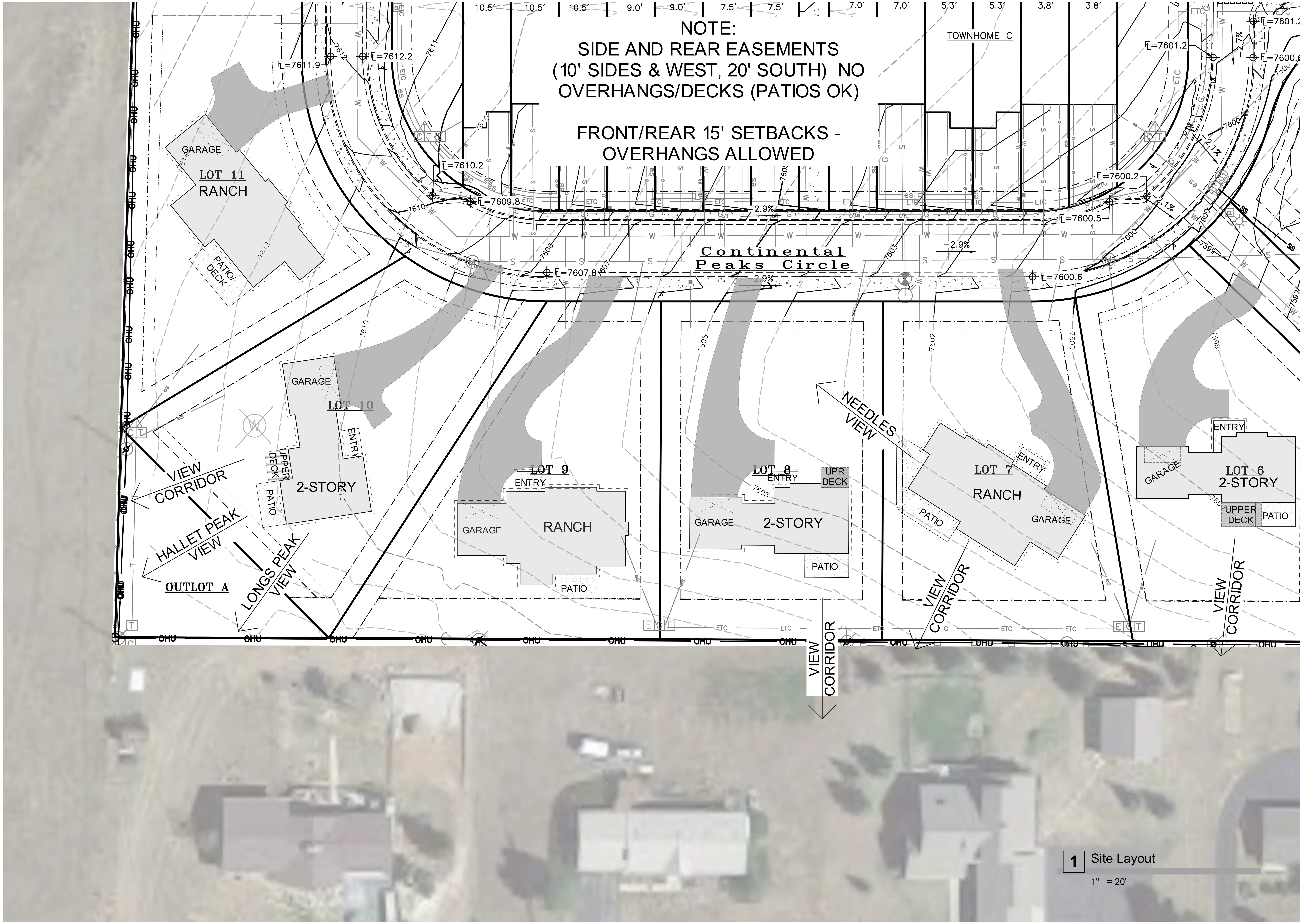
Date: 5/5/23

Wildfire Development
Single Family Layouts

TBD Various
Estes Park, CO 80517

Sheet Title: Lots 2-5 / 12-15

Sheet No: 1



BAS1S ARCHITECTURE P.C.
1695 Big Thompson Ave, Suite 100
Estes Park, Colorado 80517

970.586.9140
BAS1S.com

Issue: Schematic
Date: 5/5/23

Wildfire Development Single Family Layouts
TBD Various
Estes Park, CO 80517

Sheet Title: Lots 6-11

Sheet No: 2

1 Site Layout
1" = 20'

Document must be filed electronically.
Paper documents are not accepted.
Fees & forms are subject to change.
For more information or to print copies
of filed documents, visit www.coloradosos.gov.

E-Filed

Colorado Secretary of State
Date and Time: 03/07/2023 05:39 PM
ID Number: 20231268744

Document number: 20231268744
Amount Paid: $50.00

ABOVE SPACE FOR OFFICE USE ONLY

Articles of Incorporation for a Nonprofit Corporation

filed pursuant to § 7-122-101 and § 7-122-102 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name for the nonprofit corporation is The Divide Townhomes Owners Association.

*(**Caution:** The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)*

2. The principal office address of the nonprofit corporation's initial principal office is

Street address
851 Dry Gulch Rd.
(Street number and name)

Estes Park | CO | 80517
(City) | *(State)* | *(ZIP/Postal Code)*

United States
(Province – if applicable) | *(Country)*

Mailing address
(**leave blank** if same as street address)
P.O. Box 4443
(Street number and name or Post Office Box information)

Estes Park | CO | 80517
(City) | *(State)* | *(ZIP/Postal Code)*

United States.
(Province – if applicable) | *(Country)*

3. The registered agent name and registered agent address of the nonprofit corporation's initial registered agent are

Name
(if an individual)
Westover | Mark | |
(Last) | *(First)* | *(Middle)* | *(Suffix)*

OR

(if an entity)

*(**Caution:** Do not provide both an individual and an entity name.)*

Street address
851 Dry Gulch Rd.
(Street number and name)

Estes Park | CO | 80517
(City) | *(State)* | *(ZIP Code)*

Mailing address P.O. Box 4443
(**leave blank** if same as street address)
(Street number and name or Post Office Box information)

Estes Park CO 80517.
(City) (State) (ZIP Code)

(The following statement is adopted by marking the box.)

☒ The person appointed as registered agent above has consented to being so appointed.

4. The true name and mailing address of the incorporator are

Name
(if an individual) Allnutt Richard D.
(Last) (First) (Middle) (Suffix)

OR

(if an entity)

*(**Caution:** Do not provide both an individual and an entity name.)*

Mailing address P.O. Box 12
(Street number and name or Post Office Box information)

Glen Haven CO 80532
(City) (State) (ZIP/Postal Code)

United States.
(Province – if applicable) (Country)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ The corporation has one or more additional incorporators and the name and mailing address of each additional incorporator are stated in an attachment.

5. *(If the following statement applies, adopt the statement by marking the box.)*

☒ The nonprofit corporation will have voting members.

6. Provisions regarding the distribution of assets on dissolution:

Upon dissolution of the Association other than incident to merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

7. *(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

☐ This document contains additional information as provided by law.

8. ***(Caution:*** *Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)*

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)
The delayed effective date and, if applicable, time of this document is/are __________________________.
(mm/dd/yyyy hour:minute am/pm)

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes. This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

9. The true name and mailing address of the individual causing the document to be delivered for filing are

Groom	Patrick	M.	
(Last)	*(First)*	*(Middle)*	*(Suffix)*

822 7th St., Ste. 760
(Street number and name or Post Office Box information)

Greeley	CO	80631
(City)	*(State)*	*(ZIP/Postal Code)*

	United States.
(Province – if applicable)	*(Country)*

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

BYLAWS

OF

THE DIVIDE TOWNHOMES OWNERS ASSOCIATION

ADOPTED: May ____, 2024

BYLAWS
OF
THE DIVIDE TOWNHOMES OWNERS ASSOCIATION

ARTICLE 1 - INTRODUCTION

These are the Bylaws of The Divide Townhomes Owners Association ("Association"), a Colorado nonprofit corporation, made pursuant to the Articles of Incorporation of the Association ("Articles"), the Declaration of Covenants, Conditions, Restrictions and Easements for The Divdie Townhomes ("Declaration") and the Colorado Revised Nonprofit Corporation Act ("CRNCA "), all as may be amended. Terms herein have the meaning ascribed in the Declaration and the Act.

ARTICLE 2 – DEFINITIONS

Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the Declaration.

ARTICLE 3 - EXECUTIVE BOARD

3.1 Numbers and Qualification. An Executive Board shall govern the affairs of the Association. The initial Executive Board shall consist of three (3) Directors, to be appointed by the Declarant, Wildfire Homes LLC, a Colorado limited liability company. Declarant shall have the right to appoint Directors to the Executive Board and to have members remain on the Executive Board as provided in the Declaration and the Act. In the case where, through removal or resignation, the total number of Executive Board members is less than three, the Executive Board will be considered properly constituted until such vacancies are filled. The number of members of the Executive Board may be increased or decreased by amendment of these Bylaws; provided, however the number must be less than three (3).

(a) The Declaration shall govern appointment of Directors of the Executive Board during the period of Declarant Control.

(b) The terms of the Directors of the Executive Board shall be not be less than one (1) year. The Executive Board may establish longer terms and may stagger terms.

(c) At any time after the Owners, other than the Declarant, are entitled to elect a Director of the Executive Board, the Association shall call a meeting and shall give not less than ten (10) nor more than fifty (50) days notice to the Owners for this purpose. This meeting may be called and the notice given by any Owner if the Association fails to do so.

(d) Each Executive Board Director shall hold office until the election and qualification of his or her successor. At any meeting at which the Executive Board is to be elected, the Owners may, by resolution, adopt specific procedures that are not inconsistent with these Bylaws or the

CRNCA for conducting the elections.

3.2 Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, these Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association, including the following:

(a) Adopt and amend Bylaws, policies, procedures, rules and regulations of the Association.

(b) Adopt and amend budgets for revenues, expenditures and reserves.

(c) Collect Assessments.

(d) Suspend the voting interests allocated to a Lot, and the right of an Owner to cast such votes, or by proxy the votes of another, during any period in which such Owner is in default in the payment of any Assessment, or, after notice and a hearing, during any time in which an Owner is in violation of any other provision of the Association Documents.

(e) Hire and discharge Managers.

(f) Hire and discharge employees, independent contractors and agents other than Manager.

(g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Declaration, the Articles of Incorporation or these Bylaws in the Association's name, on behalf of the Association or on behalf of two or more Owners in matters affecting the Project.

(h) Make contracts and incur liabilities.

(i) Regulate the use, maintenance, repair, replacement and modification of all property within the Association.

(j) Cause additional improvements to be made as a part of the Common Elements.

(k) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property, subject to the limitations set forth in the Declaration.

(l) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions, through or over the Common Elements.

(m) Impose and receive, on behalf of the Association, a payment, fee or charge for services provided to Owners and for the use, rental or operation of the Common Elements.

(n) Establish from time to time, and thereafter impose, levy and collect charges for late payment of Assessments or any other sums due and, after notice and hearing, reasonable fines for violations of the Association Documents.

(o) Impose a reasonable charge for the preparation and recording of amendments to the Declaration or statements of unpaid Assessments.

(p) Provide for the indemnification of the Association's officers and the Executive Board to the extent provided by law, provide for the indemnification of committee members to the extent the Executive Board deems just and reasonable, and maintain directors' and officers' liability insurance.

(q) Declare the office of a Director of the Executive Board to be vacant in the event such member shall fail to participate in three (3) regular meetings of the Executive Board during any one-year period unless such absences are excused by the Executive Board.

(r) Appoint any committee as required or permitted by the Declaration or these Bylaws or as may be deemed appropriate by the Executive Board to carry out its purposes and duties, and by resolution, establish committees, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee.

(s) By resolution, set forth policies and procedures which shall be considered incorporated herein by reference as though set forth in full, and which provide for corporate actions and powers which are different than those set forth in the CRNCA but which are permitted by the CRNCA to be "otherwise set forth in the Bylaws." Such resolutions shall be given the same force and effect as if specifically enumerated in these Bylaws.

(t) Exercise any other powers conferred by the Declaration, the Articles of Incorporation, these Bylaws, the Act, or the CRNCA.

(u) Exercise any other power necessary and proper for the governance and operation of the Association.

(v) Exercise any other lawful power that may be exercised by a legal entity of the same type as the Association in the State of Colorado.

3.3 Manager. The Executive Board may employ a Manager for the Association, at such compensation established by the Executive Board, to perform duties and services authorized by the Executive Board; provided, however:

(a) The Executive Board may delegate to the Manager only the powers granted to the Executive Board by these Bylaws under Section 3.2 (c), (f), (g), (h), (i) and (j).

(b) Licenses, concessions and contracts may be executed by the Manager pursuant to specific resolutions of the Executive Board and to fulfill the requirements of the budget.

(c) The Executive Board shall require: (i) that the Manager shall maintain fidelity insurance coverage or a bond in an amount not less than fifty thousand dollars ($50,000) or such higher amount as the Executive Board may require; (ii) that the Manager shall maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the Manager and maintain all reserve accounts of each association so managed separate from operational accounts of the Association; and (iii) that an annual accounting for Association funds and a financial statement be prepared and presented to the Association by the Manager, its public accountant, or a certified public accountant.

3.5 Removal of Executive Board Director. The Owners, by a vote of sixty-seven percent (67%) of those present and entitled to vote at any meeting of the Owners of the Association, may remove a Board Director, with or without cause, other than one appointed by the Declarant; provided, however (i) notice of consideration of removal of one or more Board Directors must be given in the notice for the meeting, and (ii) the Board Directors who are subject to removal at such a meeting must be given an opportunity to be heard. For purposes of this meeting a quorum of fifty percent (50%) of the Owners of the Association shall be required. Any Director of the Executive Board appointed by the Declarant during the period of Declarant Control may only be removed by the Declarant. Vacancies created by removal shall be filled as follows:

(a) As to vacancies of Executive Board Directors whom Owners other than the Declarant elected, by a majority of the Owners of the Association pursuant to the terms of these Bylaws; and

(b) As to vacancies of Executive Board Directors whom the Declarant has the right to appoint, by the Declarant.

Each person so elected or appointed shall serve on the Executive Board for the remainder of the term of the member replaced.

3.6 Vacancies. Except in the case of removal of an Executive Board Director pursuant to Section 3.5 above, in the event a vacancy is not filled by the Owners, the vacancy may be filled at a special meeting of the Executive Board held for that purpose at any time after the occurrence of the vacancy, even though the Directors of the Executive Board present at that meeting may constitute less than a quorum. These appointments shall be made, as to vacancies of Executive Board Directors, and each person so elected or appointed shall serve on the Executive Board for the remainder of the term of the member replaced or until such vacancy is filled by the Association, whichever occurs first.

3.7 Regular Meetings. The first regular meeting of the Executive Board following each annual meeting of the Owners shall be held within sixty (60) days after the annual meeting at a time and place to be set by the Executive Board at the meeting at which the Executive Board shall have been elected. No notice shall be necessary to the newly elected Executive Board in order to legally constitute such meeting, provided a majority of the Executive Board members are present. The Executive Board may set a schedule of additional regular meetings by resolution, and no further notice is necessary to constitute regular meetings.

3.8 Special Meetings. Special meetings of the Executive Board may be called by the President or by a majority of its members on at least three (3) business days' notice to each member.

3.9 Quorum; Actions of the Executive Board. A majority of the total number of Executive Board members shall constitute a quorum for all meetings and consents. Unless otherwise determined by a vote of the Executive Board as to a particular issue, a majority vote of those present constitutes a valid corporate action. The term "present" as used herein shall include attendance in person, by proxy (to the fullest extent provided by the CRNCA), via telephonic or other electronic means, or via "real time" e-mail.

3.10 Location of Meetings. All meetings of the Executive Board shall be held either (i) within the State of Colorado, unless all members thereof consent in writing to another location, or (ii) in such a manner as to permit discussions and deliberations via telephonic means or communication via "real time" e-mail.

3.11 Waiver of Notice. Any Executive Board Director may waive notice of any meeting in writing. Attendance by an Executive Board Director at any meeting of the Executive Board shall constitute a waiver of notice. If all the members of the Executive Board are present at any meeting (participating in a meeting through any means authorized by these Bylaws), no notice shall be required, and any business may be transacted at such meeting.

3.12 Consent to Corporate Action. If a majority of the Executive Board or members of a committee established for such purpose, as the case may be, severally or collectively consent in writing to any action taken or to be taken by the Association, that action shall be a valid corporate action as though it had been authorized at a meeting of the Executive Board or the committee, as the case may be. The Secretary shall file these consents with the minutes of the Executive Board.

3.13 Types of Communication in Lieu of Attendance. Any member of the Executive Board may attend a meeting of the Executive Board by: (i) using an electronic or telephonic communication method whereby the member may be heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Executive Board; or (ii) by participating in "real time" e-mail communication when all Board members are participating in this form of communication. The vote of such member shall be counted and the presence noted as if that member was present in person on that particular matter.

3.14 Compensation. No Director of the Executive Board shall receive any compensation from the Association for acting as such, however Directors of the Executive Board may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Executive Board members. Nothing herein shall prohibit the Association from compensating a member of the Executive Board, or any entity with which an Executive Board member is affiliated, for services or supplies furnished to the Association in a capacity other than as an Executive Board member pursuant to a contract or agreement with the Association, provided that such Executive Board member's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Executive Board, excluding the interested member of the Executive Board.

ARTICLE 4 - OWNERS

4.1 Meetings of the Owners. The following types of "meetings" (as that term is used in the CRNCA) shall be or may be held, as provided below.

4.1.1 Annual Meetings. An annual meeting of Owners shall be held at least once a year, within Colorado, at such date set forth in the notice. At these meetings, the Executive Board shall be elected by ballot of the Owners, in accordance with these Bylaws. The Owners may transact other business as may properly come before them at these meetings.

4.1.2 Special Meetings. Request that a special meeting of the Association be called may be made by the President, by a majority of the members of the Executive Board or by a written instrument signed by Owners comprising at least twenty percent (20%) of the votes in the Association.

4.1.3 Meeting to Approve Annual Budget. Within thirty (30) days after the adoption of any proposed budget for the Association by the Executive Board, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

4.2 Place of Meetings. Meetings of the Owners shall be held within Colorado, and may be adjourned to a suitable place convenient to the Owners, as may be designated by the Executive Board or the President.

4.3 Notice of Meetings. Except as otherwise set forth in Subsection 4.1.3, the Secretary shall cause notice of all meetings of the Owners to be hand-delivered, sent via a reliable over-night or express delivery service, or sent prepaid by United States mail directed to the mailing address of each Unit or to the mailing address designated in writing by the Owner, or sent by fax transmittal to the fax number designated in writing by the Owner with a written confirmation of receipt, not less than ten (10) nor more than fifty (50) days in advance of a meeting. The date notice is "sent" shall be the date received by the recipient or three days after placing the notice in the United States mail. No action shall be adopted at a special meeting except as stated in the notice.

4.4 Adjournment of Meeting. At any meeting of Owners, a majority vote may adjourn the meeting to another place and time.

4.5 Order of Business. The order of business at all meetings of the Owners shall be as set forth in the written meeting agenda available at the beginning of each meeting.

4.6 Voting.

(a) If only one of several Owners of a Lot is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to that Lot. If more than one of the Owners is present, the vote allocated to the Lot may be cast only in accordance with the agreement of a majority of the Owners of that Lot. Majority agreement exists if any one of the Owners casts the vote allocated to the Unit without protest being made promptly to the person presiding over the meeting by another Owner of the Lot.

(b) The vote allocated to a Unit may be cast under a proxy duly executed by an Owner. If more than one person owns a Unit, each Owner of the Unit may vote or register protest to the casting of votes by the other Owners of the Unit through a duly executed proxy. An Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven months (11 months) after its date, unless it specifies a shorter term.

(c) The vote of a corporation or limited liability company may be cast by an officer of that corporation or by the manager of the limited liability company or by any person designated by the corporation or company. The vote of a limited liability limited partnership or a limited partnership may be cast by the general partner (or any general partner if there is more than one general partner). Any general partner of the partnership may cast the vote of a general partnership in the absence of express notice of the designation of a specific person by the partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of an Owner who is a corporation, limited liability company, limited liability limited partnership, limited partnership, general partnership or any other type of entity recognized by Colorado law is duly designated and qualified to vote on behalf of the Owner.

(d) Votes allocated to a Lot owned by the Association may not be cast.

4.7 Quorum. Except as otherwise provided in these Bylaws, the Owners present in person or by proxy at any meeting of Owners, representing at least twenty percent (20%) of the votes in the Association, shall constitute a quorum at that meeting. As used herein, the term "present" shall include attendance in person, by proxy, via telephonic or other electronic means, via "real time" e-mail or, in the case of written ballots, by providing written response on or before the date responses are due as set forth in the written ballot. Only Owners eligible to vote may cast proxies for other Owners and only Owners eligible to vote may be considered present.

4.8 Majority Vote. The vote of a majority of the Owners (casting one vote per Lot) present at any meeting properly noticed and whereat a quorum is present shall be binding upon all Owners for all purposes except where a higher percentage vote is required in the Declaration, these Bylaws or the Act. Reference to a "majority of all Owners" in the Declaration, these Bylaws, or the CRNCA shall mean a vote cast by Owners representing one more than one-half of all Units in the Wildfire Subdivision.

4.9 Voting by Mail. The Executive Board may decide that voting of the Owners on any matter shall be by written ballot. Pursuant to the CRNCA, any action that may be taken at any annual, regular, or special meeting of Owners may be taken without a meeting if the Secretary delivers a written ballot to every member entitled to vote on the matter. "Delivery" to the Owner and the Owner's return of the completed ballot shall be made by the same methods available for providing notice to a member as provided herein.

(a) A written ballot shall: (i) set forth each proposed action; and (ii) provide an opportunity to vote for or against each proposed action.

(b) Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of votes cast in approval equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) All solicitations for votes by written ballot shall: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than the election of members of the Executive Board; (iii) specify the time by which a ballot must be received by the Association in order to be counted; and (iv) be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter.

(d) A written ballot, once received by the Association, may not be revoked, unless the Owner casting the written ballot appears in person at a meeting convened to consider any one or more of the matters on the ballot.

ARTICLE 5 - OFFICERS

5.1 Designation. The principal officers of the Association shall be the President, Vice President, Secretary and Treasurer, all of whom shall be appointed by the Executive Board. The same person may hold any two offices except the offices of President and Secretary. The office of Vice President is optional. All officers must be members of the Executive Board.

5.2 Election of Officers. The Executive Board at the organizational meeting of each new Executive Board shall appoint the officers of the Association annually.

5.3 Resignation and Removal of Officers. Any officer may be removed, either with or without cause, by the Executive Board. A successor may be elected at any regular meeting of the Executive Board or at any special meeting of the Executive Board called for that purpose. Any officer may resign at any time by giving written notice to the President or Secretary.

5.4 President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Owners and of the Executive Board. The President shall have all of the general powers and duties which are incident to the office of President of a nonprofit corporation organized under the laws of the State of Colorado, including but not limited to the power to appoint committees from among the Owners from time to time as the President may decide is appropriate to assist in the conduct of the affairs of the Association. The President may fulfill the role of Treasurer in the absence of the Treasurer. The President may cause to be prepared and may execute amendments, attested by the Secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

5.5 Vice President. The Vice President shall take the place of the President and perform the President's duties whenever the President is absent or unable to act. If neither the President nor the Vice President is able to act, the Executive Board shall appoint another of its members to act in the place of the President on an interim basis. The Vice President shall also perform other duties imposed by the Executive Board or by the President.

5.6 Secretary. The Secretary shall keep the minutes of all meetings of the Owners and the Executive Board. The Secretary shall have charge of the Association's books and papers as the Executive Board may direct and shall perform all the duties incident to the office of Secretary of a nonprofit corporation organized under the laws of the State of Colorado. The Secretary may cause to be prepared and may attest to execution by the President of amendments to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

5.7 Treasurer. The Treasurer shall be responsible for Association funds and securities, for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. This officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Executive Board and shall perform all the duties incident to the office of Treasurer of a nonprofit corporation organized under the laws of the State of Colorado. The Treasurer may endorse on behalf of the Association, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the Association in banks designated by the Executive Board. Except for reserve funds described below, the Treasurer may have custody of and shall have the power to endorse for transfer, on behalf of the Association, stock, securities or other investment instruments owned or controlled by the Association or as fiduciary for others. Reserve funds of the Association shall be deposited in segregated accounts or in prudent investments, as the Executive Board decides. Funds may be withdrawn from these reserves for the purposes for which they were deposited, by check or order, authorized by the Treasurer, and executed by two members of the Executive Board, one of whom may be the Treasurer.

5.8 Execution of Instruments. Except as expressly provided in Sections 5.4, 5.6, 5.7 and 5.9 of these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any officer of the Association or by any other person or persons designated by the Executive Board.

5.9 Statements of Unpaid Assessments. The Treasurer or Manager, or in their absence, any officer having access to the books and records of the Association, may prepare, certify, execute and deliver statements of unpaid assessments in accordance. The Executive Board shall establish the amount of the fee for preparing statements of unpaid Assessments. Any unpaid fees may be assessed as a Common Expense Assessment against the Unit for which the certificate or statement is furnished.

ARTICLE 6 - ENFORCEMENT

6.1 Abatement and Enjoinment of Violations by Owners. The violation of any provision of the Association Documents shall give the Executive Board the right, in addition to any other rights set forth in the Association Documents, after notice and an opportunity to be heard (except in case of an emergency when no notice is required):

(a) To enter the Lot or Limited Common Element in which, or as to which, the violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that is creating a nuisance or danger to the Common Elements or any person or property contrary to the intent and meaning of the provisions of the Association Documents. The Executive Board shall not be deemed liable for any manner of trespass or damage by this action; or

(b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

6.2 Fines for Violation. The Executive Board may adopt resolutions providing for fines for the infraction of any Association Documents. Fines may be levied after notice thereof and an opportunity to be heard. The Executive Board may levy fines in any amounts that it determines in its sole discretion are reasonable.

ARTICLE 7- INDEMNIFICATION

7.1 Actions Other Than By Or In The Right of The Association. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a member of the Executive Board or an officer of the Association, against expenses (including expert witness fees, attorneys' fees and costs) judgments, fines, amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner which such individual reasonably believed to be in the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner he or she reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe his or her conduct was unlawful.

7.2 Actions By Or In The Right of The Association. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure judgment in its favor by reason of the fact that such person is or was a member of the Executive Board or an officer of the Association, against expenses (including expert witness fees, attorneys' fees and costs) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner which he or she reasonably believed to be in the best interests of the Association; but no indemnification shall be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable for negligence, recklessness, or willful misconduct in the performance of his or her duties as a member of the Executive Board or as an officer of the Association unless, and to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses if such court deems proper.

7.3 Successful on the Merits. To the extent that a member of the Executive Board or any officer of the Association has been wholly successful on the merits in defense of any action, suit or proceeding referred to in Sections 7.1 or 7.2 above, such person shall be indemnified against expenses (including expert witness fees, attorneys' fees and costs) actually and reasonably incurred him or her in connection therewith.

7.4 Determination Required. Any indemnification under Sections 7.1 or 7.2 above (unless ordered by a court), as distinguished from Section 7.3 above, shall be made by the Association only as authorized by the specific case upon a determination that indemnification of the Director of the Executive Board or officer is proper in the circumstances because such individual has met the applicable standard of conduct set forth in Sections 7.1 or 7.2 above. Such determination shall be made by the Executive Board by majority vote of a quorum consisting of those Directors of the Board who were not parties to such action, suit or proceeding or, if a majority of disinterested Directors of the Executive Board so directs, by independent legal counselor by members entitled to vote thereon. Such determination shall be reasonable, based on substantial evidence of record, and supported by a written opinion. The Executive Board shall provide a copy of its written opinion to the officer or Executive Board Director seeking indemnification upon request.

7.5 Payment in Advance of Final Disposition. The Association shall pay for or reimburse the reasonable expenses incurred by a former or current Director of the Executive Board or officer who is a party to a proceeding in advance of final disposition of the proceeding if (i) the member of the Executive Board or officer furnishes to the Association a written affirmation of the Executive Board Director's good faith belief that he or she has met the standard of conduct described in Sections 7.1 or 7.2; (ii) the Executive Board Director or officer furnishes to the Association a written understanding, executed personally or on the Executive Board Director's or officer's behalf, to repay the advance if it is ultimately determined that the Executive Board Director or officer did not meet the standard of conduct; and (iii) a determination is made that the facts then known to those making the determination would not preclude indemnification under this Article. The undertaking required in this Section 7.5 shall be an unlimited general obligation of the Executive Board but need not be accepted by the Executive Board Director or officer or may be accepted without reference to financial ability to make repayment.

7.6 No Limitation of Rights. The indemnification provided by this Article 7 shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Directors or disinterested Directors of the Executive Board, or otherwise, nor by any rights which are granted pursuant to the Act and the CRNCA. Upon a vote of the Executive Board, the Association may also indemnify a Director appointed by the Executive Board to serve on a committee (when such committee member is not also a member of the Executive Board) upon such terms and conditions as the Executive Board shall deem just and reasonable.

7.7 Directors and Officers Insurance. The Association shall purchase and maintain insurance on behalf of any person who is or was a Director of the Executive Board or an officer of the Association against any liability asserted against him or her and incurred by such individual in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify such individual against such liability under provisions of this Article 7.

ARTICLE 8 - RECORDS

8.1 Records and Audits. The Association shall maintain financial records. The cost of any audit shall be a Common Expense unless otherwise provided in the Declaration. An audit shall be done no less often than every three (3) years, unless otherwise provided for in the Declaration or as determined by the Executive Board.

8.2 Examination. All records maintained by the Association or the Manager shall be available for examination and copying by any Owner or by their duly authorized representatives, at the expense of the person examining the records, during normal business hours and after reasonable notice in accordance with the CRNCA.

8.3 Records. The Association shall keep the following records:

(a) An account for each Unit, which shall designate the name and address of each Owner, the name and address of each mortgagee who has given written notice to the Association that it holds a mortgage on the Unit, the amount of each Common Expense Assessment, the dates on which each Assessment comes due, the amounts paid on the account and the balance due;

(b) The current operating budget;

(c) A record of insurance coverage provided for the benefit of Owners and the Association for the immediately preceding three (3) years;

(d) Tax returns for state and federal income taxation for the preceding seven (7) years;

(e) Minutes of proceedings of Incorporators, Owners, Executive Board and its committees (including written consents), and waivers of notice;

(f) A copy of the most current versions of the Articles of Incorporation, Declaration, Bylaws, Rules and Regulations, and resolutions of the Executive Board, along with their exhibits and schedules;

(g) All written communications to Owners (which communications shall only be made available to the Owner with whom the Association has communicated);

(h) A list of the names and business or home addresses of the current members of the Executive Board and officers;

(i) A copy of the Association's most recent corporate report filed with the secretary of state in accordance with the CRNCA;

(j) Any other records required to be kept pursuant to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 *et seq*. and

(k) Such other records the Executive Board shall determine from time to time are necessary or desirable.

ARTICLE 9 - MISCELLANEOUS

9.1 Notices. All notices to the Association or the Executive Board shall be delivered to the office of the Manager, or, if there is no Manager, to the office of the Association, or to such other address as the Executive Board may designate by written notice to all Owners. Except as otherwise provided herein, all notices to any Owner shall be sent to the Owner's address as it appears in the records of the Association. All notices shall be deemed to have been given when deposited into the United States mail, first class postage prepaid, except notices of changes of address, which shall be deemed to have been given when received.

9.2 Fiscal Year. The Executive Board shall establish the fiscal year of the Association.

9.3 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason or any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

9.4 Office. The principal office of the Association shall be at such place as the Executive Board may from time to time designate.

9.5 Reserves. As a part of the adoption of the regular budget, the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the repair and replacement of the Common Elements based upon the age, remaining life and the quantity and replacement cost of the Common Elements.

9.6 Conflict of Documents. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; in the case of any conflict between the Articles of Incorporation and the Declaration, the Declaration shall control.

9.7 Dissolution. Upon the dissolution of the Corporation, the Executive Board shall, after paying or making provisions for the payment of all of the Corporation's liabilities, dispose of all of the Corporation's assets exclusively for the purposes of the Corporation in such manner as the Executive Board shall determine, or to such organization or organizations organized and operated exclusively for charitable, education, or scientific purposes as shall at the time qualify as an exempt organization or organizations under section 501(c)(3) of the Internal Revenue Code, as amended (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine.

ARTICLE 10 - AMENDMENT OF BYLAWS

10.1 Vote. These Bylaws may be amended by the Executive Board.

MADE AND ADOPTED this ____ day of May, 2024.

CERTIFICATION

KNOW ALL MEN BY THESE PRESENTS: That the undersigned authorized agent of Wildfire Homes LLC does hereby certify that the foregoing Bylaws were adopted by the Executive Board of the Association effective May _____, 2024 and do now constitute the Bylaws of the Association.

DECLARANT:

WILDFIRE HOMES LLC
a Colorado limited liability company

____
Calvin Mark Westover, Authorized Agent

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

The Divide Townhomes Owners Association

is a

Nonprofit Corporation

formed or registered on 03/07/2023 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20231268744 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 05/05/2024 that have been posted, and by documents delivered to this office electronically through 05/06/2024 @ 14:51:36 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 05/06/2024 @ 14:51:36 in accordance with applicable law. This certificate is assigned Confirmation Number 16012155 .

Jena Griswold

Secretary of State of the State of Colorado

End of Certificate

Notice: A certificate issued electronically from the Colorado Secretary of State's website is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's website, https://www.coloradosos.gov/biz/CertificateSearchCriteria.do entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our website, https://www.coloradosos.gov click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE DIVIDE,
a Colorado common interest community

TABLE OF CONTENTS

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR THE DIVIDE,
A COLORADO COMMON INTEREST COMMUNITY**

This Declaration of Covenants, Conditions and Restrictions for The Divide, a Colorado common interest community, is made and entered into this ____ day of September, 2023, by Wildfire Homes LLC, a Colorado limited liability company (as further described below, the "Declarant"). Declarant owns that certain property located in the County of Larimer, State of Colorado (the "Property" and more particularly defined on Exhibit A attached hereto and incorporated herein by this reference), and hereby subjects the Property to all of the following covenants, conditions and restrictions (the "Declaration"):

NOW, THEREFORE, in addition to the foregoing, the Declarant for itself, its successors and assigns, and for and on behalf of all existing Owners, hereby declares that the Property and any Future Parcel(s) which may be annexed to this Declaration in the manner provided for herein, shall, from the date they so become annexed, be owned, held, transferred, conveyed , sold, leased, rented, encumbered, used, occupied, maintained, altered and improved subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, and other provisions set forth above and herein, as the same may be amended and/or supplemented from time to time

I. DEFINITIONS

1.1 Affiliate means any and all partnerships, ventures, limited liability companies or other entities which the Declarant owns or in which any of the entities comprising the Declarant owns, either directly or indirectly, a controlling interest.

1.2 Architectural Review Committee or "ARC" shall mean and refer to the committee or committees created pursuant to the terms of this Declaration established to review and approve plans for the construction or alteration of Improvements on Lots as set forth in Article IV of this Declaration.

1.3 Association. The "Association" is The Divide Homeowners Association, a Colorado nonprofit corporation, which will be created by Declarant pursuant to Article VII of this Declaration.

1.4 Board. The "Board" shall mean the Board of Directors of the Association.

1.5 Common Areas. "Common Areas" shall mean the real property and improvements located within the Property, and depicted as Outlots on the Final Plat for The Wildfire Subdivision recorded in the records of the Larimer County Clerk & Recorder on August 6, 2020 at Reception Number 20200060501 (the "Plat"), as amended from time to time, being a portion of Wildfire Homes Subdivision (the "Subdivision"), and on any subsequent additions to the Property.

1.6 Common Expenses. "Common Expenses" shall mean (a) all costs, expenses and liabilities incurred by or on behalf of the Association, including, but not limited to, costs, expenses and liabilities for (i) maintaining, repairing, replacing and insuring the Common Improvements, Common Areas and Right of Way Areas; (ii) administering, maintaining, regulating and managing the Property; (iii) levying, collecting and enforcing the assessments, charges and liens due the Declarant or Association pursuant hereto; (iv) operating the Association; and (v) allocations to reserves. Common Expenses are more particularly described in Article VIII of this Declaration.

1.7 Common Improvements. "Common Improvements" shall mean all (a) driveways and sidewalks located on the Common Areas and Right of Way Areas; (b) landscaping located on the Common Areas and Right of Way Areas; (c) signage, including, but not limited to, monument signs for the Property and directional signs, excluding signs identifying specific occupants or uses of the Property or the Improvements; (d) lighting in the Common Areas and Right of Way Areas; and (e) other Improvements of any kind installed or constructed on the Common Areas or Right of Way Areas.

1.8 Completion of Construction. For purposes of this Declaration, an Improvement will be deemed completed when a final certificate of occupancy for it has been issued by the Town of Estes Parking Planning Department, or, if no such certificate is required for the Improvement involved, when all construction or other activities depicted by the plans approved by Declarant have been substantially completed.

1.9 Declarant. "Declarant" shall mean Wildfire Homes LLC, a Colorado limited liability company, its successors and assigns, including without limitation any assignee of one or more of Declarant's rights in writing (but solely with respect to such assigned rights that are assigned in accordance with the Act, as defined in Section 2.2 below). The term "Declarant" as used herein includes any entity that results from reorganization or restricting of the existing entity or the conversion thereof to another form of entity. For purposes of determining which Lots or Future Parcels are owned by Declarant, "Declarant" shall automatically be deemed to include "Affiliates" as defined in this Article I.

1.10 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions for the Divide, a Colorado common interest community.

1.11 Development Rights. "Development Rights" shall mean the following rights or combination of rights hereby reserved by the Declarant, as such Development Rights may be further described in this Declaration, to:

1.11.1 add real estate to this Property and create Lots or Common Areas within the Property in connection with the addition of such real estate, as provided in Section 14.3 of this Declaration (Right to Add Additional Land);

1.11.2 subdivide or replat Lots as provided in Section 14.5 of this Declaration (Subdivision or Replatting of Lots);

1.11.3 withdraw real estate from the Property, as provided in Section 14.4 of this Declaration (Right to Withdraw Land); and

1.11.4 create Lots and Common Areas from the Property.

1.12 Future Parcels. "Future Parcels" refers to any real property adjacent to the Property or in its vicinity which the Declarant identifies as annexable to this Declaration in any recorded document executed by Declarant which refers to this Declaration, as hereafter provided. Declarant need not own Future Parcels so long as the Owner thereof consents to the annexation of such real estate to this Declaration. Future Parcels may be added to this Declaration by the Declarant, provided such Future Parcels are properly annexed to the Town, and provided such inclusion is in accordance with applicable law and Town requirements.

1.13 Improvements. "Improvements" shall mean and include the following: (a) the construction, installation, alteration, demolition in whole or in part, or expansion of any exterior improvement, building, structure, appurtenance, or other improvements, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sidewalks, trails, bridges, sprinkler systems, garages, driveways, parking areas, fences, including gates in fences, basketball backboards and hoops, swing-sets or other play structures, screening walls, retaining walls, stairs, decks, exterior light fixtures, poles, signs, exterior tanks, utilities, facilities, parks,, lines solar panels, radiant gas piping and exterior air conditioning, colling, heating and water softening equipments, if any; (b) the staking, clearing, grading, excavation, filling or similar disturbance of the land, including without limitation any change of grade, improvements, drainage, retention and detention ponds or facilities, storm sewer and other collection facilities; (c) all initial planting of and subsequent material modifications to landscaping, hedges windbreaks, berming, plantings, trees, shrubs, flowers, vegetables, sod, gravel, and all planting, clearing or removing of trees, shrubs, grass or perennial plants, but in each instance excluding removal of dead or diseased plants and trees and excluding any replacement that is substantially similar to the item being replaced; (d) any change or alteration to the exterior material, color or texture; (e) the repainting and resurfacing of exterior surfaces of structures, including roofing materials, gutters, downspouts, drains pouts, exterior siding or stucco finish, entry doors, windows trim around doors and windows, surfaces of garage doors, external vents and flues and glass surfaces, exclusive of any replacement that is substantially identical to the item being replaced or resurfaced; and (f) reconstruction of any structures.

1.14 Lot. "Lot" shall mean each platted residential lot within the Property, as shown on the Plat or Plats of the Property as may now or thereafter be recorded in Larimer County, Colorado in accordance with the subdivision ordinances of the Town.

1.15 Master Association. "Master Association" refers to Wildfire Subdivision Master Association.

1.16 Member. "Member" shall mean and refer to a person entitled to membership in the Association as provided in Section 7.3.

1.17 Outlot. "Outlot" shall mean any portion of the Property designated as an Outlot on the Plat.

1.18 Owner. "Owner" shall mean the person or entity, whether one or more, including Declarant, holding fee title to a Lot or other portion of the Property, but does not include a Person having an interest in a lot solely as security for an obligation.

1.19 Permittees. "Permittees" means with respect to an Owner or Declarant, the tenants, mortgagees, agents, guests, employees, licensees, invitees and contractors of Owner or Declarant, as applicable.

1.20 Period of Declarant Control. The "Period of Declarant Control" shall begin with the recordation of the Declaration and terminate twenty (20) years thereafter; provided, however, the Period of Declarant Control in any event terminates no later than the earlier of sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than a Declarant and/or its Affiliates.

1.21 Person. "Person" means a natural person, a corporation, a limited liability company, a partnership, a trust, joint venture, an unincorporated association, or any other entity or any combination thereof and includes, without limitation, Declarant.

1.22 Plat. "Plat" means the plat of Wildfire Subdivision, a copy of which was recorded on August 6, 2020, at Reception No. 20200060501 in the records of the Larimer County Clerk and Recorder.

1.23 Project. "Project" shall mean The Divide, the common interest community subject to this Declaration.

1.24 Project Documents. "Project Documents" shall mean the Declaration, the Plat, the Articles of Incorporation of the Association, Bylaws of the Association, Rules and Regulations, any Guidelines adopted by the ARC, as such may be amended or supplemented from time to time.

1.25 Property. "Property" shall mean the real property located in the Town of Estes Park, County of Larimer, State of Colorado, legally described in Exhibit A, attached and incorporated herein by this reference, as amended from time to time, and any subsequent additions to the property.

1.26 Right of Way Areas. "Right of Way Areas" shall mean all internal roads and rights of way conveyed by the Plat, as amended from time to time.

1.27 Signage. "Signage" shall mean those certain written detailed requirements and criteria prepared by Declarant specifying the requirements in connection with all Signage on the Property as set forth more fully in the Design Review Guidelines. Declarant may, from time to time, revise or modify the Signage requirements as conditions warrant in its discretion. A current copy of the applicable Signage for a particular Lot may be found in the Design Review Guidelines which may be obtained from the Declarant upon written request.

1.28 Special Declarant Rights. "Special Declarant Rights" shall mean those rights described in Article XIII of this Declaration.

1.29 Supplemental Declaration. "Supplemental Declaration" shall mean a written instrument containing covenants, conditions, restrictions or equitable servitudes, or any combination thereof, which may hereafter be recorded on any portion of the Property.

1.30 "Town" means the Town of Estes Park, State of Colorado.

II. APPLICABILITY AND PURPOSE

2.1 Applicability. The Property is hereby made subject to all terms, conditions covenants, restrictions and reservations contained in this Declaration, all of which shall apply to all of the Property, every Owner, and every person or entity having any interest, including, but not limited to, any leasehold interest in any portion of the Property after the date of this Declaration. The Property shall be held, sold, conveyed, transferred, hypothecated, encumbered, leased, rented, used, occupied, developed and improved subject to this Declaration. All of the terms, conditions, covenants, restrictions and reservations contained in this Declaration shall run with the Property and every portion thereof. Each Owner of a Lot shall include in every lease to a tenant on its Lot a reference to this Declaration and shall provide a copy of this Declaration to the tenant or lessee under such lease.

2.2 Purpose. The purpose of this Declaration is to create a planned community within The Wildfire Subdivision by subjecting the Property to the planned community provisions of the Colorado Common Interest Ownership Act, Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time (the "Act"), to elect to have the Property treated as a common interest community and thereby subject the Property to the provisions of the Act, and to establish a general plan for development and improvement of the Property as a high-quality single family residential development and to ensure proper maintenance and use of the Property so as to:

2.2.1 protect the Owners and tenants of the Property from development and use of other parcels within the Property that will depreciate the value and use of their Lots;

2.2.2 enhance the value of the Property;

2.2.3 prevent the erection on the Property of structures constructed of improper or unsuitable materials or with unsuitable quality or methods of construction;

2.2.4 ensure adequate and reasonably consistent development of the Property;

2.2.5 encourage and ensure the erection of attractively designed Improvements appropriately located within the Property in order to achieve harmonious appearance and function;

2.2.6 provide adequate off-street parking; and

2.2.7 generally promote the welfare of the Owners, tenants and occupants of the Property.

III. USE OF THE PROPERTY

3.1 Use Restrictions. The Property shall be used for residential purposes as specifically set forth herein. In addition, all Owners and every person or entity having any interest, including but not limited to any leasehold interest, in any portion of the Property must abide by all restrictions and easements set forth on the final Plat.

IV. ARCHITECTURAL REVIEW COMMITTEE

4.1 Appointment of Members to ARC. The Declarant, or if the Declarant does not act, the Board, shall appoint the members of the ARC. There shall initially be three (3) members of the ARC. Members of the ARC may be, but need not be, members of the Board.

4.2 Term. Each member of the ARC shall serve at the pleasure of the Board. In the event of the death, incapacity or resignation of any member of the ARC, the Board shall appoint a successor.

4.3 Design Review Requirements.

4.3.1 No Improvements shall be constructed, erected, placed, altered, planted, applied or installed upon any Lot unless said Improvements are in full compliance with the provisions of the Project Documents and unless completed plans and specifications have been first submitted to and approved in writing by the ARC.

4.3.2 The ARC Shall exercise its reasonable judgment with the goal that all improvements generally conform to and harmonize with the existing surroundings, residence, landscaping and structures. In its review of such plans, specifications and other materials and information, the ARC may require the applicant(s) to pay a review fee and/or reimburse the ARC for the expenses incurred by the ARC in the review process. A deposit may also be required as a condition precedent to review and approval of any plans.

4.3.3 In addition to the foregoing review and approvals, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction over the Property, including issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the applicable governmental entity, if required, shall be a precondition to commencement of any construction of, alteration of, addition to or change in any Improvement.

4.3.4 In additional to the foregoing Sections, the ARC shall likewise have the power to delegate the responsibility for reviewing any application submitted to the ARC to a professional architect, landscape architect, engineer, or other professional who is qualified to review the issues raised in the application. The ARC shall also have the power to require that the applicant pay the fees reasonably incurred by the ARC in retaining such professionals to review the submitted application.

4.4 Guidelines. The Board is authorized to promulgate design and/or architectural standards, rules, regulations and/or guidelines (collectively the Residential Improvement Guidelines and Site Restrictions, hereinafter referred to as the "Guidelines"). Any such Guidelines may include rules and regulations promulgated by the Board ("Rules and Regulations"). Without limiting the generality of the foregoing, the Guidelines may contain provisions to clarify the designs and materials that may be considered in design approval; may state requirements for submissions; may state procedural requirements, or may specify acceptable Improvement(s) that may be installed without the prior approval of the ARC. By way of example, and not by limitation, such provisions may state that a certain style of roofing material and color is acceptable, or may state that only one or more types of fences are acceptable and no other types will be approved. All Improvements proposed to be constructed, and any Guidelines that are adopted, shall conform to this Declaration.

4.5 Procedures. The ARC shall approve or disapprove all applications within thirty (30) calendar days after the complete submission of all plans, specifications, and other materials and information which the ARC may require in conjunction therewith. A stamped or printed notation, initialed by a member of the ARC, affixed to any of the plans and specifications, shall be deemed a sufficient writing to confirm the ARC's decision. However, the ARC shall not be required to maintain records of plans, specifications or other documents or information that have been submitted to it for approval. Approval by the ARC shall be conclusive evidence of compliance with this Article IV, provided that the Improvements are constructed in compliance with the plans and specifications as approved.

4.6 Voting and Appeals. A majority vote of the ARC is required to approve an application or any other matter to be acted on by the ARC, unless the ARC has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the ARC renders a decision on an application which is adverse to the applicant, then the applicant shall have the right to appeal such decision to the full ARC, upon a written request therefor submitted to the ARC within ten (10) calendar days after such decision by the ARC's representative. In the event the full ARC denies the appeal by majority decision, then the applicant shall have the right to appeal such decision to the full Board, upon a written request therefor submitted to the Board within ten (10) calendar days after such decision by the ARC. Notwithstanding anything to the contrary in this Declaration, the Board may intercede of its own volition in matters of architectural approval by the ARC, and the Board may reverse, alter, amend, adjust, change, or otherwise modify any decisions of the ARC at any time, so long as any one or more Owners are not unduly prejudiced thereby.

4.7 Prosecution of Work After Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with all conditions and requirements of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application, or to complete the Improvement in complete conformance with the conditions and requirements of the approval, shall constitute noncompliance and the compliance deposit if any, shall become non-refundable; provided, however, the ARC, in its sole discretion, may grant extensions of time for completion of any proposed Improvements and proportional amounts of compliance deposit redemption.

4.8 Notice of Completion. Upon the completion of any Improvement, the applicant shall give a written "Notice of Completion" to the ARC. Until the date of receipt of such Notice of

Completion by the ARC, the ARC shall not be deemed to have received notice of completion of any Improvement on which approval has been sought and granted as provided in this Article.

4.9 Inspection of Work. The ARC or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion in order to determine whether the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Article; provided, however, that the right of inspection shall terminate sixty (60) calendar days after the ARC shall have received a Notice of Completion from the applicant.

4.10 Notice of Noncompliance. If, as a result of inspections or otherwise, the ARC finds that any Improvement has been done without obtaining the approval of the ARC, or was not done in substantial compliance with the approval that was granted, or was not completed within one (1) year after the date of approval (subject to any extensions of time granted pursuant to Section 4.7 hereof), the ARC shall notify the applicant in writing of the noncompliance; which Notice of Noncompliance shall be given, in any event, within sixty (60) calendar days after the ARC receives a Notice of Completion from the applicant. The Notice of Noncompliance shall specify the particulars of the noncompliance.

4.11 Correction of Noncompliance. If the ARC determines that the applicant is in noncompliance, the Person responsible for such noncompliance shall remedy or remove the same (and return the subject real estate and/or Improvements or structure to its original condition) within a period of not more than thirty (30) calendar days from the date of receipt of the Notice of Noncompliance. If such Person does not comply with the ruling within such period, the ARC may, at its option, retain the deposit, if any, record a Notice of Noncompliance against the Lot on which the noncompliance exists, may remove the non-complying Improvement or may otherwise remedy the noncompliance, and the Person responsible for such noncompliance shall reimburse the ARC, upon demand, for all costs and expenses incurred with respect thereto in excess of the retained compliance deposit.

4.12 Cooperation and Delegation. The Board shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with, and/or delegate to, any other architectural review committees, or one or more other boards or committees, including the Master Association, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board in its discretion. The costs and expenses for all such matters, if any, shall be shared or apportioned between such other boards or committees and the Board, as the Board may determine in its discretion from time to time. Additionally, the Board shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with, and/or delegate to, other architectural review committees, or one or more other boards or committees, including the Master Association, to collect fees, charges, or other amounts which may be due to such entity and to permit any such entity to collect fees, charges, or other amounts which may be due to the Board; in any such instance, the Board shall provide for remittance to such entity of any amounts collected by the Board.

4.13 Access Easement. Each Lot is subject to an easement in favor of the ARC, including its agents, representatives, employees and contractors thereof: for performing any of the actions contemplated in this Declaration, including without limitation Sections 4.9 and 4.11 hereof; and/or for any incidental charges related to investigation and/or enforcement of any term or provision of any of the Project Documents. If damage occurs, or a strong likelihood exists that it will occur, to any of the Property, including without limitation any Lot, the Person responsible for the damage shall be liable for the cost of prompt repair and remediation. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive matter; and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner(s) or occupant(s) of each affected Lot shall be notified of emergency entry as early as is reasonably possible. The interior of any residence located on a Lot shall not be subject to the easements provided for in this Section.

4.14 No Liability. The Board, the ARC, and the members thereof, as well as any representative of the Board and the ARC appointed to act on its behalf, shall not be liable in equity or damages to any Person submitting requests for approval or to any Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, in regard to any matter within its jurisdiction hereunder. In reviewing any matter, the Board and the ARC shall not be responsible for the safety, whether structural or otherwise, of the Improvements submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, nor compliance with any other standards or regulations, and any approval of an Improvement by the Board or the ARC shall not be deemed an approval of any such matters. No Owner or other Person shall be a third-party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval granted by the Board or the ARC.

4.15 Variance. The ARC, in its sole discretion, may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other real estate and Improvements in the Divide and shall not militate against the general intent and purpose of this Declaration. In the event the Town requires a variance, said variance shall be obtained in advance of submitting a request for variance to the ARC. Town approval of a variance does not obligate the ARC to also grant the same variance or adjustment.

4.16 Waivers; No Precedent. The approval or consent of the ARC, or any representative thereof, to any application shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the ARC or any representative thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required, nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

V. USE RESTRICTIONS

5.1 Restrictions Imposed. The Property is subject to all restrictions as contained in this Article and the Guidelines.

5.2 Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to jeopardize property values or to be detrimental to the well-being of any Owner.

5.3 Restriction and Further Subdivision. No Lot upon which a dwelling unit has been constructed shall be further subdivided or separated into smaller lots by any Owner, and no portion constituting less than all of any such Lot nor any easement or other interest herein shall be conveyed or transferred by an Owner, provided that this Section shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar corrective instruments.

5.4 Single-Family Residence. No dwelling unit or Lot shall be used for any purpose other than as a single-family residence, and no business or commercial activity shall be carried on within the project other than those authorized by the Town zoning ordinance as presently enacted or as amended in the future.

5.5 No Violation of Law. Nothing shall be done or kept in or on any Lot within the Divide which would be in violation of any statute, rule, ordinance, regulation, permit, or validly imposed requirement of any governmental body.

5.6 Appearance. All Lots within the project shall be kept in a clean, safe, and attractive condition, and no rubbish, refuse, or garbage shall be allowed to accumulate on a Lot.

5.7 Restrictions on Signs. No signs or advertising devices of any nature shall be erected or maintained on any Lot other than a sign advertising the sale of the Lot and/or dwelling unit contained thereon or except as authorized by the Act. Any sign used to advertise the Lot and/or a dwelling unit shall be no greater than two feet (2') in length and two feet (2') in height. Any for sale sign shall be removed within two (2) weeks after sale.

5.8 Rules and Regulations. Every Owner, family member, tenant, guest, and employee of an Owner shall strictly adhere to the Guidelines adopted from time to time by the Board or the ARC. The Board may adopt general rules to regulate potential issues relating to the use of the Property, including but not limited to keeping of animals, storage items, vehicles, storage and use of machinery, use of outdoor clotheslines, antennas, signs, trash, trash containers, maintenance, and removal of vegetation on the properties.

5.9 Parking. No trailers, motor homes, camper units, boats, snowmobiles, all-terrain vehicles, motorcycles or similar recreational vehicles shall be stored or permitted to remain for more than three (3) consecutive days on any Lot except within enclosed garages, or within fully screened, fenced areas (for which the vehicle, boat or camper in question shall not exceed the height of the fence), all as approved by the ARC. For clarification, it is not acceptable to move any campers, trailers, motor homes, buses, tractor/trailers, RVs or boats and repark every three (3) days to avoid enforcement of this provision. Without limiting the foregoing, the ARC or the Board shall have the power to grant permission to store such vehicles on a Lot under such conditions as the approving entity shall deem appropriate to protect the rights of other Owners. In addition, no trucks, mobile homes, large commercial vehicles, unused vehicles, snowmobiles, all-terrain vehicles or motorcycles shall be kept, placed, stored or maintained upon any Lot in such a manner that such vehicle is visible from neighboring Lots or any street. Commercial vehicles engaged in the delivery or pick up of goods or services shall be exempt from the provisions of this Section provided that they do not remain onsite in excess of the reasonable period of time required to perform such commercial function not to exceed 24 hours. For purposes of this Section, a three fourths (3/4) ton or smaller vehicle, commonly known as a "pick-up truck" shall not be deemed to be a "truck" or "commercial vehicle." The term "unused vehicle" shall mean and refer to any vehicle which has not been driven under its own propulsion for a period of ten (10) days or longer. Furthermore, no Owner or other Person shall park on or about a Lot (or on the streets adjoining any Lot) for more than three (3) consecutive days, more than one (1) personal passenger vehicle, non-commercial pickup truck or other vehicle, it being the intent of this provision that Owners or other Persons shall not regularly park more than one personal passenger vehicle outside the garage on a Lot.

5.10 Household Pets. No animals, livestock, poultry, venomous reptiles or bees of any kind shall be raised, bred, kept or boarded upon any Lot, except that dogs, cats or other household pets as the same may be defined and determined by the Board may be kept on any portion of a Lot, provided the same are not kept, bred or maintained for any commercial purposes. The Board may, in its sole discretion, limit the number, size and weight of household pets which may be kept upon any Lot. However, each Lot Owner shall have the right to keep a maximum of two (2) household pets on any Lot. Household pets shall be subject to any Guidelines adopted by the Board and all governmental ordinances and applicable laws. Each owner of a pet shall be responsible for cleanup and removal of such pet's excrement upon the Lot, streets, sidewalks or any Common Area of The Divide.

5.11 Control of Antennas and Receiving Equipment. Exterior television receiving or transmitting devices of any type, except satellite dishes twenty-four inches (24") in diameter or smaller, receiving or transmission equipment for microwave transmissions and any radio receiving or transmitting devices of any type are expressly prohibited unless approved in writing by the ARC or otherwise authorized by the Act.

5.12 Underground Electric Lines. All electric, television, radio, telephone line installations and connections from any property line of a Lot to a dwelling unit or other structure shall be placed underground, except that during the construction of a dwelling unit the contractor or builder may install a temporary utility line which shall be promptly removed upon completion of construction.

5.13 No Hazardous Activities. No activities shall be conducted in the Project or on Improvements constructed on a Lot 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 upon the Property and no open fires shall be lighted or permitted on the Lots except in a contained barbecue unit while attended and in use for cooking purposes, or within a safe and well-designed substantially enclosed fire pit while attended.

5.14 No Annoying Light, Sound, or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare. No sound shall be emitted on any Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Lot which is noxious or offensive to others.

5.15 Dog Runs, Clotheslines, Storage Sheds, and Storage Areas. No clotheslines, dog runs, service yards, wood piles, storage areas or storage sheds shall be located on any Lot, except as approved in writing by the ARC or otherwise authorized by the Act.

5.16 Trash and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be placed on any street, Lot or driveway unless placed in a container suitably located, solely for the purpose of trash pickup. All equipment and/or containers for the storage or disposal of such materials shall be kept in a clean and sanitary condition and out of public view except on trash service days.

5.17 Repair. No activity such as, but not limited to, maintenance, repair, building, rebuilding, dismantling, repainting, or servicing of any kind of machines, vehicles, trailers, or boats, may be performed on any Lot unless the work is done within completely enclosed garage or other structure located on the Lot which screens the sight and sound of the activity from the street and from adjoining property, nor shall any such activity be performed on the Common Areas. The foregoing restriction shall not be deemed to prevent washing and polishing of any vehicle, boat, trailer, or motorcycle or those activities normally incident and necessary to such washing and polishing.

5.18 Storage Tanks. No tanks for the storage of gas, fuel, oil, chemicals or other materials shall be erected, placed, or permitted above or below the surface of a Lot.

5.19 Trash Burning. Trash, leaves, and other similar materials shall not be burned within the Development.

5.20 Maintenance of Property.

5.20.1 Owner Obligation. Each Owner shall keep any Lot owned and all Improvements thereon in good order and repair and free of debris, all in a manner and with such frequency as is consistent with reasonable property management. Each Lot at all times shall be kept in a clean, sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lots so that the same are visible from any neighboring Lot or street, except as necessary during the period of construction. Each Owner agrees not have weed growth that exceeds twelve inches (12”) in height on his/her Lot.

5.20.2 Failure to Maintain Premises. In the event an Owner of any Lot shall fail to maintain the Lot and Improvements situated thereon as provided in this Declaration, either the Board or any other Lot Owner shall have the right to initiate a civil action to enforce the Owner's obligations regarding maintenance of Property. If either an Owner or the Board shall be successful in proving that the terms and conditions of the Project Documents have not been complied with, the Owner who initiates that civil action shall be entitled to recover all costs of the action, reasonable attorney's fees and shall be entitled to request that a mandatory injunction be issued requiring the defaulting Lot Owner to maintain the Property in accordance with this Declaration. It is the intent of this Declaration to allow either the Board or Lot Owner to obtain equitable relief in the event maintenance of Property is not performed by a Lot Owner subject to and in accordance with this Declaration.

5.21 Prohibition of Certain Activities; Indemnification. Nothing shall be done or kept on any Lot or in or on the Common Improvements, Common Areas or Right of Way Areas, or any part thereof, which would be in violation of any statute, rule, law, ordinance, regulation, permit or other imposed requirement of any governmental body having jurisdiction over the same. No damage to or waste of the Common Improvements, Common Areas or Right of Way Areas, or any part thereof, shall be committed by an Owner, or by an Owner's agents, employees or invitees. In addition, no Owner or the Owner's agents or employees shall use any Common Improvement, Common Area or Right of Way Area in excess of that normally and customarily used by other owners of the Property, or in any way prohibited by the Rules & Regulations. Each Owner shall indemnify and hold the Declarant, the Association, and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by Owner, or Owner's agents, employees or invitees, which is in violation of this Section 5.21.

VI. COMMON AREAS, COMMON IMPROVEMENTS AND EASEMENTS

6.1 Maintenance of Common Areas and Common Improvements. Declarant, or the Association as the case may be, shall maintain all Common Areas and Common Improvements within the Property in the manner herein provided. As set forth in Section 8.2, Declarant or Association may enter into an agreement with any other community associations and/or any metropolitan district, including the Master Association, to share some or all of the costs and/or responsibility for any maintenance, repair, replacement, or to perform maintenance, repair or replacement of Common Areas and Common Improvements. Any maintenance, repair or replacement of the Common Areas and Common Improvements by Declarant or Association shall be deemed to be for the benefit of all Lots within the Property, except as otherwise provided herein, and Declarant or Association shall be entitled to assess owners of Lots within the Project for all such work.

6.2 Grant of Easements.

6.2.1 Easement of Enjoyment; Common Areas. Every Owner and its respective Permittees, shall have a perpetual non-exclusive right and easement for the use and enjoyment of, and for access over, across, and upon, any portion of the Common Areas designated for common use that shall be appurtenant to and shall pass with the title of the Lot to the Owner, provided, however, that such right and easement shall be subject to the following:

(a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, and the Plat;

(b) the right of the Declarant or Association to enter into an agreement with, or enter into any document conveying to, any other community associations and/or any metropolitan district, including the Master Association, for any portion of the Common Areas; and

(c) the right of the Declarant or Association to adopt, from time to time, such Rules and Regulations concerning the Property as the Association may determine are necessary or prudent for the management, preservation, safety, control, orderly operation, or use of the Property for the benefit of all Owners.

6.2.2 Recorded Easements. The Property shall be subject to any easements as shown on any recorded Plat affecting the Property, or as reserved or granted under this Declaration.

6.2.3 Easements for Declarant and Association. Each Lot shall be subject to an easement in favor of the Declarant or the Association (including their respective assignees, agents, employees, and contractors) as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration, including but not limited to the maintenance, repair, construction and restoration of the Common Areas and all other portions of the Property.

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

6.2.5 Utility Easements. There is hereby created and granted a blanket easement on, over, in, under and through the Common Areas for the installation, replacement, repair, operation and maintenance of utilities, including, but not limited to water, sewer, gas, telephone, electricity, data transmission, fiber optic and satellite and cable systems serving the Project. This blanket easement includes future utility services not presently available to the Project that may reasonably be required in the future.

(a) By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment, and appurtenances within, in, on, over, under or across any portion of the Property;

(b) 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 Divide without conflicting with the terms hereof; provided, however that such power shall cease upon termination of the Special Declarant Rights as defined in Article XIII, at which time such reserved right shall vest in the Association; and

(c) The easement granted in this Section 6.2.5 shall in no way affect, void, extinguish or modify any other recorded easement(s) on, over, in, under and through The Divide.

6.2.6 Easements for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot, an easement for the existence of such encroachment and for the maintenance of the same shall exist. The easement shall extend for whatever period of time the encroachment exists. Encroachments referred to herein include, but are not limit to, unintentional encroachments caused by error in the original construction of improvements on a Lot, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the planned community or any part thereof or by any other movement of any portion of the Improvements located in the Project. Such easements shall not be considered to be encumbrances either on the Common Areas or on a Lot; provided, however, that encroachments created by the intentional act of an Owner shall not be deemed to create an easement, shall be considered an encroachment upon the Property, and such encroachment shall be removed at Owner's expense immediately upon notice from the Association. In the event such encroachment is not timely removed, the Association may effect removal of the encroachment and the expense thereof shall be levied as an assessment to the Owner.

6.3 Easements Deemed Created. Owners and Declarant, and their respective Permittees, as applicable, are entitled to the easements as described in Section 6.2 above and all conveyances of Lots hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in Section 6.2, even though no specific reference to such easements or to Section 6.2 appears in the instrument for such conveyance.

VII. THE DIVIDE HOMEOWNERS ASSOCIATION

7.1 Formation of Association. At any time, but in no event later than the sale of the first Lot to an Owner, Declarant may form a nonprofit, incorporated association, to be known as The Divide Homeowners Association, for the purposes and with the powers set forth below. The Association shall be incorporated in accordance with the laws of the State of Colorado. During the period of Declarant's Control, Declarant shall have the right to appoint and remove officers and directors of the Board, and Declarant shall continue to have the right to designate the ARC, to revise the Guidelines, and by and through the ARC, shall continue to exercise all rights under Article V until such time as Declarant specifically assigns those rights in writing to the Association.

7.2 Cooperation with Other Community Associations and/or any Districts. The Association shall have the right and authority at any time and from time to time, to enter into agreements and otherwise cooperate with any other community associations and/or any metropolitan districts, including the Master Association, to share the costs and/or responsibility for any maintenance, repair, replacement, or other matter; to perform maintenance, repair or replacement for any persons in consideration of payment or reimbursements therefore; to utilize the same contractors, subcontractors, managers or others who may perform services for the Association and/or any other community associations and/or any metropolitan districts, including the Master Association; or to otherwise cooperate with any other community associations and/or any districts, including the Master Association, in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board in its discretion. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any other community associations and/or any districts as the Board may determine in its discretion.

7.3 Membership in Association. The Members of the Association shall be all Owners of Lots within the Property, including Declarant (if it owns a Lot(s)). As soon as the Association has been validly formed in accordance with state law, each Owner of a Lot shall automatically become a Member. Membership shall continue so long as a Member has record ownership of any Lot within the Property. As soon as such ownership ceases, membership in the Association automatically terminates. Such past Members shall, however, remain liable to the Association for any unpaid obligations arising during the period of such Member's ownership. By accepting a deed to its Lot, each Owner agrees to become a Member of the Association and agrees that it will not assign, encumber or transfer its membership in the Association in any manner except upon the sale of its Lot(s).

7.4 Purposes of Association. In addition to the duties enumerated in the Articles of Incorporation and Bylaws of the Association ("Bylaws") or elsewhere in this Declaration, the Association shall be formed for the purpose of maintaining, repairing and replacing the Common Areas, Right of Way Areas and Common Improvements, unless an agreement with a governmental authority including metropolitan districts provides otherwise, including without limitation, the following items, each of which shall be a Common Expense:

7.4.1 the improvement, maintenance, repair, reconstruction, and replacement of the Common Improvements including, without limitation, any fences located on Common Areas and

Right of Way Areas, landscaping located on Common Areas and Right of Way Areas, and monument, traffic and directional signs;

7.4.2 the improvement, maintenance, repair, reconstruction, and replacement of that portion of the Property used for a drainage easement or detention pond and related improvements, including, but not limited to, the Common Areas;

7.4.3 the maintenance, repair, upkeep, reconstruction, and replacement of the storm drainage channels, water quality measures, and storm sewers constructed as part of the Property;

7.4.4 the maintenance, repair and replacement of all paved surfaces and curbs of all private roads, trails, and sidewalks within the Property, which are Common Improvements, in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resurfacing and resealing;

7.4.5 periodically removing papers, debris, filth, refuse, ice and snow to the extent necessary to keep the Property and Common Improvements in a first class, clean and orderly condition;

7.4.6 maintaining, cleaning and replacing any appropriate directional, stop or handicapped parking signs or markers; keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks; and maintaining, repairing and restriping roads, drive lanes and driveways located on the Common Areas or Right of Way Areas as necessary to maintain traffic direction;

7.4.7 maintaining, cleaning and replacing lighting facilities on the Property which are Common Improvements, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers, illuminating the Common Improvements; provided however, exterior building lighting fixtures, including any lighting fixtures associated with an architectural feature forming a part of such building, shall be considered a part of such building, and the maintenance and replacement of such fixtures, and the cost of illumination, shall be the obligation of the Owner upon whose Lot such fixtures are located;

7.4.8 maintaining and replacing all landscape plantings, trees, shrubs and trails on the Property which are Common Improvements in an attractive and thriving condition, trimmed and, to the extent reasonably possible, weed-free; maintaining and replacing landscape planters; providing water for landscape irrigation through a properly maintained system, including performing any seasonal (start up and/or winterization) maintenance thereto, and any modifications to such system to satisfy governmental water allocation or emergency requirements;

7.4.9 keeping the Common Improvements free from any obstructions unless such obstruction is permitted under the provisions of this Declaration;

7.4.10 maintaining, cleaning and replacing sidewalks on the Property that are Common Improvements; and

7.4.11 maintaining, repairing and operating the landscaping on Common Areas and Right of Way Areas as described in or reasonably required by the terms of the Plat.

In addition, the Association shall have the following powers:

7.4.12 To install, operate and maintain any common monument or other similar signs for the benefit of the Property;

7.4.13 To hold, enjoy and utilize the nonexclusive access, maintenance and utility easements in, under and across the Property as set forth in Section 6.2 above;

7.4.14 To levy and collect assessments as provided for in Article VIII of this Declaration;

7.4.15 To obtain and maintain in effect such liability, casualty and other insurance as the Board deems appropriate to protect the Association's interest;

7.4.16 To adopt rules and regulations ("Rules & Regulations") for all or a part of the Property and enforce the covenants, conditions, restrictions, reservations, easements, and regulations contained in this Declaration;

7.4.17 To enter into contracts with vendors to provide services to the Property;

7.4.18 To hire a property management company;

7.4.19 To empower the Board as granted in the Bylaws; and

7.4.20 Such other rights and duties as may be set forth in a written amendment to this Declaration adopted in accordance with Section 12.2 of this Declaration.

7.5 Owner's Misconduct. If any Common Expense is caused by the misconduct of any Owner or such Owner's Permittee, the Declarant may assess that expense exclusively against such Owner's Lot. The amount of the Owner's liability will be determined by the Declarant at a hearing of the Board pursuant to the Bylaws.

7.6 Voting Rights. In all matters on which Members are entitled to vote, each Lot shall be entitled to one vote. When more than one person is an Owner of a Lot, all such persons shall be Members. The vote for such Lot may be exercised by one person or alternative persons as the Owners themselves determine. If more than one of the multiple Owners is present at a meeting in person or by proxy, the vote allocated to their Lot may be cast only by agreement of a majority in interest of the Owners.

VIII. ASSESSMENTS

8.1 Assessment for Common Expenses. All Owners of Lots shall be obligated to pay the assessments imposed by the Association to pay for Common Expenses (Regular, Special, and Supplementary assessments collectively referred to as "Assessments"). Each Lot shall be assessed an equal pro rata share, except for any assessment which may be may assessed against one or more but not all of the Lots. Subject to the provisions of this Declaration, the Association shall have the power and authority to reasonably determine all matters in connection with assessments, including power and authority to determine where, when and how assessments should be paid, and each Owner shall be required to comply with any such determinations. Upon Completion of Construction as defined in Section 1.8, such Lot shall thereafter be subject to assessment in the same manner as any other Owner. Each Owner shall have the right to review and audit, at such Owner's sole expense, the records relating to any assessments against such Owner's Lot.

8.2 Determination of Amount of Regular Assessments. The total amount to be raised by regular assessments to pay the expenses of maintaining, repairing, replacing and insuring the Common Improvements for the subsequent fiscal year shall be determined annually by the Association. The assessments for expenses shall be based upon the amount the Association shall from time to time determine is required to pay all estimated expenses, including a reserve fund for the replacement of those items that must be replaced periodically.

To determine the total amount required to be raised by regular assessments, the Association shall cause to be prepared an annual budget showing, in reasonable detail, the estimated costs and expenses which will be payable in the following year and the estimated income and other funds which will be available in the following year. Within ninety (90) days after adoption of the proposed budget, the Board shall mail, by ordinary first-class mail, or deliver by electronic posting on a website or otherwise, a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed in the Bylaws. The Board shall give notice to the Owners of the meeting as provided in the Bylaws. The budget does not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of the Owners holding at least sixty-seven percent (67%) votes in the Association, whether or not a quorum is present. In the event the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners shall continue to govern until a subsequent budget proposed by the Board is not vetoed by the Owners.

8.3 Special Assessments. In addition to regular assessments, the Association may levy special assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, to the extent the amounts in any capital reserve fund are insufficient therefore, the cost of reconstruction, repair or replacement of the Common Improvements or any part thereof, or for the other expenses incurred or to be incurred as provided in this Declaration or for the costs, expenses and attorneys' fees incurred by the Association in any action to enforce any breach of this Declaration as provided therein.

8.4 Supplementary Assessments. If the amount received by the Association for regular assessments is less than the amount required for maintenance of the Common Improvements, whether as a result of defaults by some Owners in making payments or as a result of mistaken estimates in budgeting or otherwise, the Association may, at any time, levy supplementary assessments to cover the deficiency. If the Association levies supplementary assessments to cover shortfalls caused by defaults by some Owners and subsequently recovers delinquent amounts from such Owners, the amount recovered shall be refunded pro rata to the Owners who paid the supplementary assessments or credited against future assessments payable by such Owners.

8.5 Payment of Assessments. Prior to the commencement of each year, the Association's Board shall mail to each Owner and/or post on the Association's website, a copy of the Association's annual budget for such year and a written statement of such Owner's annual assessment and monthly payments thereof. If an Owner acquires a Lot after the start of a year, a statement of that Owner's annual assessment and monthly payments shall be delivered to the Owner at the closing of the purchase of the Lot. One-twelfth (1/12) of such Owner's annual assessment shall be due and payable to the Association on the first day of each month during the year. Such monthly payments shall be prorated if the initial ownership of a Lot commences on a day other than the first day of the month. If the Association has not delivered to Owners the new budget by the first of the year, Owners will continue to pay monthly assessments in the manner provided herein at the previous year's amount until the new budget and assessment amount is delivered to Owners.

Any special assessment or any charge, or other amount payable with respect to any Owner or under any provision of this Declaration, shall be due and payable within fifteen (15) days after written notice of the amount due is given by the Association to the obligor thereof, and a late charge equal to five percent (5%) of the amount due shall be included and paid with all overdue payments. In addition, any amount payable to the Association under this Declaration shall bear interest at the rate of eighteen percent (18%) per annum, or the prime rate published in the Wall Street Journal, plus five percent

(5%), whichever is greater, from the date such amount is due and payable until the date it is paid. The Association may recover reasonable attorney fees and other legal costs for collection of assessments and other actions to enforce the power of the Association, regardless of whether or not suit is initiated, and, after notice and an opportunity to be heard, the Association may levy reasonable fines for violations of this Declaration, the Bylaws or the Rules & Regulations of the Association (a "Fine").

8.6 Owner's Obligations for Payment of Assessments. The amount of Common Expenses assessed against each Lot shall be the personal and individual debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid assessments, and costs of suit and attorneys' fees, shall be maintainable by the Association without foreclosing or waiving any lien securing the same. Each Owner is liable for assessments made against such Owner's Lot during the period of ownership of such Lot; provided, however, that a former Owner of a Lot remains liable to the Association for all such amounts which had accrued and were payable at the time of the sale of fee simple title to the Lot to a new Owner. No Owner may be exempt from liability for assessments against such Owner's Lot by waiver of the use or enjoyment of any of the Common Areas, Common Improvements or by abandonment of the Lot against which the assessments are made.

8.7 Lien for Assessments and Other Amounts. The Association shall have a lien against each Lot to secure payment of any Assessment, charge, Fine, penalty or other amount due and owing to the Association with respect to the Lot, plus interest at the rate of eighteen percent (18%) per annum or the prime rate published in the Wall Street Journal, plus five percent (5%), whichever is greater, from the date due and payable, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. To evidence such lien, the Association shall 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 the Association and may be recorded in the office of the Clerk and Recorder of Larimer County, Colorado. Such lien shall attach from the date of the failure of payment of the amount due.

Subject to C.R.S. §38-33.3-316, such lien shall be superior to any liens and encumbrances and shall be superior to any exemptions as now or hereafter provided by state homestead law and federal law. The acceptance of a deed to a Lot shall constitute a waiver of such exemptions and all procedures and rights related thereto. Such 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, the costs and expenses for filing the notice or claim of lien and all reasonable attorneys' fees. The Owner shall also be required to pay to the Association the monthly assessment for the Lot during the period of foreclosure and any applicable redemption period, and the Association shall be entitled to the appointment of a receiver to collect the same.

8.8 Assessment for Private Driveway. Access to Lots 2, 3, 4, and 5 is over and across a private driveway located on Outlot E, and Lots 3, 4, 5 (the "Private Driveway"). The Private Driveway shall be a limited common element for the benefit of Lots 2, 3, 4 and 5. The Association shall be responsible for the maintenance, repair and replacement of the Private Driveway and shall be entitled to assess the Owners of Lots 2, 3, 4 and 5 on an equal basis for the cost thereof.

8.9 Assignment of Assessments. The Board shall have the unrestricted right to assign its right to receive assessments for Common Expenses and other future income, either as security for obligations of the Association or otherwise, provided that any such assignment is first approved in writing by the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

IX. MAINTENANCE OF IMPROVEMENTS

9.1 Obligation to Maintain. All Improvements constructed on a Lot shall be maintained, or caused to be maintained, by the Owner thereof in a first-class condition; provided, however, subject to Section 6.1 above, Declarant or the Association shall maintain all Common Improvements, Common Areas and Right of Way Areas. Maintenance of each Lot shall include, but not necessarily be limited to, repairing any structural defects in Improvements, keeping the exteriors of any structures on the Lot in first-class condition, including painting as required, maintaining all landscaping and pedestrian areas, streets and parking facilities on the Lot, keeping vehicular and pedestrian areas free from dangerous accumulations of snow and ice, keeping the Lot free of trash and debris, and keeping all signs and lighting on the Lot clean and functional. At all times, but particularly during construction, the Owner of a Lot shall control noxious weeds and fugitive dust in accordance with applicable governmental requirements, and shall keep adjacent properties, streets and roads free from accumulations of mud, dirt and debris on the Property.

9.2 Landscape Maintenance. All landscaped areas on a Lot that are not Common Areas or Right of Way Areas are to be installed and maintained by the Owner thereof in a neat and orderly fashion.

9.3 Right to Maintain. If the Declarant or Association determines any Lot or portion thereof or the Improvements located thereon are not being maintained in the manner specified in Sections 9.1 and 9.2 above, Declarant or Association shall give the Owner of the Lot written notice pursuant to the Bylaws, specifying the maintenance which Declarant or Association determines is required under this Declaration. If the maintenance specified in such notice is not satisfactorily performed within thirty (30) days after delivery of such notice (or commenced and diligently pursued if such cannot reasonably be completed within thirty (30) days), Declarant or Association shall have the right, but not the obligation, to perform such maintenance and shall have the right to enter the Lot involved and perform any acts reasonably necessary to complete such maintenance. Declarant or Association shall not be liable for any losses, costs or damages to any tenant or Owner of any Lot on account of its performance of such maintenance except for any such loss, cost or damage caused by the gross negligence or willful misconduct of Declarant or the Association. Declarant or Association may delegate its maintenance rights hereunder to third-parties, including the Master Association.

9.4 Reimbursement and Lien. If Declarant or Association performs maintenance pursuant to Section 9.3 above, Declarant or Association will submit to the Owner of the Lot upon which or for whose benefit such maintenance was performed a written statement of the costs incurred by Declarant or Association in performing the maintenance. These costs shall be a personal obligation of the Owner involved and shall be paid to Declarant or Association within twenty (20) days after receipt of such notice. If any such costs or assessments have not been paid after expiration of this twenty (20) day period, Declarant or Association may thereafter record a lien against the Lot in the amount of all such costs or assessments, together with all related costs incurred by Declarant or Association in collecting such costs and assessments, which lien shall be senior to all other liens or encumbrances of record except for tax liens imposed by operation of statute and the lien of any first mortgage or first deed of trust. This lien may thereafter be foreclosed upon in the manner provided by Colorado law for foreclosing upon real estate mortgages. Any lien recorded pursuant to this Section shall provide that all sums expended by Declarant or Association in foreclosing the lien and collecting the amounts due Declarant or Association (including reasonable attorneys' fees) shall be additional indebtedness secured by the lien.

X. ENFORCEMENT

10.1 Remedies. The terms, condition, covenants, reservations and restrictions contained in this Declaration may be enforced as provided hereinafter by the Declarant, the Association, or an

Owner of a Lot. The Declarant or the Association shall be acting for itself, and/or on behalf of all of the Owners of Lots. Violation of any term, condition, covenant, restriction or reservation contained in this Declaration shall give to the Declarant or the Association the right to enter upon the Lot wherein said violation or breach exists and to summarily abate and remove at the expense of the Owner any structure or condition constructed or maintained in violation of this Declaration, and/or to prosecute a proceeding at law or in equity to enjoin or prevent such violation or breach and to recover damages for said violation. Furthermore, any costs incurred by the Declarant or the Association in correcting any violation, whether summarily or by proceeding at law or equity, which are not paid by the Owner of the Lot involved within (i) thirty (30) days after receipt of written notice of such costs, may be filed as a lien upon the Lot as provided in Section 8.7 above; or (ii) twenty (20) days after receipt of written notice of such costs, may be filed as a lien upon the Lot as provided in Section 9.4 above. Neither the Declarant, the Association nor an Owner shall be required to post any bond as a condition to the granting of any injunctive relief for a violation of this Declaration (including a preliminary injunction or temporary restraining order), nor shall the right to such injunctive relief be affected by any arbitration provisions in any contract executed by an Owner, a tenant or their agents. The rights and remedies provided herein shall be cumulative and not exclusive and shall be in addition to, and not in lieu of, any other rights and remedies that may exist at the time of such violation of this Declaration. The exercise of any one or more of such rights and remedies shall not be deemed an election precluding the exercise of any of the others. Notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of this Declaration, Bylaws, Articles, or Rules & Regulations or to compel the removal of any building or improvement because of the violation of the terms of any such building restriction unless the action is commenced within one (1) year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

10.2 Inspection. Declarant or Association may from time to time at any reasonable hour enter and inspect any part of the Property and any Improvements thereon to ascertain compliance with this Declaration. Except in emergency situations, Declarant will use good faith efforts to give Owner at least twenty-four (24) hours advance notice of any such entry. Entry by the Declarant or its agents upon any part of the Property and all action taken thereupon in connection with the care and maintenance thereof, or pursuant to any rights of the Declarant hereunder, shall not be deemed a trespass, and all claims for damages by reason thereof are thereby expressly waived and shall be deemed waived forever by the acceptance of any interest whatsoever in any part of the Property.

10.3 No Waivers. The failure of the Declarant, the Association or any other party to enforce any of the terms, conditions, covenants, restrictions or reservations in this Declaration shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other term, condition, covenant restriction or reservation. Neither the Declarant, the Association nor any other party with the right of enforcement shall be liable for any failure to enforce any term, condition, covenant, restriction or reservation contained in this Declaration.

10.4 Costs and Fees. In any legal or equitable proceeding for the enforcement of any provision of this Declaration, the prevailing party therein shall be entitled to recover all costs and the reasonable attorneys' fees from the non-prevailing party. Recoverable costs shall include, without limitation, the costs of investigation, discovery and settlement, expert witness fees and all additional costs incurred in enforcing or collecting any judgment rendered.

10.5 Violations; Fines. Except for non-payment of Assessments and maintenance costs (which are subject to the separate provisions of Article IX and Section 9.4 above) if an Owner is in violation of any of the provisions of this Declaration or the Guidelines, the Declarant or the Association may give the Owner involved written notice of the violation (a "Demand for Abatement") pursuant to the Bylaws. If the violation continues past the time allowed in the Demand for Abatement or if the same violation subsequently occurs, then Declarant may give the Owner involved a written notice of hearing ("Notice of Hearing") pursuant to the Bylaws, and the proposed sanction may include payment of a Fine as set forth in the Association's policies from the date the Notice of Hearing was delivered until the violation involved is fully cured. This sum shall be payable as specified in the Bylaws and in accordance with Colorado law, and if not paid when due, shall be a lien upon the Owner's Lot, to the same extent as assessments under Article VIII above, and may be collected in the same manner.

10.6 Deemed Nuisances. Every violation of this Declaration is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against an Owner shall be applicable. Without limiting the generality of the foregoing, this Declaration may be enforced as provided above in this Article X.

XI. INSURANCE AND TAXES

11.1 Insurance.

11.1.1 Commencing not later than the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain insurance as required by the Act and other applicable law, including the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of such coverage shall be paid by the Association as a Common Expense. Insurance premiums for all insurance provided by the Association shall be a Common Expense to be included as part of the Assessments levied by the Association. In addition, the Association may maintain such insurance on such other property as the Board may determine in its discretion from time to time, or as may be hereinafter required. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any of the agencies with respect to their insurance, guaranty, or purchase of security interests.

(a) Property insurance on the Common Areas for broad form covered causes of loss; except that the total amount of insurance must not be less than the full insurable replacement costs of all the insured property less applicable deductibles at the time the insurance is purchased and at such renewal date, exclusive of land, foundations, excavations and other items normally excluded from property policies.

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Areas and the performance of its maintenance obligations, insuring the Association in an amount not less than One Million Dollars ($1,000,000.00) per occurrence, insuring the Board, the Association, any managing agent, and their respective employees, agents and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Board. The Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Areas. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts of the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Association or any portion of the Property and/or any Owner who disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance 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 two (2) months aggregate Assessments on the Lots, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor engaged for the purposes of managing the Association to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated 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 subsection (iii).

(d) In addition, the Association may obtain insurance against such 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.

(e) The Association shall obtain workers' compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

11.1.2 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. Unless otherwise provided by statute, and to the extent available, the policy will include a provision that the insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or nonrenewal have been mailed to the Association and each Owner and each security interest holder to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question to any party in interest, including any security interest holder, upon request. 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, omissions, negligence, or willful misconduct of an Owner where such Owner is not under the control of the Association. All policies, to the extent obtainable, shall contain waivers of subrogation against the Declarant, the Association, the Board, Members, Owners, their guests, and invitees.

11.1.3 Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment.

(a) To the extent the Association settles claims for damages to real property, it shall have the authority but not the obligation to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than any one Lot is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

(b) Any determination by the Association 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 any Owner, its tenants, family members, guests or invitees, may be made only after notice and hearing to the Owner pursuant to the Bylaws. Upon such determination by the Association, any such loss or portion thereof may be assessed to the Owner and the Association may collected the amount from such Owner in the same manner as any Assessment.

11.1.4 Payment of lnsurance Proceeds. Any loss covered by an insurance policy described in Section 11.1.1(a) of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any security interest holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and security interest holders as their interests may appear. Insurance proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and security interest holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored.

11.1.5 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds payable 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 any Assessment. Any such Owner's policy shall also contain waivers of subrogation.

11.1.6 Acceptable Insurance Companies. Each insurance policy purchased by the Association must be written by a hazard insurance carrier rated by Best's Rating Guide not less than A-, which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (i) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor's or mortgagee's designee, or (ii) 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 (iii) the policy includes any limiting clause (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

11.1.7 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance.

11.1.8 Notice of Cancellation. If the insurance described in Sections 11.1.1(a) and 11.1.1(b) is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be delivered to all Owners pursuant to Article XV. If the insurance described in Sections 11.1.1(a) and 11.1.1(b) is not reasonably available, the Association may carry any other insurance it considers appropriate.

11.2 Insurance to be Maintained by Owners.

11.2.1 All Owners shall be required to obtain hazard insurance coverage for their Lot(s) and the Improvements thereon. Owners shall provide the Board with proof of such insurance coverage upon request. Such insurance shall provide coverage equal to the current replacement costs, exclusive of land, excavations, and other items normally excluded. In addition, insurance coverage on furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each Lot, shall be the sole responsibility of the Owner. The Declarant, Association and the Board shall not have responsibility for insurance coverage on any property owned by an Owner.

11.2.2 Any damage to or destruction of any structure located on a Lot shall, except as hereinafter provided, be promptly repaired and reconstructed by the Owner using insurance proceeds and/or personal funds of such Owner. "Repaired and reconstructed," as used in this Section shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. All repair and reconstruction shall be in conformance with the Guidelines, as amended, and with approval of the ARC. If a residence is destroyed or so damaged that the residence is no longer inhabitable, then the Owner of such Lot shall, within a reasonable time not to exceed ninety (90) days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction of the residence or demolish the same. Demolition of a residence shall include removal of any foundation slab, basement walls, and floors; regrading of the Lot to a level condition; and the installation of such landscaping as required by the ARC pursuant to a plan submitted by the Owner. If the Owner does not either commence repair, reconstruction, or demolition activities within a reasonable time, as provided in this Section 11.2.2, and diligently pursue the same in conformance with the plans approved by the ARC, then the Association may, in its discretion, after providing the Owner with notice and an opportunity to be heard, enter upon the Lot for the purpose of demolishing the residence and then landscape the Lot in conformance with approved plans. The cost related to such demolition and landscaping shall be the personal obligation of the Owner of the Lot on which such work is performed and shall be subject to all the terms and provision applicable to Assessments, including without limitation, interest, late charges, and lien rights.

XII. TERMINATION AND AMENDMENT

12.1 Term. This Declaration, and any amendments thereto, shall remain in effect for a period of thirty (30) years from the date this Declaration is recorded with the Larimer County Clerk and Recorder and shall automatically be renewed for successive ten (10) year period unless, prior to the expiration of the initial term or any extensions thereof, an instrument stating that extension is not desired, signed and acknowledged by the Owners entitled to vote totaling at least sixty-seven percent (67%), is recorded with the Larimer County Clerk and Recorder. If this Declaration is terminated, any easements granted in Section 6.2 above will continue in full force and effect, such provisions surviving any termination of this Declaration.

12.2 Amendment. The Declaration may be amended by Owners entitled to vote, holding at least sixty-seven percent (67%) of the total votes of all Owners, including Declarant, duly acknowledged and recorded with the Larimer County Clerk and Recorder. Amendments to this Declaration shall become effective upon being recorded with the Larimer County Clerk and Recorder.

12.3 Amendments by Declarant. Declarant reserves the right to amend, without the consent of the Owners or first mortgagees, this Declaration any time prior to the date of termination of the Period of Declarant Control as set forth in Section 1.19 hereof, as follows:

12.3.1 to make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement;

12.3.2 to comply with any requirements of any of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development, the Department of Veterans Affairs or any other governmental or quasi-governmental entity (collectively, the "Agencies") or to induce any of the Agencies to make, purchase, sell, insure, or guarantee a first mortgagee; or

12.3.3 to comply with any requirements of the Act., or other governmental authorities.

The amendments will not impair the lien of a first mortgagee or any warranties made to any first mortgagee prior to the amendment.

XIII. DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

13.1 Development Rights and Special Declarant Rights. The Declarant reserves, for itself and its successors in title, whether specifically recited in a deed or grant of a Lot from the Declarant to its successor in title, during the Period of Declarant Control, the following Development Rights and Special Declarant Rights:

13.1.1 the right to enlarge the Common Areas, reduce or diminish the size of Lots, reduce or diminish the size of areas of the Common Areas, subdivide Lots or complete or make improvements, as the same may be indicated on plats or maps filed of record or filed with the Declaration;

13.1.2 the right to create or construct additional Lots, Common Areas and Limited Common Areas, to subdivide Lots and to convert Lots into Common Areas or to convert Common Areas into Lots;

13.1.3 the right to add Lots and to subject all or any part of the property described in *Exhibit D* attached hereto and additional unspecified real estate to the provisions of this Declaration;

13.1.4 the right to exercise any Development Rights reserved or allowed in the Act;

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

13.1.6 the right to merge or consolidate the project with another common interest community;

13.1.7 the right to withdraw all or any part of the Property and any additional property annexed pursuant to Section 13.1.3 from the Project;

13.1.8 the right to use and to permit others to use easements through the Common Areas, as may be reasonably necessary;

13.1.9 the right to appoint or remove any officer of the Association or any Director during the Declarant control period;

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

13.1.11 the right to amend the Declaration in connection with the exercise of any Development Right;

13.1.12 the right to amend the Maps in connection with the exercise of any Development Right; and

13.1.13 the right to exercise any additional reserved right created by any other provision of this Declaration.

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

13.2 Additional Reserved Rights. In addition to the rights set forth above, Declarant also reserves the following additional rights:

13.2.1 Sales. The right to maintain mobile and other sales offices, parking lots, management offices and models on Lots or on the Common Areas;

13.2.2 Signs. The right to maintain signs and advertising on the Project to advertise the Project or other communities developed or managed by, or affiliated with the Declarant;

13.2.3 Dedications. The right to establish, from time to time, by dedication or otherwise, public streets, utility and other easements for purposes including but not limited to public access, private access, paths, walkways, drainage, recreation areas, parking areas, and to create other reservations, exceptions and exclusions;

13.2.4 Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of parking and/or recreational facilities and/or Common Areas, which may or may not be a part of the Project;

13.2.5 Construction Easement. Declarant and its assignees expressly reserve the right to perform warranty work, and repairs and construction work and to store materials in secure areas, on Lots and in Common Areas, and the future right to control such work and repairs, and the right of access thereto, until completion. Declarant and its assignees have such an access easement through the Common Areas and an access easement through the Project as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to place construction trailers on the Property, and to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the Property;

13.2.6 Access Easement. Declarant and its successors and assigns shall have an access easement to and from real property accessible through the Community; and

13.2.7 Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration.

13.3 Rights Transferable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the County of Larimer, State of Colorado pursuant to C.R.S. § 38-33.3-304 of the Act. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. §38-33.3-210 without the consent of the Association, any Lot Owners or any holders of security interest on a Lot. Any rights created or reserved under this Article or the Act for the benefit of the Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of the County of Larimer, State of Colorado. Such instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. §38-33.3-210 with the consent of the appropriate Lot Owner(s) or any holders of a security interest on a Lot. Upon such assignment, and only to the extent thereof, Declarant shall be relieved from all liabilities, obligations and duties hereunder. The term "Declarant" as used herein includes such assignee(s) of Declarant, and its respective successors and assigns but only to the extent of the rights of Declarant actually assigned in accordance herewith

13.4 No Further Authorizations Needed. The consent of Lot Owners or holders of security interests shall not be required for exercise of any reserved rights, and the Declarant or its assignees may proceed without limitation at their sole option. The Declarant or its assignees may exercise any reserved rights on all or any portion of the Property and additional property in whatever order determined. The Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Lots initially submitted.

13.5 Amendment of the Declaration or Map. If the Declarant or any assignee elects to exercise any reserved rights, that party shall comply with the Act.

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

13.7 Maximum Number of Lots. Subject to Declarant's right to add additional land pursuant to Section 13.1.3, the maximum number of Lots in the planned community shall be twenty-five (25) Lots, or, if allowed by the Act, the maximum number of Lots allowed by any governmental entity having jurisdiction over the Property, pursuant to any development plan or approvals for the Property. Declarant shall not be obligated to expand the planned community beyond the number of Lots initially submitted to this Declaration.

13.8 Termination of Reserved Rights. The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above unless (a) reinstated or extended by the Association subject to whatever terms, conditions and limitations the Board may impose on the subsequent exercise of the expansion rights by Declarant, (b) extended as allowed by law, or (c) terminated by written instrument executed by the Declarant and recorded in the real property records of the County of Larimer, State of Colorado.

XIV. DECLARANT'S RIGHTS AND DUTIES

14.1 Exemption of Declarant. Nothing in this Declaration shall limit, and no Owner shall do anything to interfere with, the right of Declarant to further subdivide any portion of the Property owned by Declarant, or to complete excavation and grading and construction of Improvements to and on any portion of the Property owned by Declarant. Such right shall include, but shall not be limited to, carrying on excavation and grading work and erecting, constructing and maintaining on the Property such structures as may be reasonably necessary for the conduct of Declarant's work on the Property or the sale, lease or other disposition of the Property.

14.2 Resolving Questions. If any doubt or questions arise concerning the intent of meaning of this Declaration, Declarant, until the Association is formed, and thereafter the Association, shall determine the proper construction of the provision in question and shall set forth in written instrument duly acknowledged and filed in Larimer County, Colorado, the meaning, effect and application of the provision. This definition will thereafter be binding on all parties so long as it is not arbitrary or capricious.

XV. NOTICES

15. Notices. Any notices required or permitted by this Declaration shall be in writing as provided in the Bylaws, subject to C.R.S. § 7-121-402, and shall be directed as follows:

15.1 If intended for an Owner, (i) to the address of the Lot if improved or the Owner's email address on file with the Association; or (ii) if the Lot is not improved, to the address set forth in the purchase contract for the Lot or the email address set forth in the purchase contract; and (iii) if neither of the foregoing, to the last known address of the Owner; and

15.2 If intended for Declarant, to its registered agent with the Colorado Secretary of State.

Any Owner may specify a different physical and/or electronic address for notices by delivery of written notice to Declarant, and Declarant may specify a different address for notices by delivery of written notice to the other and to all Owners.

XVI. MISCELLANEOUS

16.1 Constructive Notice and Acceptance. Every person who now owns or hereafter acquires any rights, title or interest in or to any portion of the Property shall be conclusively deemed to have consented and agreed to every term, condition, covenant, restriction and reservation contained in this Declaration, whether or not any reference to this Declaration is contained in any instrument conveying to such person any interest in the Property.

16.2 Severability. All of the terms, conditions, covenants, restrictions and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said terms, conditions, covenants, restrictions and reservations, or any part hereof, is invalid, or for any reason becomes unenforceable, no other terms, conditions, covenants, restrictions and reservations or any part thereof shall be hereby affected or impaired, but shall continue in full force and effect.

16.3 Benefits and Burdens. All of the terms, conditions, covenants, restrictions and reservations contained in this Declaration shall run with the land and shall bind and inure to the benefit of Declarant, the Association, all owners located within the Property, and their respective heirs, successors, personal representatives and assigns.

16.4 Singular and Plural. Words used therein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

16.5 Headings. The article and section headings in this Declaration are for conveyance only and shall not be used in its interpretation or considered part of this Declaration.

16.6 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property or of any Lot or portion thereof to the general public, or for any public use or purposes whatsoever. Except as herein specifically provided, no right, privileges or immunities of any party hereto shall inure to the benefit of any third-party person, nor shall any third-party person be deemed to be a beneficiary of any of the provisions contained herein.

16.7 Governing Law. This Declaration has been entered into under, and shall be governed by the laws of the State of Colorado.

16.8 Further Assurances. All Owners agree that the Declarant may, without the consent of such Owners being required, and during the period during which either Declarant holds record and/or equitable title to a Lot, further amend the Plat provided such amendment(s) do not materially or adversely increase such Owner's obligations hereunder or modify the then current boundaries of, access to or permitted use of such Owner's Lot(s). Notwithstanding the foregoing, all Owners agree to promptly execute such documents and instruments as the Declarant may reasonably request in conjunction with the foregoing.

16.9 Waiver. No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain request. No waiver shall be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.

16.10 Limitation of Liability. Neither the Association nor any officer or member of the Board shall be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under any Association documents (i.e., Articles of Incorporation and Bylaws) if the action or failure to act was made in good faith. The Association shall indemnify all of the officers and Board with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.

16.11 Conflict. This Declaration, the Articles of Incorporation and Bylaws are intended to comply with the requirements of the Act and the Colorado Revised Nonprofit Corporation Act. If there is any conflict between this Declaration, the Articles of Incorporation, Bylaws and the provisions of the statutes, the provisions of the statutes shall control. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

16.12 Disclaimer Regarding Safety. DECLARANT, THE ASSOCIATION, AND THE BOARD, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE DIVIDE.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first set forth above.

DECLARANT:

WILDFIRE HOMES LLC
a Colorado limited liability company

By: ___________________________________
Richard D. Allnutt, Manager

CONSENT OF LIENHOLDER

This Declaration of Covenants, Conditions and Restrictions is consented to and approved by Independent Bank d/b/a Independent Financial on this ____ day of September, 2023.

INDEPENDENT BANK
d/b/a INDEPENDENT FINANCIAL

By: ______________________________
Kory Stolte, Senior Vice President

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of September, 2023, by Kory Stolte, Senior Vice President of Independent Bank d/b/a Independent Financial.

WITNESS my hand and official seal.

____
NOTARY PUBLIC
My Commission expires: __________________

[SIGNATURE PAGE TO LENDER CONSENT(S)]

EXHIBIT A

That certain property located in the Town of Estes Park, County of Larimer, State of Colorado more fully described as:

Lots 2 through 15, Block 1, Wildfire Homes Subdivision, according to the plat recorded on August 6, 2020 at Reception No. 2020006051 in the records of the Larimer County Clerk and Recorder

Outlots A, B, C and E

EXHIBIT B
Liens

1. Reservations contained in the Patent from The United States of America as set for recorded September 14, 1876 in Book I at Page 211, Which among other things recites as follows: Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of the courts; and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law.

2. Road rights of way as shown on the Parrack Exemption plat recorded October 6, 1978 at Reception No. 274966 and re-recorded December 10, 2013 at Reception No. 20130089788, and Deed of Dedication for road right of way and utility easement as described in instrument recorded December 10, 2013 in Book 1899 at Page 114 and recorded December 10, 2013 at Reception No. 20130089789.

3. Terms, conditions, provisions, agreements and obligations contained in the Application for Water Tap Outside Town Limits as set forth recorded April 19, 1973 in Book 1550 at Page 74.

4. Road rights of way as shown on Annexation Map of Dry Gulch Road & Wildfire Ridge Addition to the Town of Estes Park as set forth in document recorded January 7, 1999 at Reception No. 99001981.

5. Easements for the purpose of storm water drainage system and rights incidental thereto, granted to Town of Estes Park, as set forth in document recorded June 17, 1999 at Reception No. 99053227.

6. Any tax, lien, fee, or assessment by reason of inclusion of subject property in the Estes Valley Recreation and Park District, as evidenced by instrument recorded December 3, 2014 at Reception No. 20140070180 and recorded December 10, 2014 at Reception No. 20140071715.

7. Any tax, lien, or assessment by reason of inclusion of subject property in the Northern Colorado Water Conservancy District, as evidenced by instrument recorded August 5, 2019 at Reception No. 20190044854.

8. Terms, conditions, provisions, agreements and obligations contained in the Wildfire PreAnnexation Agreement as set forth in document recorded October 9, 2019 at Reception No. 20190062123.

9. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 13-19, An Ordinance Approving the Annexation of Certain Territory to the Tow of Estes Park as set forth in document recorded August 6, 2020 at Reception No. 20200060497.

10. Resolution No. 13-19 recorded August 6, 2020 at Reception No. 20200060496.

11. All matters as shown on the Wildfire Homes Annexation Map recorded August 6, 2020 at Reception No. 20200060498.

12. Terms, conditions, provisions, agreements and obligations contained in the Town of Estes Park, Colorado Improvement Agreement Wildfire Homes Subdivision as set forth in document recorded August 6, 2020 at Reception No. 20200060499.

13. Ordinance No. 22-19, an Ordinance Vacating a Portion of the Wildfire Road Right-of-way set forth in document recorded August 6, 2020 at Reception No.20200060500.

14. Notes, statements and easements as set forth on the Plat(s) of Plat of Wildfire Homes Subdivision set forth in document recorded August 6, 2020 at Reception No. 20200060501.

15. Right of way for Dry Gulch Road along easterly side of subject property as shown on plat map recorded August 6, 2020 at Reception No. 20200060501.

16. Terms, conditions, provisions, agreements and obligations contained in the Restrictive Covenant and Agreement as set forth in document recorded December 21, 2020 at Reception No. 20200099615.

17. Terms, conditions, provisions, agreements and obligations contained in the Restrictive Covenant and Agreement by and between Wildfire Homes LLC and the Town of Estes Park as set forth in document recorded March 18, 2021 at Reception No. 20210027380.

18. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document Recording Date: January 20, 2022 Recording No.: 20220004733 First Amendment recorded February 2, 2022 at Reception No. 20220007709 and recorded January 28, 2022 at Reception No. 20220006496.

DECLARATION

OF

COVENANTS, CONDITIONS AND

RESTRICTIONS

FOR

THE DIVIDE TOWNHOMES,

A RESDIENTIAL

COMMON INTEREST COMMUNITY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE DIVIDE TOWNHOMES, A COMMON INTEREST COMMUNITY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE DIVIDE TOWNHOMES, a planned community, ("Declaration") is made on this ____ day of May 2024, by WILDFIRE HOMES LLC, a Colorado limited liability company, whose principal address is 530 Fox Creek Rd., Glen Haven, CO 80532 ("Declarant").

RECITALS:

A. Declarant is the owner of certain real estate in the Town of Estes Park, County of Larimer, State of Colorado, which is more particularly described as set forth in Exhibit A attached hereto and by reference made a part hereof (the "Property").

B. Declarant desires to create a residential townhome common interest community on the real estate described in Exhibit A to be known as "The Divide Townhomes."

C. Declarant has caused "The Divide Townhomes Owners Association," a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado for the purpose of exercising the owner's association rights and obligations as herein set forth.

ARTICLE 1

DECLARATION AND SUBMISSION

Section 1.1 **Declaration**. Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which shall run with the land and be binding upon all parties and heirs, as well their successors and assigns, having any right, title or interest in all or any party of the Property. Additionally, Declarant hereby submits the real estate described in Exhibit A, and such additional real estate as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the "Real Estate"), to the provisions of the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, *et seq*., as it may be amended from time to time (the "Act") and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Declarant hereby declares that all of the Real Estate described in Exhibit A, and as added by expansion, shall be held or sold, and conveyed subject to the following easements, restrictions, covenants, and conditions. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Real Estate, that this Declaration shall run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Unit Owner thereof.

Declarant may annex to this Declaration, as a Development Right in accordance with the provisions of the Act, additional property within the lands described on Exhibit B, attached hereto and incorporated herein by this reference until that date which is ten (10) years after the date of the recording of this Declaration.

ARTICLE 2

DEFINED TERMS

Section 2.1 **Defined Terms**. Each capitalized term in this Declaration or in the Map or Plat shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration:

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

(b) "***Annual Assessment***" means the Assessment levied pursuant to an annual budget.

(c) "***Assessment***" means the Annual, Special and Default Assessments levied pursuant to this Declaration. Assessments are also referred to as a "Common Expense Liability" as defined under the Act.

(d) "***Association***" means The Divide Townhomes Owners Association, a Colorado nonprofit corporation, and its successors.

(e) "***Building***" means the building or buildings that will contain the Townhomes.

(f) "***Bylaws***" means the Bylaws adopted by the Association, as amended from time to time.

(g) "***Common Elements***" means the Real Estate within this Community other than the Units, including, but not limited to, private streets, perimeter fences, drainage facilities, and appurtenant easements, all of which shall be owned by the Association.

(i) *"General Common Elements"* means all tangible physical properties of the Project except the Limited Common Elements and the Units.

(ii) *"Limited Common Elements"* means those parts of the Common Elements which are either limited to or reserved in this Declaration, on the Plat, or by action of the Association for the exclusive or common use of fewer than all Owners.

(h) "***Common Expenses***" shall mean (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws: (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements or of fulfilling other maintenance obligations of the Association pursuant to this Declaration or the Bylaws; (iii) insurance premiums for the insurance maintained by the Association; and (iv) all other expenses lawfully determined to be common expenses by the Executive Board.

(i) "***Community***" shall mean and refer to the community known as The Divide Townhomes, which Community is a residential phased community as defined in the Act and which Community is also a Common Interest Community as defined in the Act.

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

(k) "***Eligible Mortgagee***" means a First Mortgagee who (i) is also a bank, savings and loan association, insurance company, real estate mortgage investment trust, mortgage banker, pension fund, Agency or any other lender generally recognized as an institutional lender, and (ii) has notified the Association, in writing, or its name and address, and that it holds the First Mortgage on any Unit(s). The notice must include the Unit number and street address of the Unit on which it has a security interest. This notice shall be deemed a request that the Eligible Mortgagee be given the information and afforded the rights described such Eligible Mortgagees under this Declaration.

(l) "***Executive Board", "Board" or "Board of Directors***" means the body, regardless of name, designated in this Declaration to act on behalf of the Association.

(m) "***Governing Documents***" means this Declaration, the Plat, the Articles of Incorporation for the Association, the Bylaws, and any rules and regulations of the Association, as all of the foregoing may be amended from time to time.

(n) "***Improvements***" means structures installed within or upon a Lot.

(o) "***Limited Common Elements***" means those portions of the Common Elements, if any, designated by Declarant or the Association for the exclusive use of one or more but fewer than all of the Units.

(p) "***Owner***" means the owner of record, whether one or more Persons, of fee simple title to any Unit, and also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit.

(q) "***Owner's Agent***" means the Owner's lawful family members, agents, employees, invitees, licensees, guests and tenants.

(r) "***Person***" means a natural person, a corporation, a limited liability company, a partnership, an association, a trust, or any other lawful entity or any combination thereof.

(s) "***Plat***" means the final Plat recorded in connection with the Community, as the same may be amended or supplemented from time to time.

(t) "***Real Estate***" means the property described in Exhibit A, and such additional property as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon. All easements and licenses which the Community is subject to as of the date of this Declaration are recited in Exhibit C.

(u) "***Townhome***" means the portion of a Building contained within each Unit.

(v) "***Unit***" means a physical portion of the Community, designated for separate ownership or occupancy, the boundaries of which are defined on the Plat and in this Declaration.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meaning as specified or used in the Act.

ARTICLE 3

NAMES/DESCRIPTION OF REAL ESTATE AND EASEMENTS

Section 3.1 **Name and Type**. The type of Common Interest Community is a townhome phased community. The name of the Community is "The Divide Townhomes." The name of the Association is the "The Divide Townhomes Owners Association."

Section 3.2 **Real Estate**. The Community is located in the Town of Estes Park, County of Larimer, State of Colorado. The initial Real Estate of the Community is described in Exhibit A. All easements and licenses to which the Community is presently subject are recited in Exhibit C. Additional easements are established in the Act. The Community may be subject to other easements or licenses granted pursuant to the Declaration, or granted by authority reserved in any recorded document or established in the Act.

Section 3.3 **Utility and Plat Easements**. Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon the recorded Plat of the Community and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 3.4 **Easements for the Executive Board and Unit Owners**. Each Unit shall be subject to an easement in favor of the Executive Board (including its agents, employees and contractors) and to each Unit Owner to allow for their performance of obligations in this Declaration. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages, and a lien therefore is authorized and established against that party's property, pursuant to this Declaration.

Section 3.5 **Emergency Easements**. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

Section 3.6 **Utility Easements**. There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Units and the Improvements situated on the Property for ingress and egress, installation, replacing, repairing, and maintaining all utilities, including without limitation water, sewer, gas, telephone, cable TV and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Common Elements and affix and maintain electrical, gas, water or telephone wires, circuits, conduits and pipes through any Townhome to serve any other Townhome, provided that such utility infrastructure is located below the main floor living area of the Townhome burdened by the easement.

ARTICLE 4

THE ASSOCIATION

Section 4.1 **Membership**. Every person who is an Owner, of record, of a fee interest in any Unit which is subject to this Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of such Unit shall be the sole qualification for such membership. Where more than one person holds an interest in any Unit, all such persons shall be members.

Section 4.2 **General Purposes and Powers of the Association**. The Association, through its Executive Board, shall perform functions and manage the Community as provided in this Declaration so as to protect the value and desirability of the Community and the Units and to further the interests of the residents, occupants, tenants and guests of the Community and members of the Association. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 4.3 **Authority of the Association**. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, its Articles of Incorporation and Bylaws, and any rules and regulations adopted by the Executive Board. The Executive Board may, by written resolution, delegate authority to a manager or managing agent for the Association provided no such delegation shall relieve the Board of final responsibility.

Section 4.4 **Specific Powers**. The Association shall have the powers, authority and duties as necessary and proper to manage the business and affairs of the Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act and the Colorado Revised Nonprofit Corporation Act. The Association shall have the power to institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more other Owners on matters affecting the Community, provided however, that the Association may not institute any such proceeding against any party alleging a defect in the design, workmanship, construction, drainage or other alleged defect relating to the Common Elements or the Limited Common Elements, except in accordance with the provisions of Article 13. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Unit Owners present at a meeting called for that purpose.

Section 4.5 **Power of the Executive Board of the Association**. Except as otherwise provided in the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association, including without limitation to:

(a) Adopt and amend the Bylaws and any policies, procedures, rules and regulations of the Association;

(b) Adopt and amend budgets and collect Assessments;

(c) Hire and terminate the Manager and other employees, agents and independent contractors;

(d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Community, subject to the limitations in the Declaration;

(e) Enter into contracts and incur liabilities;

(f) Regulate the use, maintenance, repair, replacement and modification of Common Elements;

(g) Cause additional improvements to be made as part of the Common Elements;

(h) Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if: (a) Owners entitled to cast at least two-thirds (2/3) of the votes agree to that action; (b) the provisions of subsection 11.3 are followed with respect to approval of Eligible Mortgages; and (c) if all Owners of Units to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest;

(i) Grant easements, leases, licenses and concessions through or over the Common Elements;

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements;

(k) Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents including without limitation any rules and regulations;

(l) Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

(m) Provide for indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive Assessments;

(o) Exercise any other powers conferred by the Act or Association Documents;

(p) Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 4.6 **Allocated Interests**. The Allocated Interest of each Unit at any time shall be equal to a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units within the Community. The Allocated Interest of each Unit which is subject to decrease with the annexation of additional property pursuant to expansion rights reserved in this Declaration. Nothing contained in this Section shall prohibit certain Common Expenses from being apportioned to particular Units under Section 5.4 of this Declaration.

(a) **Liability for the Common Expenses**. The percentage of liability for Common Expenses allocated to each Unit shall be equal to such Unit's Allocated Interest.

Section 4.7 **Association Agreements**. Any agreement for professional management of the Community or any contract providing for services of the Declarant, may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days' written notice. The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Declarant control period unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the turnover date upon not more than thirty (30) days' notice to the other party thereto.

Section 4.8 **Right to Notice and Comment**. Pursuant to C.R.S. § 38-33.3-205(1)(o), whenever the Governing Documents require that an action be taken after "Notice and Comment," and at any other time the Executive Board determines the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing, notice shall be given to each Unit Owner in writing, delivered personally or by mail (including electronic mail) to all Unit Owners at such address as it appears in the records of the Association or notice shall be published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The Notice shall be given not less than three (3) days before proposed action is to be taken. The Notice shall invite comment (orally or in writing) to the Executive Board before the scheduled time of any meeting.

Section 4.9 **Indemnification**. To the full extent permitted by law, each officer and director of the Association shall be and are hereby indemnified by the Owners and the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not they are an officer or director of the Association at the time such expenses are incurred; except in such cases wherein such officer or director is adjudged guilty of willful misfeasance or malfeasance, the performance indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interests of the Association.

Section 4.10 **Declarant Control**. The Declarant shall have the reserved power, pursuant to Section 303(5) of the Act, to appoint and remove officers and members of the Executive Board during the period of Declarant control. Such period of Declarant control shall terminate no later than the earlier of sixty (60) days after conveyance of seventy-five percent (75%) of the maximum number of units that may be created under this Declaration and zoning to Owners other than the Declarant, two years after the last conveyance of a unit by the Declarant in the ordinary course of business, two years after any right to add new units was last exercised; or fifteen (15) years after recordation of the Declaration.

ARTICLE 5

UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 5.1 **Number of Units**. The maximum number of Units which may be subject to this Declaration is Thirty (30) including those Units which may be included if all of the property subject to the expansion rights set forth in this Declaration is annexed to this Declaration. Declarant reserves the right to create and add additional Units up to the maximum number of Units for the property subject to this Declaration as allowed by any governmental entity having jurisdiction. However, the aforesaid number of Units is not a representation or a guarantee as to the actual number of Units that will ultimately be included in or constructed as a part of the Community.

Section 5.2 **Identification of Units/Unit Descriptions**. The identification of each Unit is shown on the Plat. Every contract for sale, deed, lease, Security Interest, or other legal instrument shall legally describe a Unit by its lot and block number, followed by the name of the Community, with reference to the Plat and the Declaration. An illustrative description is as follows:

Lot ___________, Block 2, Wildfire Homes Subdivision, Town of Estes Park, State of Colorado, according to the Plat recorded August 16, 2020 at Reception No. 20200060501, in the records of the office of the Clerk and Recorder of the County of Larimer, State of Colorado.

Reference to the Declaration or Plat in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration or Plat, without specific references hereto.

Section 5.3 **Common Elements**. The real estate and improvements owned or leased by the Association shall be considered Common Elements. Portions of any Common Elements may be designated as part of a Unit or as a Limited Common Element to a Unit.

Section 5.4 **Limited Common Elements**. In the event a Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, those Common Expenses may be assessed equally against the Units to which the Limited Common Element is assigned.

The Declarant reserves, for itself, for fifteen (15) years after the recording of this Declaration, the right to allocate areas as Common Elements, and further, to allocate areas which constitute a part of any Common Elements as Limited Common Elements for the exclusive use of the owners of Units to which those specified areas shall become appurtenant. Without limited the foregoing, Declarant reserves the right to allocate specified areas which constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the owners of Units to which the specified areas shall become appurtenant. Declarant may assign such Common Elements as Limited Common Elements pursuant to the provisions of C.R.S. § 38-33.3-208 of the Act by making such an allocation: (i) by making such an allocation in a recorded instrument, or (ii) in the deed to the Unit to which such Limited Common Element shall be appurtenant, or (iii) by recording an appropriate amendment or supplement to this Declaration. Such allocations by Declarant may be to Units owned by Declarant. This reserved right of the Declarant shall be deemed transferred to the Association upon the sale of all Units or upon the expiration of fifteen (15) years after the recording of this Declaration or assignment by the Declarant to the Association, whichever occurs first. The Declarant or the Association may allocate or assign Common Elements or Limited Common Element areas (i) in a recorded instrument, (ii) by recording an appropriate amendment or supplement to this Declaration, or (iii) by recording a supplement to the Plat. Such allocations by the Declarant may be as a matter of reserved right by the Declarant or the Association.

Section 5.5 **Owners' Easements of Enjoyment**. Every Owner shall have a right and easement access to their Unit and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions.

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

(b) The right of the Association to suspend the voting rights and rights to use Common Elements by an Owner for any period during which any Assessment against his or her Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

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

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

(e) The Special Declarant Rights of the Declarant reserved in this Declaration.

Section 5.6 **Delegation of Use**. Any Owner may delegate its right of enjoyment to the Common Elements to the members of their family, their tenants, guests, or contract purchasers who reside at their Unit.

ARTICLE 6

MAINTEANCE

Section 6.1 **Unit Maintenance**. Each Unit Owner is responsible for the maintenance, repair and replacement of the Improvements and properties located within its Unit boundaries, including Limited Common Elements allocated to the Unit, which is not specifically the obligation of the Association to maintain, replace and keep in good repair. An Owner shall not take or permit any action that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall be responsible for the maintenance, repair and replacement of all interior non-bearing walls of such Owner's Unit, and the surface materials thereon such as plaster, drywall, paneling, wallpaper, paint, title and carpeting of the walls, ceilings and floors within the Unit, including all doors, windows and screens, subject to the Party Wall restrictions set forth in this Declaration.

Section 6.2 **Owner's Failure to Maintain or Repair**. In the event that a Unit (including any Limited Common Elements) is not properly maintained and repaired (subject to the Association's obligation in Section 6.3), or in the event that the Unit is damaged or destroyed by and event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction to substantially the same condition in which it existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board (after a determination by the executive Board that the condition of such Unit negatively impacts other Owners or the value of other Units within the Community) shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to good condition and repair. The Owner of the Unit, upon demand, shall reimburse all costs incurred by the Association in connection with the restoration. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for unpaid Assessments.

Section 6.3 **Association Maintenance**. The Executive Board of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance responsibilities. The Association shall be responsible for the improvement, maintenance, repair, upkeep and reconstruction, replacement and operation of the Common Elements; the roofs and Building exterior walls and trim; the main water and sewer lines which serve more than one Unit; landscaping; for the payment of expenses which may be incurred by virtue of maintenance, repair or replacement as set forth on the recorded plat and final development plan, agreement with or requirement of any local governmental authority, the Town of Estes Park and/or the County of Larimer or other government authorities; for operational expenses of the Association.

Section 6.4 **Landscaping, Sidewalks and Driveways**. With the exception of flowers and planting placed by an Owner upon such Owner's Lot, which shall be the responsibility of the Owner, the Association shall maintain landscaping of the Lots surrounding the perimeter of the Units, including, but not limited to, lawns, trees and shrubs (but excluding any enclosed, screened or fenced-in areas located in the backyard of any Lot), and the Association shall also maintain sidewalks and driveways (and such maintenance shall include snowplowing services). The maintenance provided under this Section shall be performed at such time and in such a manner as the Association shall determine.

Section 6.5 **Additional Maintenance**. Notwithstanding any other provisions hereof, the Board may, from time to time, determine that the Association shall provide other maintenance to any other improvements on the Lots. Any such determination by the Board must apply uniformly to all Lots requiring such maintenance. Any additional maintenance services provided in accordance herewith may be revoked at any time as determined by the Board.

Section 6.6 **Association Maintenance a Common Expense**. The cost of maintenance, repair and replacement by the Association shall be a Common Expense of all of the Owners, to be shared by each Unit Owner according to the Allocated Interests. The cost of repair of any damage to any part of a Unit resulting from the maintenance, repair, or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall be a Common Expense of all of the Owners. However, if such damage is caused by the negligent or wrongful acts or omissions of an Owner or Owner's agent, then such Owner shall be responsible and liable for the cost to repair such damage, to the extent that Owner's or Owner's Agent's negligence or wrongful acts or omissions caused such damage.

Section 6.7 **Easement for Maintenance, Repair and Replacement of Common Elements**. Each Owner and the Association shall have the irrevocable right, to be exercised by the Association, its employees, agents and contractors, of access to each Unit from to time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements, or at any hour for making emergency repairs, maintenance or inspection necessary to prevent damage to the Common Elements or any Unit. In the event insurance proceeds are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

Section 6.8 **Limited Common Element Damage**. In the event of damage or destruction of a Limited Common Element from any cause other than the negligent act or omission of an Owner or Owner's Agent, the Owners of the Units to which the Limited Common Element is attributable shall bear equally the expense to repair or replace the Limited Common Element to its previous condition. The Owner shall bear the cost of such damage to the extent of such Owner's or Owner's Agent's negligent act or omission.

ARTICLE 7

COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 7.1 **Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments**. Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments described below, insurance assessments, utility assessments, and such other assessments as imposed by the Association. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Unit owner of such Unit at the time when the assessment or other charges became due. The Association Annual Common Expense Assessments and such other assessments as imposed, by the Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such assessment or charge is made. If any assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Unit Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made. All assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Executive Boards are not properly exercising its duties and powers under this Declaration.

Section 7.2 **Apportionment of Common Expenses**. Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Units in accordance with formula for liability for the Common Expenses as set forth in this Declaration.

Section 7.3 **Annual Assessment/Commencement of Common Expense Assessments**. The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. The budget shall be submitted to the Unit Owners for ratification pursuant to Section 38-33.3-303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by votes of Owners representing sixty seven percent (67%) of the votes in the Association. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Executive Board. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs. The omission or failure of the Executive Board to levy the assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 7.4 **Special Assessments**. In addition to the Annual Assessments, the Association may levy at any time Special Assessments, payable as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of improvements with the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests, subject to the right of the Association to assess only against the Owners of affected Units. Any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner or Owner's Agents shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment shall be given promptly to the Owners provided no payment shall be due less than thirty (30) days after such notice shall have been given.

Section 7.5 **Default Assessments**. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to any Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 7.6 **Effect of Non-Payment of Assessments**. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Executive Board, shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, or such lesser rate as may be established by the Executive Board, and the Association may assess a late charge thereon in an amount not to exceed $5.00 per day, or as otherwise determined by the Executive Board. Further, pursuant to the terms of the Act, the Association may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Association against a Unit Owner to recover a money judgment for unpaid assessments, charges, or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefore. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any assessment lien and a Unit Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notices to the Unit owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 7.7 **Lien Property**. The lien of the Association under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien Security Interest on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Unit shall not affect the lien for said assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or any proceeding in lieu thereof, shall not relieve any Unit from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 7.8 **Working Fund**. The Association or Declarant may require the first Unit Owner of each Unit (other than Declarant) to make a non-refundable payment to the Association in an amount equal to one-sixth (1/6) of the annual Common Expense Assessment against that Unit, in effect at the closing thereof, which sum shall be held, without interest, by the Association at the time of closing of the initial sale by Declarant of each Unit, as aforesaid, and shall be for the use and benefit of the Association. Such payment shall not relieve a Unit owner from making regular payments of assessments as the same become due.

Section 7.9 **Owner's Negligence or Misconduct**. In the event that the need for maintenance, repair or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's Agents, tenants, employees, guests, customers, or invitees, including, but not limited to pet damage, damage from water overflowing from a tub, hot water heater leaks, or water damage from a washing machine or hose, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner, and if not repaid to the Association within seven (7) days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Section, and such expenses costs, and fees shall automatically become a default assessment determined and levied against such Unit, and the Association may proceed in accordance with the applicable provisions of Article 7 hereof.

Section 7.10 **Non-exemption**. No Owner may waive or otherwise avoid liability for any Assessments by the nonuse of the Common Elements, or the abandonment of their Unit.

ARTICLE 8

RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

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

Section 8.1 **Use/Occupancy**. No Unit within the Community shall be used for any purpose other than as allowed by the local zoning codes. Units shall not be used for any purpose other than a residential dwelling, and commercial and business uses with any adverse external effect on the nature, perception, operation or ambiance of the Community as a first class residential community, as reasonably determined by the Executive Board of the Association, are prohibited, unless approved by the Declarant or the Association, and allowed pursuant to restrictions of record and by local zoning ordinances and regulations.

Section 8.2 **Leasing and Occupancy**. Any Unit Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Unit Owner may deem advisable, subject to restrictions of record and the terms of this Declaration. Notwithstanding the foregoing, no leases for a term shorter than six (6) months shall be allowed. Any lease or rental agreement shall be in writing, a copy of which shall be delivered to the Executive Board or the Association's managing agent prior to the effective date of the lease, and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation and the rules and regulations of the Association. All leases and rental agreements of Units shall state that the failure of the tenant, renter or guest to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the rules and regulations of the Association shall constitute default of the lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them. All occupants of a Unit shall be subject to the right of the Association to remove and/or evict the occupant for failure of the occupant to comply with the terms of this Declaration, the Bylaws of the Association, the Articles of Incorporation or the rules and regulations of the Association.

Section 8.3 **Restrictions on Animals and Pets**. No animal, livestock, birds, poultry, reptiles or insects of any kind, shall be raised, bred, kept or boarded in or on any portion of the Community, provided however, that Owners may keep no more than two domestic, bona fide household pets. Such pets may not be bred or kept for any commercial purpose, and may not be kept in such a manner as to create a nuisance or inconvenience to any resident of the Community. Any Owner who owns a pet shall obtain and maintain liability insurance specifically providing personal liability coverage for his or her pet's acts, and shall provide the Association with a certificate of insurance or similar evidence that such coverage is in place. Any Owner who owns a pet also fully indemnifies the Association from and against any and all claims relating to the actions of such pet.

The Executive Board of the Association shall have the right and authority to determine, in its sole discretion, that dogs, cats and other household pets are being kept for commercial purposes or are being kept in such a manner as to be unreasonable, or create a nuisance, or the Owner is otherwise in violation of this Section. The Executive Board of the Association may take such action as it deems reasonably appropriate to correct the violation, which may include directing permanent removal of the pet or pets from the Community. Reimbursement for damages caused by such pet and costs incurred by the Association, to include attorneys' fees and costs, in the removal of a pet or pets from the Community, or incurred by the Association in cleanup after such pets may be levied against such pet's Owner as an Assessment in accordance with this Declaration.

Household pets shall not be allowed to run at large within the Community, but shall at all times be under the Owner's control, and owners shall clean up pet litter. No pets shall be allowed outside of a Unit, except for dogs, which must be kept upon a leash at all times. Cats shall not be permitted outside of a Unit, except when being transported in a pet carrier to a location outside of the Community.

Section 8.4 **Antennae**. Subject to the Act and federal statutes or regulations governing common interest communities, only Permitted Antennas shall be allowed within the Community. "Permitted Antennas" are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or issues to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

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

Section 8.5 **Nuisances**. No nuisance shall be permitted within the Community, nor any use, excessive noise, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Unit Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Unit or Common Element, or any portion of the Community by Unit Owners. Further, no immoral, improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed. As used herein, the term nuisance shall not include any activities of Declarant or its assignees which are reasonably necessary to the development and construction of Improvements within this Community; provided, however, that such activities shall not reasonably interfere with any Unit Owner's use and enjoyment of their Unit, or any Unit Owner's ingress and egress to or from their Unit and a public way.

Section 8.6 **Vehicular Parking, Storage and Repairs**.

(a) Vehicular parking upon the Common Elements shall be regulated by the Executive Board of the Association.

(b) Each parking area may be subject to designation of individual spaces as a Limited Common Element appurtenant to certain designed Units. Parking designated as visitor or guest parking shall not be used by Owners or their family members residing with them. All other parking spaces shall be used by the Owners or self-service parking purposes on a "first come, first served" basis; provided, however, that no Owner shall park more than one (1) vehicle (owned or leased by such Owner, a member of his or her family or occupant of his or her Unit) on the Common Element parking spaces without the prior written consent of the Executive Board of the Association. While any buildings under construction or completed are owned by Declarant, use of the parking spaces adjacent to that building may be restricted to Declarant's use for construction and sales purposes.

(c) The following vehicles may not be parked or stored within the Community, unless such parking or storage is within a garage of a Unit, or unless authorized in writing by the Executive Board of the Association: oversized vehicles, trailers, camping trailers, board trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. Any such oversized vehicle may be parked as a temporary expedience (for up to four hours) for loading, delivery of goods or services, or emergency. Overnight parking of these vehicles is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of the Common Elements, Units or any Improvement located thereon.

(d) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on a Unit or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Executive Board of the Association. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Unit Owner thereof or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within seventy-two (72) hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges.

(e) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of the garages.

(f) Garages, carports, and designated parking spaces (designated as either a part of a Unit, a Limited Common Element or as a part of Common Elements) are restricted to use for access or as a parking space for vehicles.

(g) The conversion or alteration of garages into living areas, storage areas, workshop areas, or any other modification or alteration of the garages, which would hinder, preclude or prevent the parking of the number of vehicles for which the garage was originally designed is prohibited.

(h) Each Owner shall keep any garage door at their Unit closed as frequently as possible, such that the visual effect of open garage doors are avoided and the contents therein are concealed from view from other Units and the streets, all for the purpose of preserving the value and appearance of the Community.

(i) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

Section 8.7 **<u>Use of Common Elements</u>**. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association.

Section 8.8 **No Annoying Lights, Sounds or Odors**. No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Executive Board.

Section 8.9 **Restrictions on Clotheslines and Storage**. No clotheslines, drying racks, service yards, shops, equipment, storage sheds or storage areas shall be installed, allowed, kept, maintained or permitted in the Community unless the same, in each instance, is expressly permitted in writing by the Executive Board of the Association. Where such written permission is granted, such permission is revocable if the item or condition becomes obnoxious to other Owners, in which event the Unit Owner or person having the item or condition complained of shall be given a written notice to correct the problem or, if not corrected, the Unit Owner upon written notice will be required to remove the item/condition from their Unit and from the Community. The written notices provided for herein shall be issued by one (1) or more of the members of the Executive Board of the Association. Unit Owners shall deem to hold the Association harmless from any claim resulting from any clotheslines, drying racks or yards, service yards, shops, equipment, storage sheds or storage areas maintained on their Unit.

Section 8.10 **No Hazardous Activities**. No activity shall be conducted on any portion of the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no fireworks or firearms shall be discharged upon any portion of the Community and no open fires shall be lighted or permitted on any portion of the Community.

Section 8.11 **Compliance with Insurance Requirements**. Except as may be approved in writing by the Executive Board, nothing shall be done or kept on the Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 8.12 **No Unsightliness**. All unsightly condition, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure.

Section 8.13 **Restriction on Signs and Advertising Devices**. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community except such sign or signs as may be approved in writing by the Executive Board or authorized by the Act.

Section 8.14 **No Restrictions on Sale of a Unit**. The right of a Unit Owner to sell, transfer or otherwise convey their Unity shall not be subject to any right of first refusal or similar restriction and such Unit may be sold free of any such restrictions.

Section 8.15 **No Restrictions on Mortgaging of a Unit**. There are no restrictions on the right of the Unit Owners to mortgage or otherwise encumber their Unit. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 8.16 **Restrictions on Structural Alterations and Exterior Improvements**. No structural alterations to any Unit or any Common or Limited Common Elements shall be done by any Owner, without the prior written approval of the Association. No improvement to the exterior of a building which includes a Unit or to the Common Elements or to any landscaping shall be constructed, erected, placed or installed within the Community unless complete plans and specifications thereto shall have been first submitted to and approved by the Executive Board.

Section 8.17 **Plat Restrictions**. The restrictions, if any, included on the Plat for the Real Estate are incorporated herein by this reference.

Section 8.18 **Rules and Regulations**. In furtherance of the provisions of this Declaration, and the general plan, rules and regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Executive Board, or its successors and assigns. The Executive Board may establish and enforce penalties for the infraction thereof.

Section 8.19 **Fences**. No fences may be constructed on any Unit without the express written consent of the Executive Board, which consent may be withheld in the Board's sole discretion.

Section 8.20 **Declarant's Use**. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, is assigns, employees and agents, to perform such reasonable activities, and to maintain upon portions of the Community such facilities as deemed reasonably necessary or incidental to the construction and sale of Units in the development of the Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities.

Section 8.21 **Party Wall Provisions**.

(a) **Party Walls**. Each Unit is adjacent to another Unit to the east and another Unit to the west, except the Units at the end of each Building, which Units are adjacent to only one other Unit. Along and over the common boundaries between the Units lie Party Walls that, in conjunction with the footings underlying and the portion of the roof thereover, form a structural part of, and physically join, the improvements on the adjoining Unit(s).

(b) **Easement**. The Owners of adjacent Units, shall each be deemed to own the necessary easements for the perpetual lateral and subjacent support, maintenance, repair, and inspection of the respective Party Wall with equal rights of joint use. The Association shall have the same necessary easements with respect to all Party Walls.

(c) **Preservation of Party Wall**. No Owner of a Unit shall have the right to destroy, remove, or make any structural changes in a Party Wall that would jeopardize the structural integrity of either of the Units sharing such Party wall without the prior written consent of the Association, the adjacent Unit Owner, and any First Mortgagee with respect to such adjacent Property, nor shall any Unit Owner subject a Party Wall to the insertion or placement of timbers, beams, or other materials in such a way as to adversely affect the Party Wall's structural integrity. No Unit Owner shall subject a party Wall to any use that in any manner whatsover may interfere with the equal use and enjoyment of the Party Wall by an adjoining Unit Owner.

(d) **Damage by Unit Owner**. Should a Party Wall be structurally damaged or destroyed by the intentional act or negligence of either adjacent Unit Owner (the "Responsible Unit Owner") or the Responsible Unit Owner's agent, contractor, employee, tenant, family members, licensee, guest, or invitee, the Association shall promptly rebuild and/or repair the Party Wall, the cost of which shall be a Common Expense apportioned to the negligent Unit Owner under Article 7.

(e) **Damage by Third Parties**. Should a Party Wall be structurally damaged or destroyed by causes other than the intentional act or negligence of either adjacent Unit Owner (or their agents, contractors, employees, tenants, family members, licensees, guests, or invitees), the damaged or destroyed Party Wall shall be repaired or rebuilt by the Association, the costs of which shall be a Common Expense apportioned among all the Unit Owners under Section 7.1.

(f) **Application of Law**. To the extent not inconsistent with the terms and conditions of this Declaration, the general rules of law of the State of Colorado concerning party walls shall be applicable hereto.

ARTICLE 9

DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 9.1 **Development Rights and Special Declarant Rights**. The Declarant reserves, through the maximum period of time allowed by law, but in all events, not more than fifteen (15) years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

(a) The right to redesignate uses, to relocate boundaries between adjoining Units, enlarge Units, enlarge the common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements, subdivide Units or complete or make improvements, as the same may be indicated on plats filed of record or filed with the Declaration;

(b) The right to create or construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements or to convert Common Elements into Units;

(c) The right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions, as permitted under the Act;

(d) The right to withdraw all or any part of the Real Estate from the Community;

(e) The right to make amendments to the Declaration or other Governing Documents to meet or comply with any requirements of FHA or VA;

(f) The right to exercise any development rights reserved or allowed in the Act;

(g) The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary;

(h) The right to merge or consolidate the Community with another community of the same form of ownership;

(i) To make the Community subject to a master association;

(j) The right to appoint or remove any officer of the Association or any Director during the Declarant Control period;

(k) The right to exercise any additional reserved right created by any other provision of this Declaration;

(l) The right to amend the Declaration in connection with the exercise of any development right; and

(m) The right to amend the Maps or plat in connection with the exercise of any development right.

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

Section 9.2 **Reserved Development Rights of Expansion**. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time during the period of reservation of Development Rights to subject additional phases of the Expansion Property to the provisions of this Declaration and expand the Project (Units and Common Elements) to include the Maximum Units and entire Expansion Property.

Section 9.3 **Additional Reserved Rights**. In addition to the rights set forth above, Declarant also reserves the following additional rights:

(a) **Sales**. The right to maintain mobile and other sales offices, parking Units, management offices and models in Units or on the Common Elements.

(b) **Signs**. The right to maintain signs and advertising on the Community to advertise the Community or other communities developed or managed by, or affiliated with, the Declarant.

(c) **Dedications**. The right to establish, from time to time, by dedication or otherwise, public streets, utility and other easements for purposes including, but not limited to, public access, access paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions.

(d) **Use Agreements**. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of parking and/or recreational facilities and/or Common Elements, which may or may not be a part of the Community.

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

(f) **Access Easement**. Declarant, and its successors and assigns, shall have an access easement to and from any real property accessible through the Community.

(g) **Other Rights**. The right to exercise any additional reserved right created by any other provision of this Declaration.

Section 9.4 **Rights Transferable/Rights Transferred**. Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the County of Larimer. Such instruments shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S.§ 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Unit Owners or any holders of a Security Interest in a Unit. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of the County of Larimer. Such instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) with the consent of the appropriate Unit Owner(s) or any holders of a Security Interests on the Unit(s).

Section 9.5 **No Further Authorizations Needed**. The consent of Unit Owners or holders of Security Interests shall not be required for exercise of any reserved rights, and Declarant or its assignees, may proceed without limitation at its sole option. Declarant and its assignees may exercise any reserved rights on all or any portion of the Property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted.

Section 9.6 **Amendment of the Declaration or Map**. If Declarant or its assignees elect to exercise any reserved rights, that party shall comply with the requirements of the Act including those concerning amendments of the Declaration or Map.

Section 9.7 **Interpretation**. Recording of amendments to the Declaration and the Map or plat pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of the amendment. Further, such amendment shall automatically (a) vest in each existing Unit Owner the reallocated Allocated Interests appurtenant to their Unit, and (b) vest in each existing Security Interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any Additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration, Map or Plat. Reference to the Declaration, Map or Plat in any instrument shall be deemed to include all Amendments to the Declaration, Map or Plat without specific reference thereto.

Section 9.8 **Construction**. Subsequent to the initial Real Estate and improvements made subject to this Declaration, any additional buildings, structures and types of improvements to be placed on the Real Estate or any part thereof may be of such quality and type as the persons developing the same may determine, and those improvements need not be of the same quality or type as the improvements previously constructed on the Real Estate, nor of the same size, style or configuration. The improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Real Estate as may be added or as shown on the Map.

Section 9.9 **Termination of Reserved Rights**. The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by the Declarant, recorded in the records of the Clerk and Recorder of the County of Larimer, Colorado.

Section 9.10 **Additions by Others**. Additions of Units to the Community may be made by others than the Declarant, upon approval of the Association pursuant to a vote of a majority of a quorum of its members and upon approval of two-thirds (2/3) of the Eligible Holders of first lien Security Interest. Such approval by the members and Eligible Holders of first lien Security Interests shall be evidenced by a certified copy of such resolution of approval and a supplement or amendment to this Declaration, both recorded in the records of the Clerk and Recorder of the County of Larimer.

ARTICLE 10

INSURANCE/CONDEMNATION

Section 10.1 **Insurance Carried**. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, or the first occupancy of a Unit. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

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

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

(c) All liability insurance shall be carried in blanket form, naming the Association, the Board, the manager or managing agent, if any, the officers of the Association, the Declarant, holders of first lien Security Interests, their successors and assigns and Unit Owners as insureds.

(d) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Units and the Common Elements, without deduction for depreciation, review any increase in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof,. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full replacement cost.

(e) Unit Owners may carry and are advised to carry other insurance on the Improvements and personal property in their Unit for their benefit and at their expenses, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such insurance carried by Unit Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if a Unit Owner has other insurance that covers the same loss or losses as covered by policies of the Association. In this regard, Declarant discloses that the Association's insurance coverage, as specified hereunder and under the Act, does not obviate the need for Unit owners to obtain insurance for their own benefit.

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

Section 10.2 **Hazard Insurance on the Units and Common Elements**. The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to Units and to the Common Elements and the other property of the Association. Insurance obtained on the Units is not required to include improvements and betterments installed by Unit Owners. If coverage purchased by the Association includes improvements and betterments installed by Unit Owners, the cost thereof shall be assessed to each Unit in proportion to risk. All blanket hazard insurance policies shall contain a standard non-contributory mortgage clause in favor of each holder of first lien Security Interests, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such holders of first lien Security Interests, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of the County of Larimer. If obtainable, the Association shall also obtain the following and any additional endorsements deemed advisable by the Executive Board: (a) an inflation guard endorsement, (b) a construction code endorsement, (c) a demolition cost endorsement, (d) a contingent liability from operation of building laws endorsement, (e) an increased cost of construction endorsement, and/or (f) any special PUD endorsements.

Section 10.3 **Liability Insurance**. The Association shall obtain adequate comprehensive policy of public liability and property damage liability insurance covering all of the Units and the Common Elements, including structural coverage of the Units, in such limits as the Board may determine from time to time, but not in any amount less than Two Million Dollars ($2,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. All liability insurance shall name the Association as the insured. If there are steam boilers in operation in the Community, or if the Community has central heating or cooling, there must be in force boiler explosion and machinery coverage insurance providing for not less than Two Million Dollars ($2,000,000.00) per accident, per location. Additionally, for such times, if any, as the Declarant has the reserved development right to expand the Community by addition additional Units, the Declarant shall purchase, at Declarant's expense an additional general liability insurance policy for the benefit of the Association, existing Unit Owners and existing holders of first lien Security Interests.

Section 10.4 **Fidelity Insurance**. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "Officers, directors, trustees and employees" shall not include any officer, director, agent or employee of Declarant or any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 10.5 **Worker's Compensation and Employer's Liability Insurance**. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 10.6 **Officers' and Directors' Personal Liability Insurance**. The Association may obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association. Neither the term "officers" nor the term "directors" shall include any officer, director, employee or agent of any professional manager or managing agent heretofore or hereafter employed by the Association.

Section 10.7 **Other Insurance**. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 10.8 **Insurance Premium**. Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual assessments levied by the Association.

Section 10.9 **Managing Agent Insurance**. The manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association. The Association may indemnify its managing agent except for the agent's intentional acts or omissions or negligence outside the scope of their duties and obligations to the Association, or outside of direction from or of the Association.

Section 10.10 **Waiver of Claims Against Association**. As to all policies of insurance maintained by or for the benefit of the Association and Unit Owners, the Association and the Unit Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 10.11 **Annual Insurance Review**. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 10.12 **Adjustment by the Association**. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien Security Interest. The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and holders of first lien Security Interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Unit Owners and holders of first lien Security Interest are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 10.13 **Duty to Repair**. Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Unit Owner, at the Unit Owner's option on whether the repair is done by the Association or the Unit Owner, except as provided in the Act.

Section 10.14 **Condemnation and Hazard Insurance Allocations and Distributions**. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Unit Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

ARTICLE 11

SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS

Section 11.1 **General Provisions**. The provisions of this Article are for the benefit of holders, insurers, or guarantors of holders of first lien Security Interests recorded within the Community. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Association. A holder, insurer or guarantor of a first lien Security Interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a Security Interest shall be considered an "Eligible Holder." Eligible insurers and guarantors of a first lien Security Interest shall have the same rights as Eligible Holder of a first lien Security Interest.

Section 11.2 **Special Rights**. Eligible Holders shall be entitled to: (a) timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligation under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association, including any annual audited financial statement; (d) receive written notice of all meetings of the Executive Board or Members of the Association; (e) designate a representative to attend any such meetings; (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (g) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration; (h) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; (i) thirty (30) days' written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the community or by an Eligible Holder; and (j) immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or to the Unit on which the Eligible Holder holds a Security Interest, if the cost of reconstruction exceeds Twenty Thousand Dollars ($20,000.00) and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Units.

Section 11.3 **Special Approvals**. Unless at least sixty-seven percent (67%) of the Eligible Holders of first lien Security Interests (based on one (1) vote for each mortgage owned) of Units in the Association and requisite Unit Owners have given their written approval, neither the Association nor any Member shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such Real Estate by the Association shall not be deemed within the meaning of this provision); (b) change the method of determining the obligations, Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Units, including the architectural design of the exterior appearance of Units, or the upkeep of the Common Elements; (d) fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration; (e) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed; (f) take action to terminate the legal status of the Community after substantial destruction or condemnation occurs; (g) amend any material provision of this Declaration; and (h) establish self-management by the Association when professional management has previously been required by the legal documents for the Community or by an Eligible Holder. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Holder of a first lien Security Interest receives written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within thirty (30) days, it shall be deemed to have approved such request.

Section 11.4 **Right to Pay Taxes and Insurance Premiums**. Any holder of a first lien Security Interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Units, and the holder of a first lien Security Interest making such payments shall be entitled to immediate reimbursement therefore from the Association.

ARTICLE 12

MEMBERSHIP AND VOTING RIGHTS

Section 12.1 **Membership**. The membership of the Association at all times shall consist exclusively of all Owners or, following termination of the Community, of all former owners entitled to distributions of proceeds under the Act or their heirs, personal representatives, successors or assigns. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

Section 12.2 **One Class of Membership**. The Association shall have one class of voting membership. Each Owner shall be entitled to one (1) vote for each Unit owned in accordance with the Allocated Interest attributable to each Unit, except that no votes allocated to a Unit owned by the Association may be cast. The total number of votes which may be cast in connection with any matter shall be equal to the total number of Units then existing within the Association. Except as otherwise provided in Article III of this Declaration, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and members of the Executive Board, and may remove all officers and members of the Executive Board which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Period of Declarant Control; but in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

ARTICLE 13

CONSTRUCTION LITIGATION PROCEDURES

Section 13.1 **Association's Enforcement Rights**. In the event of any alleged defect in (i) the soils of any portion of the Community or any of the Improvements thereon; (ii) any Improvement to the Real Estate (collectively referred to as "Defect"), or in the event of any other claim for any other alleged matter whatsoever, including but without limitation, a breach of the Declaration, Articles or Bylaws (collectively a "General Claim"), brought by the Association against the Declarant, the Board of Directors shall have the right, after compliance with the procedures set forth within this Article, and upon the affirmative votes of seventy-five percent (75%) of the Board and seventy-five percent (75%) of the Owners, to proceed with a cause of action against the Declarant or its contractors for any of the foregoing reasons.

No provision in this Article 13 is intended to amend the Notice of Claim process as set forth in the Colorado Construction Defect Action Reform Act, C.R.S. § 13-20-801 *et seq.* or the applicable statute of limitations except as specifically set forth herein.

Section 13.2 **Settlement Proposal**. Following receipt of a Notice of Claim and within forty-five (45) days following inspections of the Property by Declarant, Declarant shall submit a written statement to the Association setting forth Declarant's proposed settlement of each claim of Defect and/or General Claim, and stating whether Declarant intends to perform any remedial work, or pay the Association a cash sum in lieu thereof. A majority of the Board shall be required to meet with the Declarant on at least one occasion in order to discuss the proposed settlement, if any. Either party may be represented at such meeting by their attorneys and independent consultants. If the Declarant does not provide the Association with a written statement within forty-five (45) days following the completion of any inspections and/or destructive testing, the Association shall then have the right to institute a cause of action against the Declarant in accordance with the procedures set forth herein.

Section 13.3 **Lawsuit Against the Declarant**. The affirmative consent of seventy-five percent (75%) of the Owners of the Association entitled to vote thereon must be obtained before the Association shall have the power to institute a cause of action against the Declarant, or its contractors, for the Defect or General Claim. However, such consent must be obtained by the Association only after it delivers ballots to all Owners within the Association in accordance with the notice procedures set forth in the Bylaws with respect to special meetings. Such delivery shall also include written materials which provide:

(a) a statement describing the Defect or General Claim;

(b) a copy of Declarant's written response thereto, including any proposed settlement;

(c) a statement advising Owners of their duty to disclose to prospective purchasers and lenders the Defect or General claim which the Association will assert against the Declarant or its contractors;

(d) a statement that recovery from litigation may not result in receipt of funds to pay all costs of repairing the alleged Defect or correcting the General Claim as estimated by experts retained by the Association;

(e) an estimate of the cost to the Association in prosecuting the cause of action; and

(f) a description of the agreement with the attorney whom the Board proposes to retain to prosecute the cause of action.

Section 13.4 **Liability of Directors or Officers for Failure to Maintain an Action Against the Declarant or Contractors**. No officer or director of the Association shall be liable to any person for failure to institute, maintain or conclude such cause of action if the following criteria are satisfied:

(a) the officer or director was acting within the scope of their duties;

(b) the officer or director was acting in good faith;

(c) the act or omission was not willful, wanton or grossly negligent.

Section 13.5 **Alternative Dispute Resolution**. Any claim of a Defect or General Claim shall, upon the demand of the Association, or the Declarant or its contractor, be submitted to mediation or binding arbitration, subject to the following requirements:

(a) if the parties cannot agree upon utilizing binding arbitration or mediation, but one of the parties wants to utilize an alternative dispute resolution method, binding arbitration shall be utilized;

(b) the arbitrator or mediator must be a person qualified, either with applicable industry experience or legal experience with respect to the claim of Defect or General Claim, to consider and resolve the applicable claim;

(c) if the parties cannot agree upon an arbitrator or mediator, the parties shall follow the arbitration procedures of the American Arbitration Association ("AAA") as set forth below;

(d) the fees and costs of the arbitrator or mediator and its consultants shall be borne equally by the Association and the Declarant or its contractor;

(e) the arbitrator or mediator shall have authority to establish reasonable terms regarding inspection, destructive testing, and retention of independent consultants;

(f) the arbitrator or mediator shall hold at least one hearing in which the parties, their attorneys, and expert consultants may participate;

(g) the arbitrator or mediator shall issue a written report determining all claims, including any defenses raised by the Declarant or its contractor, and which shall include a recommendation for settlement (in the case of mediation) or binding arbitration award;

(h) all then applicable statutes of limitation on any claim subject to the mediation shall be tolled during the period of mediation or arbitration, but no longer than a period of one hundred twenty (120) days;

(i) the Declarant or its contractor shall have the right to allow subcontractors to participate in the arbitration or mediation proceedings to determine indemnification rights and obligations, provided that the Association is not made to bear the cost of resolution of such indemnity issues; and

(j) any arbitration shall be determined in accordance with the American Arbitration Association, Commercial Arbitration Rules with Expedited Procedures in effect on the date hereof, as modified by this Article. Any issue about whether a claim is covered by this Article shall be determined by the arbitrator. There shall be no substantive motions or discovery, except the arbitrator shall authorize such discovery as may be necessary to insure a fair private hearing, which shall be held within one hundred twenty (120) days of the demand, and shall be concluded within three (3) days. These time limits are not jurisdictional. The arbitrator shall apply substantive law and may award injunctive relief, but shall not have the power to award punitive damages.

Section 13.6 **Use of Funds from Cause of Action**. In the event the Association receives funds as a result of any settlement, arbitration or judgment based upon a cause of action, after the payment of any fees and costs incurred in connection with the prosecution of such action, the Association shall:

(a) deposit the proceeds in a special, interest-bearing account; and

(b) utilize the proceeds only for the purpose of performing remedial or repair work on the conditions which were the subject of the claim of Defect or for the purpose of correcting the General Claim.

Section 13.7 **Amendment**. The arbitration provisions of this Article 13 may not be removed or amended from this Declaration without the consent of Declarant.

ARTICLE 14

GENERAL PROVISIONS

Section 14.1 **Enforcement**. The Association or a Unit Owner (with Owners being subject to arbitration provisions in this Declaration) may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for such violation, including reasonable attorneys' fees incurred in enforcing these covenants, or to restrain such violation or attempted violation. Failure of the Association or of any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board of Directors may adopt such rules, procedures and resolutions for carrying out its duties, and to enforce such rules, procedures and resolutions.

Section 14.2 **Severability**. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 14.3 **Term of Declaration**. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 14.4 **Amendment of Declaration, Map or Plat by Declarant**. If Declarant shall determine that any amendments to this Declaration, the Map or the Plat shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of fifteen (15) years from the date of this Declaration is recorded. In furtherance of the foregoing a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Unit Owner and holder of a Security Interest. Each deed, Security Interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 14.5 **Amendment of Declaration by Unit Owners**. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least sixty-seven percent (67%) of the votes in the Association and with the written consent of the Association. Except to the extent expressly permitted in this Declaration or the Act, no amendment may create or increase any special Declarant's rights, increase the number of Units in the Community, or change the boundaries of any Unit or the Allocated Interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Owners. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the County of Larimer of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 14.6 **Amendment Required by Mortgage Agencies**. Prior to fifteen (15) years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which a holder of a first lien Security Interest, or FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the County of Larimer, State of Colorado of a certificate setting forth the amendment or repeal in full.

Section 14.7 **Required Consent of Declarant to Amendment**. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving development rights or for the benefit of the Declarant, or the assignees, shall not be effective unless Declarant, or its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate fifteen (15) years after the recording of this Declaration, or upon conveyance of one hundred percent (100%) of the Units to Unit Owners, whichever occurs first.

Section 14.8 **Required Consent of VA/FHA to Certain Amendments**. While the Declarant is in control of the Association (i.e., Unit Owners other than Declarant have not yet elected a majority of the Executive Board), amendments to the Declaration, Articles of Incorporation or Bylaws of the Association must first be approved by the VA or FHA if either VA or FHA has approved the Community for VA guaranteed or FHA insured loans. Further, the Association may not be merged or consolidated with another association without the prior written consent of the VA or FHA if either VA or FHA has approved the Community for VA guaranteed or FHA insured loans.

Section 14.9 **Captions**. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 14.10 **Interpretations**. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 14.11 **Singular Includes the Plural.** Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

[Signatures on following pages]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized agents this __________ day of May, 2024.

WILDFIRE HOMES LLC
a Colorado limited liability company

By: ____
Calvin Mark Westover, Authorized Agent

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

The foregoing Declaration was acknowledged before me on this ____ day of May, 2024 by Calvin Mark Westover, as Authorized Agent of Wildfire Homes LLC, a Colorado limited liability company.

Witness my hand and official seal.

____
NOTARY PUBLIC
My Commission Expires __________________

CONSENT OF LIENHOLDER

This Declaration of Covenants, Conditions and Restrictions is consented to and approved by Independent Bank d/b/a Independent Financial on this ____ day of May, 2024.

INDEPENDENT BANK
d/b/a INDEPENDENT FINANCIAL

By: ________________________________
Kory Stolte, Senior Vice President

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of May, 2024, by Kory Stolte, Senior Vice President of Independent Bank d/b/a Independent Financial.

WITNESS my hand and official seal.

____
NOTARY PUBLIC
My Commission expires: __________________

EXHIBIT A

PROPERTY DESCRIPTION

Lots 1-26, and Outlots G, H, I and J, Block 2, Wildfire Homes Subdivision, Town of Estes Park, County of Larimer, State of Colorado, according to the Plat recorded on August 16, 2020 at Reception No. 20200060501 in the records of the Larimer County Clerk and Recorder.

Exhibit B

<u>EXPANSION PROPERTY DESCRIPTION</u>

NONE.

Exhibit C

EASEMENTS & ENCUMBRANCES OF RECORD

1. Road rights of way as shown on the Parrack Exemption plat recorded October 6,1978 at Reception No. 274966 and recorded December 10, 2013 at Reception No. 20130089788 and Deed of Dedication for road right of way and utility easement as described in instrument recorded in Book 1899 at Page 114 and recorded December 10, 2013 at Reception No. 20130089789.

2. Terms, conditions, provisions, agreements and obligations contained in the Application for Water Tap Outside Town Limits as set forth below: Recording Date: April 19, 1973 Recording No. Book 1550 at Page 74.

3. Road rights of way as shown on Annexation Map of Dry Gulch Road & Wildfire Ridge Addition to the Town of Estes Park as set forth below: Recording Date: January 7, 1999 Recording No.: 99001981.

4. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document: Granted to: Town of Estes Park Purpose: storm water drainage system Recording Date: June 17,1999 Recording No.: 99053227.

5. Any tax, lien, fee, or assessment by reason of inclusion of subject property in the Estes Valley Recreation and Park District, as evidenced by instrument recorded December 3, 2014 at Reception No. 20140070180 and recorded December 10, 2014 at Reception No. 20140071715.

6. Any tax, lien, or assessment by reason of inclusion of subject property in the Northern Colorado Water Conservancy District, as evidenced by instrument recorded August 5, 2019 at Reception No. 20190044854.

7. Terms, conditions, provisions, agreements and obligations contained in the Wildfire PreAnnexation Agreement as set forth below: Recording Date: October 9, 2019 Recording No.: 20190062123.

8. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 13-19, An Ordinance Approving the Annexation of Certain Territory to the Tow of Estes Park as set forth below: Recording Date: August 6, 2020 Recording No.: 20200060497.

9. Resolution No. 13-19 recorded August 6, 2020 at Reception No. 20200060496.

10. All matters as shown on the Wildfire Homes Annexation Map recorded August 6, 2020 at Reception No. 20200060498.

11. Terms, conditions, provisions, agreements and obligations contained in the Town of Estes Park, Colorado Improvement Agreement Wildfire Homes Subdivision as set forth below: Recording Date: August 6, 2020 Recording No.: 20200060499.

12. Ordinance No. 22-19, an Ordinance Vacating a Portion of the Wildfire Road Right-of-way set forth below: Recording Date: August 6, 2020 Recording No.: 20200060500.

13. Easements, rights of way, roads, notes, terms, conditions, provisions, restrictions, covenants, agreements and obligations as shown on the Plat of Wildfire Homes Subdivision, recorded 08/06/2020 at Reception No. 20200060501.

14. Right of way for Dry Gulch Road along easterly side of subject property.

15. Restrictions, covenants, condition, reservations and easements (deleting therefrom restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin), recorded 01/20/2022 at Reception No. 20220004733, of the Public Records of Larimer County, CO.

a. First Amendment to Master Declaration of Covenants, Conditions and Restrictions for Wildfire Subdivision recorded 01/28/2022 at Reception No. 20220006496.

b. First Amendment to Master Declaration of Covenants, Conditions and Restrictions for Wildfire Subdivision recorded 02/02/2022 at Reception No.20220007709.

The Divide Townhomes 2024 Budget

	2024	Realistic 2024	Cost Per Unit/Month	For only 1 unit/ annual
		1/2 of Full Year		
Income				
Assessments	$101,400.00	50,700.00	**$325.00**	$3,900.00
Late Fees	$25.00	12.50		
Status Letter Fee	$1,000.00	500.00	250 ea	$250.00
Transfer Fee	$500.00	250.00	125 ea	$125.00
Total Income	$102,925.00	51,462.50		$4,275.00
Expenses				
Administrative				
Insurance	$13,910.00	6,955.00		$535.00
Legal	$1,000.00	500.00		$38.46
Accounting	$750.00	375.00		$28.85
Management Fees	$5,616.00	2,808.00	$18.00	$216.00
Office Expenses	$700.00	350.00		$26.92
Taxes	$1,500.00	750.00		$57.69
Pest Control	$800.00	400.00		$30.77
PO Box	$150.00	75.00		$5.77
Total Administrative	$24,426.00	12,213.00		$939.46
Repairs and Maintenance				
Gutter Cleaning	$1,500.00	750.00		$57.69
Maintenance/Supplies	$8,000.00	4,000.00		$307.69
Crack Seal/Asphalt Work	$0.00	0.00		$0.00
Back Flow Testing	$1,500.00	750.00		$57.69

Total Repairs and Maintenance	$11,000.00	5,500.00		$423.08

Landscaping and Common Areas

Common Area Maintenance	$7,500.00	3,750.00		$288.46
Irrigation	$4,500.00	2,250.00		$173.08
Extras	$2,500.00	1,250.00		$96.15
Snow Removal	$4,700.00	2,350.00		$180.77
Total Landscape/Common Area Expenses	$19,200.00	9,600.00		$738.46

Utilities

Electric	$8,400.00	4,200.00		$323.08
Sewer	$0.00	0.00	Individually metered	$0.00
Water	$6,800.00	3,400.00	Individually metered	$261.54
Trash	$0.00	0.00	Individual Service Not Provided by HOA	
Total Utilities	$15,200.00	7,600.00		$584.62
Total Income Vs Expenses	$33,099.00	16,549.50		$1,589.38
Savings/Reserve Transfers	TBD	TBD	10% of annual dues to be collected for Capital	
Transfer to Savings/Reserves			Not accounted for at this time, based on sale pr	

Figures based on 26 Townhomes sold and Dues being paid

26 units when complete Numbers based on a full year of HOA Dues and expenses.

Figured on 4 closings in 2024 @ $250 ea
Figured on 4 closings in 2024 @ $125 ea

Will be a partial year, so these numbers may need adjusted.

Current Premium on file

Remove if not renewing since mail can come to Management Office

Irrigation Costs only

Improvements. Need Savings Account Set up for this Accoc.

rice.