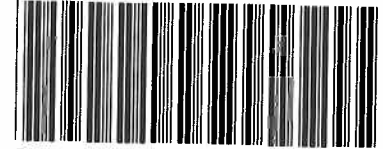


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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
RED HAWK FILING 3



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- EXHIBIT A – Community
- EXHIBIT B – Common Elements
- EXHIBIT C – Certain Title Exceptions
- EXHIBIT D – Part of the Annexable Area

Return to:
Chris Lynch
Lennar Colorado, LLC
9990 Park Meadows Drive
Lone Tree, CO 80124

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
RED HAWK FILING 3

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF RED HAWK FILING 3 is made and entered into by LENNAR COLORADO, LLC, a Colorado limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property situated in the County of Douglas, State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, the Declarant desires to subject and place upon the property described on the attached Exhibit A certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other provisions; and

WHEREAS, a common interest community may be created pursuant to CCIOA (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded.

NOW, THEREFORE, Declarant hereby declares that one or more plats that include the property described on the attached Exhibit A have been recorded and that all of the real property described on the attached Exhibit A shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein.

ARTICLE 1. DEFINITIONS

Section 1.1. AAA.

"AAA" means the American Arbitration Association.

Section 1.2. Agencies.

"Agencies" means the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development, including the Federal Housing Administration (HUD), the Veterans Administration (VA), or any other governmental or quasi-

governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

Section 1.3. *Allocated Interests.*

"Allocated Interests" means the share of Association common expenses allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Community from time to time.

Section 1.4. *Annexable Area.*

"Annexable Area" means the property described on Exhibit D attached hereto and incorporated herein by this reference, plus such additional real estate from such locations as the Declarant may elect in its sole discretion in an amount not to exceed the maximum permitted pursuant to CCIOA.

Section 1.5. *Annexable Area Easement.*

"Annexable Area Easement" means a non-exclusive, perpetual easement and right-of-way for pedestrian and vehicular access, ingress and egress, on, over and across the roads, driveways, streets, sidewalks, accessways and similar Common Elements, now or hereafter constructed, erected, installed or located in or on the Community, and on, over, across and under the Common Elements for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement and use of any utilities improvements that may now or hereafter serve the Annexable Area or any portion thereof, as more fully provided in Section 9.6 of this Declaration (Easement for Unannexed Property).

Section 1.6. *Applicant.*

"Applicant" means the Person who submits plans and specifications regarding Improvements for review and approval by the Design Review Committee, as further described in Article 5 of this Declaration (Design Review Committee).

Section 1.7. *Association.*

"Association" means Red Hawk Filing 3 Homeowners Association, Inc., a community association as provided in CCIOA.

Section 1.8. *Board of Directors.*

"Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration, the Articles of Incorporation and the Bylaws of the Association to act on behalf of the Association.

Section 1.9. *Bound Party.*

"Bound Party" means each of the following: Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; any builder or contractor,

and their respective officers, directors, employees and agents, who construct residences or other Improvements in the Community; all Persons subject to this Declaration; and any Person not otherwise subject to this Declaration who agrees to submit to Article 12 of this Declaration (Alternative Dispute Resolution).

Section 1.10. *Builder.*

"Builder" means any Member who acquires (or has acquired prior to annexation to this Declaration) more than one Lot for the purpose of constructing a residential structure on each such Lot for sale to the public.

Section 1.11. *CCIOA.*

"CCIOA" means the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, et seq., as amended.

Section 1.12. *Claim.*

"Claim" means, except as exempted by the terms of Article 12 of this Declaration (Alternative Dispute Resolution), any claim, grievance or dispute between one Bound Party and another, regardless of how the same may have arisen or on what it might be based, including without limitation those arising out of or related to (a) the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations or duties of any Bound Party under any of the Governing Documents; (b) the design or construction of Improvements; (c) any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party.

Section 1.13. *Claimant.*

"Claimant" means any Bound Party having a Claim.

Section 1.14. *Common Elements.*

"Common Elements" means any property owned or leased by the Association other than a Lot, which exists for the common use of more than one of the Owners. The Common Elements at the time of recordation of this Declaration are described on Exhibit B attached hereto and incorporated herein by this reference.

Section 1.15. *Community.*

"Community" means real estate described in this Declaration, as supplemented and amended from time to time. The Community is a planned community under CCIOA. The name of the Community is Red Hawk Filing 3.

Section 1.16. *Declarant.*

"Declarant" means Lennar Colorado, LLC and any other Person(s) to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds).

Section 1.17. *Declaration.*

"Declaration" means this Declaration of Covenants, Conditions and Restrictions of Red Hawk Filing 3 and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including, but not limited to, maps and plats.

Section 1.18. *Design Review Committee or Committee.*

"Design Review Committee" or "Committee" means the committee appointed by the Declarant or by the Association to review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

Section 1.19. *Development Rights.*

"Development Rights" means the following rights or combination of rights reserved by the Declarant as provided in this Declaration:

- 1.19.1. add real estate to this Community;
- 1.19.2. create Lots and/or Common Elements;
- 1.19.3. subdivide or replat Lots; and
- 1.19.4. withdraw real estate from this Community.

The Declarant may exercise its Development Rights in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any Development Rights. The Declarant's rights to exercise Development Rights shall terminate automatically as provided in Section 1.33 of this Declaration (Special Declarant Rights).

Section 1.20. *Governing Documents.*

"Governing Documents" means this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, the plat of Red Hawk Filing 3, recorded in the office of the Clerk and Recorder of Douglas County, Colorado, as amended, any design or architectural guidelines and any rules and regulations of the Association.

Section 1.21. *Improvements.*

"Improvements" means all improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features. The foregoing shall

include, without limitation, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, driveways, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball backboards and hoops, whether fixed or movable, signs, exterior tanks, utilities facilities, pipes, lines, and exterior air conditioning, cooling, heating and water softening equipment, if any. For purposes of Article 5 of this Declaration (Design Review Committee) and only in such Article, the word "exterior" shall be inserted immediately preceding the fourth word "improvements" in the first sentence of this Section.

Section 1.22. *Initially Unoccupied Lots.*

"Initially Unoccupied Lots" means only those Lots which have not been conveyed to the initial Owner other than the Declarant or a Builder.

Section 1.23. *Lot.*

"Lot" means each platted lot included in the real property described on the attached Exhibit A, as the same may be subdivided or replatted from time to time (and "Lot" shall include all lots created as a result of such subdivision or replatting), or any other real property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Area (which may include one or more platted lots) and any publicly dedicated property. Each Lot shall constitute a "unit" under CCIOA, and it shall not be necessary to use the term "unit" as a part of a legally sufficient description of a Lot.

Section 1.24. *Lots that May Be Included.*

"Lots that May Be Included" means One Hundred and Ninety Three (193) Lots, which shall be the maximum number of Lots that may be subject to this Declaration, including those Lots which may be included if all of the Annexable Area is annexed to this Declaration. However, the aforesaid number of Lots that May be Included is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in the Community.

Section 1.25. *Member.*

"Member" means all Owners of a Lot collectively or, following termination of the Community, of all former Owners entitled to distributions of proceeds under CCIOA or their heirs, personal representatives, successors or assigns. The Association shall have one (1) class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot shall have one (1) membership and there is only one (1) Member per Lot, even if the Lot is owned by multiple Owners.

Section 1.26. *Owner.*

"Owner" means each fee simple title holder of a Lot, including without limitation the Declarant, Builder or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. There may be more than one Owner of a Lot.

Section 1.27. *Party.*

"Party" means the Claimant and the Respondent individually; "Parties" means the Claimant and the Respondent collectively.

Section 1.28. *Person.*

"Person" means a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture, or any other entity recognized under the laws of the State of Colorado or any combination thereof.

Section 1.29. *Respondent.*

"Respondent" means any Bound Party against whom a Claimant asserts a Claim.

Section 1.30. *Security Interest.*

"Security Interest" means an interest in one or more Lots, or personal property, created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.11 of this Declaration and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2 of this Declaration, "Security Interest" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the County in which such property is located show the Administrator as having the record title to the Lot.

Section 1.31. *Security Interest Holder.*

"Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including for purposes of Section 4.11 of this Declaration and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2 of this Declaration, the Administrator of Veteran's Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records of the County in which such property is located show the said Administrator as having the record title to the Lot), or any successor to the interest of any such Person under such Security Interest.

Section 1.32. *75% Control Period.*

"75% Control Period" means a length of time expiring seven (7) years after initial recording of this Declaration in Douglas County, Colorado. However, the 75% Control Period shall terminate earlier upon the first to occur of the following events, if any of the following occur within the time

period that is specified in the first sentence of this Section: sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant; two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or two (2) years after any right to add new Lots to the Declaration was last exercised.

Section 1.33. *Special Declarant Rights.*

"Special Declarant Rights" means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, model homes and signs advertising the Community and sale of Lots; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to make the Community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the Association or any Board of Directors member during any 75% Control Period. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically at such time as the Declarant no longer owns any portion of the property described on the attached Exhibits A and D.

Section 1.34. *Termination of Mediation.*

"Termination of Mediation" means a period of time expiring thirty (30) days after submission of the matter to mediation (or within such other time as determined by the mediator or agreed to by the Parties) and upon the expiration of which the Parties have not settled the Claim.

Section 1.35. *Termination of Negotiations.*

"Termination of Negotiations" means a period of time expiring thirty (30) days after the date of the Notice (or such other period of time as may be agreed upon by the Parties) and upon the expiration of which the Parties have not resolved a Claim.

ARTICLE 2. MEMBERSHIP AND VOTING RIGHTS

Section 2.1. *Association.*

The Association has been or will be formed as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration and in its Articles of Incorporation and Bylaws.

Section 2.2. *Board of Directors.*

The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Articles of Incorporation and Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to

agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

Section 2.3. *Voting Rights.*

Each Member shall be entitled to one (1) vote for each Lot owned except that no votes allocated to a Lot owned by the Association may be cast. The maximum number of votes which may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association.

ARTICLE 3. ASSOCIATION

Section 3.1. *Authority of the Board of Directors.*

Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee, without a vote of the Members, except as otherwise specifically provided in this Declaration, the Articles of Incorporation or Bylaws of the Association.

Section 3.2. *Election of Part of the Board of Directors During the 75% Control Period.*

No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May Be Included to Owners other than a Declarant or a Builder, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that May Be Included to Owners other than a Declarant or a Builder, not less than thirty-three and one-third percent (33 1/3%) of the directors must be elected by the Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board.

Section 3.3. *Authority of Declarant During 75% Control Period.*

Except as otherwise provided in this Article, during the 75% Control Period, the Declarant or Persons appointed by the Declarant may appoint all officers and directors of the Association, and may remove all officers and directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and directors of the Association before termination of the 75% Control Period; but, in that event, the Declarant may require, for the duration of the 75% Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 3.4. *Termination of 75% Control Period.*

Not later than the termination of the 75% Control Period, the Members shall elect a Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers.

Section 3.5. *Budget.*

Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board of Directors shall give notice to the Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Board of Directors does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by ninety percent (90%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board of Directors and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

Section 3.6. *Rules and Regulations.*

Rules and regulations concerning and governing the Lots, Common Elements, and/or this Community may be adopted, amended and/or repealed from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations. The rules and regulations may state procedural requirements, interpretations and applications of the provisions of this Declaration, including without limitation, blanket requirements, blanket interpretations, and blanket applications. The Board has the authority to adopt or vary one or more rules and regulations that are different for different types of Lots, if any exist. Any rules and regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to this Declaration and all provisions hereof.

Section 3.7. *Association Books and Records.*

Subject to the next sentence, the Association shall make available to Owners, prospective purchasers, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations, design guidelines, books, records and financial statements of the Association, and the Owners or other parties accessing such documents shall pay all costs associated therewith. However, the Board of Directors may, at any time(s), prior or subsequent to a request for inspection, determine that items are confidential and should not be made available. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

Section 3.8. *Management Agreements and Other Contracts.*

Any agreement for professional management of the Association's business or other contracts providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereof, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice; provided, however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the 75% Control Period shall be subject to

review and approval by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one or more Security Interests (and HUD or VA requires such approval).

Section 3.9. *Cooperation with Other Community Association(s) and/or Any District(s).*

The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other community association(s) and/or any district(s), to share the costs and/or responsibility for any maintenance, repair, replacement, or other matters, to perform maintenance, repair or replacement for any Person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers, or others who may perform services for other community association(s) and/or any district(s), or to otherwise cooperate with other community association(s) and/or any district(s), in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and any other community association(s) and/or any district(s), as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other community association(s) and/or any district(s), to collect assessments, other charges, or other amounts which may be due to such entity and to permit such entity to collect assessments, other charges, or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

Section 3.10. *Merger.*

The Declarant hereby reserves the right to merge the Association with one or more other common interest communities without the approval of any Member or any other Person. This right shall terminate automatically as provided in Section 1.33 of this Declaration (Special Declarant Rights).

ARTICLE 4. ASSESSMENTS

Section 4.1. *Personal Obligation for Assessments.*

Each Owner of a Lot, including Declarant and each Builder, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association annual assessments or charges, special assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such assessments and other amounts to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Lot. Each amount,

together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person(s) who was the Owner of such Lot at the time when the amount became due. The personal obligation for delinquent amounts (including assessments) shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 4.2. *Purpose of Assessments.*

The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Lots, and for all of those purposes and activities which may be required of the Association, or the Board of Directors, or which the Association, or the Board of Directors, may be empowered to pursue pursuant to this Declaration, the Articles of Incorporation or Bylaws of the Association, or by law; provided, however, that such assessments levied during the 75% Control Period may not be used for the purpose of constructing capital improvements.

Section 4.3. *Initial Annual Assessment.*

Until the effective date of an Association budget adopted by the Board of Directors and not vetoed by the Owners, as provided above, the amount of the annual assessment against each Lot shall not exceed Fifty Five and No/100 Dollars (\$55.00) per Lot per month, exclusive of any amounts due to any other Person or entity. However, the rate of assessments against the Initially Unoccupied Lots shall be less than that against the other Lots, as provided in the next Section.

Section 4.4. *Rate of Assessment.*

4.4.1. Annual and special assessments shall be sufficient to meet the expected needs of the Association and shall be apportioned among the Lots in accordance with their Allocated Interests. Notwithstanding the foregoing, however, the amount of the annual assessment and special assessment against the Initially Unoccupied Lots shall be set at a lower rate than the rate of annual assessments and special assessments against other Lots, because the Initially Unoccupied Lots receive and benefit from fewer services funded by such assessments than the other Lots. Colorado Revised Statutes §38-33.3-315(3)(b) states that "Any common expense or portion thereof benefitting fewer than all of the units shall be assessed exclusively against the units benefitted." Based on this provision, the Initially Unoccupied Lots shall pay annual and special assessments at the rate of forty percent (40%) of any annual assessment or special assessment charged to Lots other than the Initially Unoccupied Lots.

4.4.2. The annual assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles.

4.4.3. Prior to automatic termination of the Special Declarant Rights as provided in Section 1.36 of this Declaration, the Declarant may in its discretion, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall constitute an advance against future amounts (including assessments) due from the Declarant; provided, however, that any such advances which have not been credited

against amounts (including assessments) due from the Declarant as of termination of the 75% Control Period shall then be repaid by the Association to the Declarant, without interest, to the extent that the Association has funds in excess of its working capital funds, reserve funds, and operating expenses to date for the calendar year in which the 75% Control Period terminates; and provided further, however, that any of such advances which are not repaid to the Declarant shall continue to constitute advances against amounts (including assessments) due from the Declarant until conveyance by the Declarant of all of the property described on the attached Exhibits A and D. If the Declarant elects in its discretion to advance any amounts as provided in this subparagraph, Declarant shall not, under any circumstances, be obligated to continue advance, payment or funding of any amount(s) in the future.

Section 4.5. *Date of Commencement of Annual Assessments.*

The annual assessments shall commence at such time as the Board of Directors may determine in its discretion. After any annual assessment has been made by the Association, annual assessments shall not be greater than the amount set forth in Section 4.3 (Initial Annual Assessment) hereof until a budget is adopted by the Board of Directors and not vetoed by the Owners, as provided in this Declaration. A budget shall be so adopted by the Association no less frequently than annually. The annual assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines in its discretion from time to time, provided that the first annual assessment shall be adjusted to reflect the time remaining in the first assessment year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

Section 4.6. *Special Assessments.*

In addition to the annual assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of the votes of sixty-seven percent (67%) of a quorum of the Association votes cast by Members voting in person or by proxy at a meeting duly called for this purpose, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital Improvement upon any portion of real property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements located on said real property, or for the funding of any expense or deficit incurred by the Association. Any such special assessment shall be set against each Lot in accordance with the Allocated Interests set forth in this Declaration, except that the special assessments against Initially Unoccupied Lots shall be set in accordance with Section 4.4.1 hereof. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with Section 4.7 hereof. Notwithstanding the foregoing, special assessments levied during the 75% Control Period may not be used for the purpose of constructing capital improvements.

Section 4.7. *Notice and Quorum for Any Special Assessments.*

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.6 hereof shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.8. *Assessments/Charges for Services to Separate Areas of the Community.*

The Association may, at any time from time to time, provide services to any separate area(s) (containing less than all of the Lots) in the Community. If such services are not funded by the annual assessments or special assessments, then such services shall be provided, if at all, pursuant to a written document that includes a statement and terms for payment of the costs, fees and expenses that are to be paid by such Owners for such services (including overhead expenses of the Association). Services which may be provided by the Association pursuant to this Section include, without limitation, (a) the construction, care, operation, management, maintenance, repair, replacement, reconstruction and renovation of Improvements or property owned by such Owner(s); (b) the provision of any services or functions; (c) the enforcement of the provisions of any declaration, covenants or any other document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; (e) the procurement of insurance for Owners.

Section 4.9. *Lien for Assessments.*

4.9.1. The Association has a lien on each Lot for any amount levied against that Lot or the Owner(s) thereof, including for fines imposed against the Lot's Owner(s). Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

4.9.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and record in the county in which the applicable Lot is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the assessments for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

Section 4.10. *Priority of Association Lien.*

4.10.1. A lien under this Article is prior to all other liens and encumbrances on a Lot except:

4.10.1.1. liens and encumbrances recorded before the recordation of the Declaration;

4.10.1.2. a Security Interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the assessment sought to be enforced became delinquent; and

4.10.1.3. liens for real estate taxes and other governmental assessments or charges against the Lot.

4.10.2. A lien under this Section is also prior to the Security Interests described in the preceding subsection 4.10.1.2 to the extent, if any, provided in CCIOA.

4.10.3. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other amounts made by the Association.

4.10.4. The Association's lien on a Lot for assessments and other amounts shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Association lien.

Section 4.11. *Certificate of Status of Assessments.*

The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished within a reasonable time after written request, and is binding on the Association, the Board of Directors, and every Owner. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 4.12. *Effect of Non-Payment of Assessments; Remedies of the Association.*

Any assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors, and the Board of Directors may charge a monthly late charge thereon in such amount as the Board of Directors may determine. The Association may bring an action at law against the Owner(s) personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained, including, without limitation in a foreclosure action, such judgment or decree shall include a reasonable attorney's fee to be fixed by the court, together with the costs of the action and interest, and may include late charges, as above provided. No Owner may be exempt from liability for payment of

assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot against which the assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

Section 4.13. *Surplus Funds.*

Any surplus funds of the Association remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves shall be retained by the Association and need not be paid to the Owners or credited to them.

Section 4.14. *Working Capital Fund.*

The Association shall require the Owner(s) (other than the Declarant or a Builder) of each Lot to make a non-refundable contribution to the Association in the amount of Six Hundred and Fifty and No/100 Dollars (\$650.00) (regardless of whether or not annual assessments have commenced as provided in Section 4.5 of this Declaration). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Lot and shall, until use, be maintained for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase additional equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of assessments as the same become due.

Section 4.15. *Other Charges.*

The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such reasonable amounts(s) as the Board of Directors may determine in its discretion at any time from time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; returned checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments.

Section 4.16. *Assessments for Misconduct.*

If any Association expense is caused by the misconduct of any Owner, his family members, tenants, guests or invitees, the Association may assess that Association expense exclusively against such Owner and his Lot.

ARTICLE 5. DESIGN REVIEW COMMITTEE

Section 5.1. *Composition of Committee.*

The Design Review Committee shall consist of three (3) or more persons. Until automatic termination of the Special Declarant Rights as provided in Section 1.33 of this Declaration, the

Declarant has the right to appoint the Design Review Committee; subsequent to such date, the Design Review Committee shall be appointed by the Board of Directors. The power to "appoint" as provided herein, shall include without limitation the power to: constitute the initial membership of the Design Review Committee; appoint member(s) to the Design Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Design Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such length of time(s), subject to the aforesaid power of removal, as may be set from time to time in the discretion of the appointor. The appointments of all then-current members of the Committee who were appointed by the Declarant shall automatically terminate at such time as the Declarant's power to appoint members of the Committee expires. The members of the Design Review Committee shall not, by virtue of their membership on the Committee, be deemed to be "officers" of the Association and thus, as a result of membership on the Committee, shall not have any of the rights or duties attributable to officers of the Association.

Section 5.2. *Review and Approval by Committee; Requirement for Approval by Governmental Entities.*

5.2.1. Except as provided in Section 5.15 of this Declaration (Declarant's and Builder's Exemption), no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee), shall have been first submitted to and approved in writing by the Design Review Committee.

5.2.2. The Design Review Committee shall exercise its reasonable judgment to the end that all proposed Improvements conform to and harmonize with the existing surroundings and Improvements. In its review of such plans, specifications and other materials and information, the Design Review Committee may require that the Applicant(s) reimburse the Committee for the actual expenses incurred by the Committee in the review and approval process. Such amounts, if any, shall be levied in addition to the assessments against the Lot for which the request for approval was made, but shall be subject to the Association's lien for assessments and subject to all other rights of the Association for the collection of such assessments, as more fully provided in this Declaration. The Committee may, from time to time, issue rules, instructions or requirements relating to any aspect(s) of the design review function.

5.2.3. In addition to the required approvals by the Design Review Committee as provided in this Article, 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 thereover, and 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 Town of Castle Rock, Colorado, if required, shall be a precondition to commencement of any construction or alteration of, addition to or change in any Improvement.

Section 5.3. *Design Guidelines.*

The Design Review Committee has the authority to, at any time from time to time, enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce, design or architectural guidelines to interpret and implement the provisions of this Article and the Declaration. Without limiting the generality of the foregoing, such document(s) may clarify the types of designs and materials that may be considered in design approval, may state requirements for submission in order to obtain review by the Committee, may state procedural requirements, or may provide for blanket approvals, interpretations or restrictions on Improvements. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval, or may state that certain types of fences are considered pre-approved (as long as such fences are in an approved location and comply with the applicable guidelines) and that no other type of fences will be approved by the Committee. The Committee shall have the authority to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce separate guidelines that govern the different types of dwelling units and/or Lots in the Community; provided that the Board of Directors may, at any time(s), modify, amend, change or repeal any guideline(s) of the Committee. Any guidelines shall be consistent, and not in conflict, with this Article and the other provisions of this Declaration.

Section 5.4. *Procedures.*

The Design Review Committee shall decide each request for approval within sixty (60) days after the complete submission of all the plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the Design Review Committee fails to decide any request within sixty (60) days after the complete submission of all the plans, specifications, materials and other information with respect thereto, then the request for approval shall be deemed to have been denied.

Section 5.5. *Vote and Appeal.*

A majority vote of the Design Review Committee is required to approve a request for approval pursuant to this Article, unless the Committee 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 Design Review Committee decides a request for approval, then any Owner shall have the right to an appeal of such decision to the full Committee, upon a request therefor submitted to the Committee within ten (10) days after such decision by the Committee's representative.

Section 5.6. *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 the terms and conditions of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application therefor (or such longer time as may be granted in writing by the Committee) or to complete the Improvement in complete conformance with terms and conditions of the approval, shall constitute noncompliance with the requirements for approval of Improvements by the Design Review Committee.

Section 5.7. *Notice of Completion.*

Upon completion of the Improvement, the Applicant for approval of the same shall give a Notice of Completion to the Design Review Committee. Until the date of receipt of such a Notice of Completion, the Design Review Committee shall not be deemed to be aware of completion of the Improvement on which approval has been sought and granted as provided in this Article.

Section 5.8. *Inspection of Work.*

The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion in order to determine whether or not 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) days after the Design Review Committee shall have received the Notice of Completion that is provided for in Section 5.7 of this Declaration.

Section 5.9. *Notice of Noncompliance.*

If, as a result of inspections or otherwise, the Design Review Committee finds that any Improvement has been done without obtaining the approval of the Design Review Committee or was not done in substantial compliance with terms and conditions of 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 5.6 of this Declaration (Prosecution of Work After Approval), the Design Review Committee may notify the Applicant in writing of the noncompliance; which notice of noncompliance shall be given, in any event, within sixty (60) days after the Design Review Committee receives the Notice of Completion that is provided for in Section 5.7 of this Declaration. The notice of noncompliance shall specify the particulars of the noncompliance.

Section 5.10. *Correction of Noncompliance.*

If the Committee determines that a noncompliance exists, the Applicant shall remedy or remove (and return the subject property or structure to its original condition) the same within a period of not more than thirty (30) days from the date of receipt by the Applicant of the ruling of the Committee. If the Applicant does not comply with the Committee ruling within such period, the Committee may, at its option, record a notice of noncompliance against the property on which the noncompliance exists, may remove the non-complying Improvement or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Committee, upon demand, for all costs and expenses incurred with respect thereto (and such amounts shall be subject to all provisions applicable to "assessments" as provided in Article 4 of this Declaration (Assessments) including, without limitation, interest, late charges and lien rights). The right of the Committee to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Committee may have at law, in equity, or under this Declaration.

Section 5.11. *Variance.*

The Design Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 10 of this Declaration (Restrictions),

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 property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 5.12. *Waivers; No Precedent.*

The approval or consent of the Design Review Committee, or any representative thereof, to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee 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.

Section 5.13. *Records.*

The Design Review Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon for such period of time as may be determined by the Board of Directors in its discretion from time to time and, subject to Section 3.7 of this Declaration (Association Books and Records), such records shall be available to Members for inspection at reasonable hours of the business day.

Section 5.14. *Liability.*

Neither the Design Review Committee, nor any member thereof, shall be liable in equity or damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within their jurisdiction hereunder. In reviewing any matter, the Design Review Committee shall not be responsible for the safety, whether structural or otherwise, of any item(s) submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, and any approval of an Improvement by the Design Review Committee shall not be deemed an approval of any such matters. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval or disapproval granted by the Architectural Review Committee.

Section 5.15. *Declarant's and Builder's Exemption.*

5.15.1. Notwithstanding anything to the contrary contained in this Declaration, the Declarant shall be exempt from the provisions of this Article except for the requirements to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 5.2.3 hereof).

5.15.2. Notwithstanding anything to the contrary contained in this Declaration, as long as a Builder has received design approval from the Declarant, such Builder shall be exempt from the provisions of this Article except for the requirements to obtain approval

from all governmental entities with jurisdiction thereover (as provided in Section 5.2.3 hereof).

ARTICLE 6. INSURANCE

Section 6.1. Insurance.

The Association shall maintain insurance in connection with the Common Elements. The Association shall maintain insurance as required by applicable law or applicable regulation, including without limitation CCIOA, which insurance shall include, without limitation, property insurance and commercial general liability insurance. In addition, the Association may maintain insurance against such other risks as the Board of Directors may elect from time to time, including, but not limited to, fidelity coverage and 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, as well as insurance on such other property and/or against such other risks as the Board of Directors may elect in its discretion from time to time.

Section 6.2. General Provisions of Insurance Policies.

All policies of insurance carried by the Association shall comply with this Section. 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. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. 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 Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation against any Owner or member of such Owner's household. Further, all policies of insurance carried by the Association shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

Section 6.3. Deductibles.

The Association may adopt and establish written non-discriminatory policies and procedures relating to the responsibility for deductibles. Any loss or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association may, at the election of the Board of Directors, be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, may be apportioned among the Persons sharing in a joint duty of repair and maintenance, may be partly or wholly borne by the Association, and/or may be shared by any such Person(s) and the Association. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid

by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question and the Association may collect the amounts from said Owner(s) in the same manner as any assessment.

Section 6.4. *Payment of Insurance Proceeds.*

Any loss covered by an insurance policy described in Section 6.1 (Insurance) hereof 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. Subject to the provisions of Section 7.1 of this Declaration (Damage or Destruction), the proceeds must be disbursed first for the repair or replacement 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 replaced or the Community is terminated.

Section 6.5. *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 not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

Section 6.6. *Acceptable Insurance Companies.*

Each insurance policy purchased by the Association must be written by an insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 6.7. *Insurance to be Maintained by Owners.*

An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Owner's Lot and the Improvements thereon, as well as on personal property belonging to an Owner and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot. Each Lot

shall be insured in an amount not less than the full replacement value of the Improvements thereon and such insurance shall name the Association as an additional insured under the policy.

ARTICLE 7. DAMAGE OR DESTRUCTION

Section 7.1. *Damage or Destruction.*

7.1.1. Any portion of the Community for which casualty insurance is carried by the Association under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

7.1.1.1. the Community is terminated; or

7.1.1.2. repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

7.1.1.3. sixty-seven percent (67%) of the Members, including every Member whose dwelling unit will not be rebuilt, vote not to rebuild; or

7.1.1.4. prior to conveyance of any Lot to a Person other than the Declarant, a Security Interest Holder of a Security Interest on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

7.1.2. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the assessment liability of all the Lots. If the Members vote not to rebuild any Lot, that Lot's Allocated Interests are automatically reallocated as if the Lot had been condemned as provided in Section 13.13 of this Declaration (Eminent Domain), and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

Section 7.2. *Lots.*

Except as otherwise provided in Section 7.1 (Damage or Destruction), any damage to or destruction of any structure located on a Lot shall be promptly repaired and reconstructed by the Owner(s) thereof. "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. If the Owner(s) of a Lot do not commence repair and reconstruction within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Committee, then the Association may, in its reasonable discretion, after providing the notice required in Section 8.2 (Association's

Right to Maintain, Repair, Replace and Reconstruct) hereof, enter upon the Lot and complete such repair and reconstruction.

ARTICLE 8. EXTERIOR MAINTENANCE

Section 8.1. General.

8.1.1. Maintenance, repair and replacement of the Common Elements, Improvements located thereon, and of any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association unless such Improvements have been dedicated to and accepted by a local government entity for the purpose of maintenance, repair and replacement or unless such maintenance, repair and replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. Further, the Association may, but shall not have a duty to, provide such other maintenance, repair and replacement as the Board of Directors deems appropriate from time to time including, without limitation, maintenance, repair and replacement of publicly-dedicated property and Improvements located thereon. The costs, expenses, fees, and other amounts to be expended for the maintenance and repair provided for in this subsection shall, subject to Section 8.4 (Acts or Omissions) hereof, be collected by the Association as assessments and paid as Association expenses.

8.1.2. The Association may contract for regular trash removal service to be provided for the Lots, which shall be paid by the Owners as part of the assessments to the Association that are provided for in Article 4 of this Declaration (Assessments). Any Owner desiring non-regular or extraordinary trash removal shall make his or her own arrangements for the same and pay for the same in addition to the assessments that are due to the Association.

8.1.3. Except as provided in the preceding subsections 8.1.1 and 8.1.2, the maintenance, repair and replacement of each Lot, and the Improvements thereon, shall be performed by the Owner(s) thereof at such Owner's sole costs and expense. However, the foregoing is subject to the provisions of Section 8.4 of this Declaration (Acts or Omissions).

Section 8.2. Association's Right to Maintain, Repair, Replace and Reconstruct.

In the event any Owner shall fail to perform his maintenance, repair, replacement and/or reconstruction obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owner(s) by the Board, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair, replacement and/or reconstruction. Notwithstanding the foregoing, no notice shall be required in emergency situations. The cost of such maintenance, repair, replacement and/or reconstruction shall be the personal obligation of the Owner(s) of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to "assessments" as provided in Article 4 of this Declaration (Assessments) including, without limitation, interest, late charges and lien rights.

Section 8.3. *Maintenance of and Non-Interference with Grade and Drainage; Irrigation Recommendations Around Foundations and Slabs.*

8.3.1. Each Owner shall maintain the grading on his Lot (including grading around the building foundation), and the Association shall maintain the grading on the Common Elements, at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner and the Association agree, for themselves and their heirs, personal representatives, successors and assigns, that they will not in any way interfere with or obstruct the established drainage pattern over any real property which they have a duty to maintain, from adjoining or other real property. In the event that it is necessary or desirable to change the established drainage over any Lot or the Common Elements, then the party responsible for the maintenance of such real property shall submit a plan to the Design Review Committee for its review and approval, in accordance with Article 5 of this Declaration (Design Review Committee), and any such change shall also be made in accordance with all laws, regulations and resolutions of any applicable governmental entities. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading by the Declarant or a Builder, as applicable, is completed.

8.3.2. The Owner of a Lot should not plant flower beds (especially annuals), vegetable gardens and other landscaping which requires regular watering, within five (5) feet of the foundation of the dwelling unit or any slab on the Lot. If evergreen shrubbery is located within five (5) feet of any foundation wall or slab, then the Owner of the Lot should water such shrubbery by "controlled hand-watering," and should avoid excessive watering. Further, piping and heads for sprinkler systems should not be installed within five (5) feet of foundation walls or slabs.

Section 8.4. *Acts or Omissions.*

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair, replacement and/or reconstruction of the Common Elements or any Lot(s), or any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, replacement, and/or reconstruction, or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair, replacement and/or reconstruction shall be added to the assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Article 4 of this Declaration (Assessments). A determination of the act or omission of any Owner, or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner.

ARTICLE 9. EASEMENTS

Section 9.1. *Other Easements.*

In addition to any other easements, including those which may be granted or reserved elsewhere in this Declaration, the following Sections describe easements to which the Community is or may be subject.

Section 9.2. *Access Easement.*

Each Lot shall be subject to an easement in favor of the Association, including the agents, employees and contractors thereof, for performing maintenance, repair, replacement and/or reconstruction, or other services as provided in the Governing Documents, including without limitation, maintenance, repair, replacement and/or reconstruction pursuant to Article 8 of this Declaration (Exterior Maintenance) and as provided on the plat of Red Hawk Filing No. 3, recorded in the office of the Clerk and Recorder of Douglas County, Colorado, as amended; and for and incidental to enforcement of any term or provision of the Governing Documents. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. 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 maintenance; 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 warned of impending 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.

Section 9.3. *Utilities Easement.*

Declarant hereby reserves a blanket easement upon, across, over and under the Common Elements for utilities and the installation, replacement, repair, maintenance and/or reconstruction of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.33 of this Declaration, at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

Section 9.4. *Easement for Encroachments.*

To the extent that any Improvement on a Lot, or on the Common Elements, encroaches on any other Lot or Common Elements, a valid easement for the encroachment exists.

Section 9.5. *Drainage Easement.*

Declarant hereby reserves, to itself and to the Association, easements for drainage and drainage facilities across the five (5) rear and five (5) side feet of each Lot; provided, however, that if a residence is located upon any of the areas described in this sentence, then such easement shall be reduced in width to the width of the distance from the nearest lot line to the exterior wall of the residence on such Lot that is nearest to such lot line. Except for residences as provided in the preceding sentence, no Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon each five (5) foot rear and side yard drainage easements, at any time, to construct, repair, replace or change drainage structures or drainageways, or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.36 of this Declaration, at which time said reserved right shall vest solely in the Association.

Section 9.6. *Easement for Unannexed Property.*

The Declarant hereby reserves an Annexable Area Easement for the use and benefit of the Annexable Area. By virtue of this Annexable Area Easement, the Declarant generally intends to provide for pedestrian and vehicular access and for utilities services, to those portion(s) of the Annexable Area which have not been included, from time to time, in the Community pursuant to Section 13.4 of this Declaration (Annexation; Withdrawal). Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as both of the following have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration pursuant to the aforesaid Section; and expiration of the Declarant's right to withdraw such portion of the Annexable Area from this Declaration.

ARTICLE 10. RESTRICTIONS

Section 10.1. *General Plan; Restrictions Imposed.*

It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Lots. The use of individual Lots may also be subject to other terms or restrictions which are more restrictive than this Article. This Community is subject to the recorded easements, licenses and other matters listed on Exhibit C attached hereto and incorporated herein by this reference. Without limiting the generality of the foregoing, each Lot shall be subject to the covenants, restrictions and requirements contained on the recorded plat,

as amended, that is applicable to such Lot. In addition, the Declarant declares that all of the Lots shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.

Section 10.2. *Compliance with Law.*

All Owners and other Persons who reside upon or use any portion of the Community shall comply with all terms and provisions of all statutes, ordinances, resolutions, regulations and laws of governmental and quasi-governmental entities and agencies, including without limitation the plat(s) of the Community or any portion thereof, the pd site plan(s) of the Community or any portion thereof, the Town of Castle Rock Municipal Code, the Town of Castle Rock Skyline/Ridgeline Protection Regulations, the Town of Castle Rock Water Conservation Ordinance(s) and the Town of Castle Rock Water Use Management Program Implementation Policy.

Section 10.3. *Residential Use.*

Subject to Section 13.7 of this Declaration (Declarant's and Builder's Use), Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that the following conditions are satisfied:

10.3.1. the business conducted is clearly secondary to the residential use of the home and is conducted entirely within the home;

10.3.2. the existence or operation of the business is not detectable from outside of the home by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

10.3.3. the business does not result in an undue volume of traffic or parking within the Community, which determination may be made by the Board of Directors in its sole discretion from time to time;

10.3.4. the business conforms to all zoning requirements and is lawful in nature; and

10.3.5. the business conforms to any rules and regulations that may be imposed by the Board of Directors from time to time on a uniform basis.

Section 10.4. *Household Pets.*

No animals, horses, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of a Lot. The Association shall have, and is hereby given, the right and authority, from time to time, to: set a maximum number of household

pets; set a size or poundage limit on pets; regulate the type(s) of pets that are permitted to be kept; determine in its sole discretion that any dog(s), cat(s) or other household pet(s) are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to pets; or determine that an Owner is otherwise in violation of any provision of this Section. If the Association determines that any of the foregoing have been or are being violated, the Association may take such action(s) as it may deem appropriate to correct the same. An Owner's right to keep household pets is coupled with the responsibility to pay for any damage caused by such pets, as well as all costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in Article 4 of this Declaration (Assessments).

Section 10.5. *Temporary Structures; Unsightly Conditions.*

No structure of a temporary character, including, but not limited to, a house trailer, tent, or shack, shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or a capital improvement, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any structure or other Improvement shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Lot as to be visible from the street or from any other Lots.

Section 10.6. *Miscellaneous Improvements.*

10.6.1. No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House," "For Rent" or security sign(s) of not more than a total of five (5) square feet in the aggregate, which pertains to that Lot. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant and/or any Builder (with the written consent of the Declarant), shall be permissible.

10.6.2. Other than during initial construction, no construction materials, wood piles, or storage areas shall be so located on any Lot as to be visible from a street or from the ground level of any other Lot.

10.6.3. Except for solar panels, which are regulated by law, no types of refrigerating, cooling or heating apparatus shall be permitted on a roof. Additionally, no such apparatus shall be permitted elsewhere on a Lot (except when appropriately screened and approved by the Design Review Committee).

10.6.4. Except as may otherwise be permitted by the prior approval of the Design Review Committee, no exterior radio antenna, television antenna, audio, visual reception device, antenna, or satellite dish of any type shall be installed, placed, erected or maintained on any Lot; provided, however, that any such devices may be erected or installed

by the Declarant during its sales or construction upon the Lots; and provided further, however, that the requirements of this subsection shall not apply to those antenna (including certain satellite dishes) specifically covered by the Telecommunications Act, of 1996 or regulations adopted thereunder, as amended. As to antenna (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 or regulations adopted thereunder, as amended, the Association shall be empowered to adopt rules and regulations governing the types of antenna that are permissible and, to the extent permitted by the Telecommunications Act of 1996 or regulations adopted thereunder, as amended, establishing reasonable, non-discriminatory restrictions or requirements relating to appearance, safety, location and maintenance.

10.6.5. Fences shall be permitted only in accordance with the prior, written approval of the Design Review Committee; except such fences as may be constructed, installed or located by the Declarant or Builder in their development of, or construction of Improvements in, the Community.

10.6.6. No wind generators, hanging articles (including without limitation clotheslines), drying yards, or service yards, shall be constructed, installed, erected or maintained on any Lot, except with the prior, written approval of the Design Review Committee.

10.6.7. Dog runs shall be permitted on a Lot only with the prior, written approval of the Design Review Committee.

10.6.8. All structures must comply with applicable law and the requirements of the Design Review Committee.

Section 10.7. *Vehicular Parking, Storage and Repairs.*

10.7.1. Except as otherwise provided in Section 10.7.2 hereof and/or in rules and regulations which may be adopted by the Board of Directors from time to time, vehicles shall be parked only in the garages, in the driveways, if any, serving the Lots, or in appropriate spaces or areas which may be designated by the Board from time to time, except that any vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. Vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt from time to time. Declarant and/or the Association may designate certain parking areas for visitors or guests and the Board of Directors may adopt reasonable rules and regulations, from time to time, governing such areas.

10.7.2. Except as may otherwise be set forth in the rules and regulations or guidelines adopted by the Board of Directors or the Design Review Committee, in their discretion from time to time, commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, recreational vehicles, golf carts and boat trailers, shall be parked only in enclosed garages or specific areas, if any, which may be designated by the Board of Directors from time to time. This restriction, however, shall not restrict

trucks or commercial vehicles which are necessary for construction or for the maintenance of any portion of the Community or any Improvements located thereon, nor shall restriction prohibit vehicles that may be otherwise parked as a temporary expedient for loading, delivery or emergency. Stored vehicles and vehicles which are inoperable or do not have current operating licenses shall not be permitted in the Community except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if, for example, it is up on blocks or covered with a tarpaulin and remains on blocks or so covered for seventy-two (72) consecutive hours without the prior approval of the Board of Directors.

10.7.3. In the event the Association shall determine that a vehicle is parked or stored in violation of subsections 10.7.1 or 10.7.2 hereof, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

10.7.4. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within completely enclosed structure(s) which screen the sight and sound of the activity from nearby property. The foregoing restriction shall not be deemed to prevent, on a Lot, washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

Section 10.8. *Nuisances.*

No nuisance shall be permitted in the Community, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of the Community or any portion thereof. As used herein, the term "nuisance" shall include each violation of this Declaration, the Articles of Incorporation, Bylaws, rules, regulations, and/or standards of the Association, but shall not include any activities of Declarant which are reasonably necessary to the development and construction of, and sales activities in, the Community. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. Further, no unlawful use shall be permitted or made of the Community or any portion thereof.

Section 10.9. *No Hazardous Activities; No Hazardous Materials or Chemicals.*

No activities shall be conducted on any Lot or within Improvements constructed on any 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 any Lot and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in

household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

Section 10.10. *No Annoying Lights, Sounds or Odors.*

No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or offensive to others. Further, no annoying light, sound or odor shall be permitted which may be seen, heard or smelled from any Lot.

Section 10.11. *Restrictions on Trash and Materials.*

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup; provided, however, that no such container shall be deposited on a street for garbage pickup prior to 5:00 a.m. on the day such garbage will be picked up. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any Lot. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

Section 10.12. *Lots to be Maintained.*

Subject to Section 10.5 of this Declaration (Temporary Structures; Unsightly Conditions), each Lot shall at all times be kept in a clean and sightly condition by the Owner(s) thereof.

Section 10.13. *Leases.*

The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Lot, or any portion thereof, as long as all leases provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, Bylaws, design guidelines and rules and regulations of the Association; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

Section 10.14. *Landscaping.*

Within the time frames as hereinafter provided, the Owner (other than Declarant or a Builder) of each Lot shall install landscaping on all of the Lot which is not covered or enclosed by a building, fence or other structure, and shall thereafter maintain such landscaping in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds, and replacement of landscaping. The Owner of each Lot (other than Declarant or a Builder) shall install landscaping on such Lot within one hundred eighty (180) days after acquisition of such Lot by such Owner if said acquisition occurs between April 1 and October 1; if said acquisition does not occur

between such dates, then such landscaping shall be installed by such Owner by the following October 1. Landscaping plans and other required documents shall be professionally done, shall be in accordance with the design guidelines, and shall be submitted to the Design Review Committee for review and approval prior to the installation of landscaping, except where installed by the Declarant. If any Owner fails to comply with this Section, or with the requirements of the Design Review Committee in installation of landscaping, the Association may, at the direction of the Board of Directors, enter upon such Lot and install or maintain landscaping for which the Owner shall be obligated to pay, in accordance with and subject to the provisions of Section 8.2 of this Declaration (Association's Right to Maintain, Repair, Replace and Reconstruct).

Section 10.15. *Restrictions on Mining or Drilling.*

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

Section 10.16. *Storm Water.*

The storm water program throughout the United States arises from the Clean Water Act of 1972 and regulations established by the U.S. Environmental Protection Agency, as well as other laws and regulations. These requirements may be implemented and expanded through state and local regulations and permits, but the federal laws are federally enforceable. The use of landscape materials (such as top soil, mulches, natural and manufactured fertilizers, crushed rock, sand, etc.) that potentially deposit silts, dusts, and debris into the storm water system near a Lot must be managed to reasonably preclude run-off or other disbursement (such as being blown) during stormy conditions. These materials should not be placed upon or adjoining any hard-surfaces such as driveways, walkways, curb, gutter, or street, where the potential for runoff is very high. If temporary storage results in these materials being located on these areas, then erosion control devices must be in place at the time of such storage. Some examples of erosion control devices are sandbags, encased straw, small stone rolls, straw bales, plastic tarps, etc. Extreme care must also be taken when handling or storing chemicals such as oils, fuels, paints, fertilizers (liquid or dry), trash, etc., and such items must also be reasonably prevented from entering the storm water system. Generally, the storm water system starts at the curb or drainage system on each Lot and ends up eventually in the Nation's waterways.

Section 10.17. *Golf Course Waiver.*

Some of the Lots are located near the Red Hawk Ridge Golf Course ("Golf Course"). Each Owner acknowledges and accepts the inherent risks associated with the Golf Course, including without limitation, the following: (a) maintenance, watering and repair of the Golf Course may begin early in the morning and extend late into the evening; (b) the Golf Course may be heavily fertilized from time to time; (c) maintenance of the Golf Course may require the use of chemicals and pesticides; (d) the Golf Course may be watered with reclaimed water; (e) golf balls are not susceptible to being easily controlled and, accordingly, may enter any air space, strike any Owners, their guests, invitees, family members or other Persons, yards, walls, roofs, windows, landscaping and personal property, which may cause personal injury, death or property damage; (f) invasion of any Owner's use or enjoyment of their Lot; (g) design of the Golf Course; (h) use, operation,

storage, maintenance or repair of golf carts or other equipment, implements or materials; (i) the level of skill of any golfer (regardless of whether such golfer has permission to use the Golf Course); (j) noise, excrement, or other activities of geese or other wildlife, animals or insects; (k) trespass by any golfer on a Lot; (l) exercise of any of the easements provided for in Section 10.18 hereof (Golf Easements); and (m) use, operation, maintenance or repair of the amphitheater (collectively the "Golf Course Risks"). Each Owner hereby releases and discharges the Declarant, the Association, Builders, the Golf Course architect, and the developer(s) of the Community, and their respective officers, directors, partners, members, shareholders, agents, employees, affiliates, representatives, receivers, subsidiaries, predecessors, successors and assigns (collectively herein the "Released Parties") from and against any and all claims, damages, losses, demands, liabilities, obligations, actions or causes of action, whatsoever, regarding the Golf Course Risks. Furthermore, each Owner hereby assumes the risks inherent in owning property adjacent to or near the Golf Course, including, without limitation, the Golf Course Risks and the risk of death, personal injury and property damage from errant golf balls or other matters incidental to use and operation of a golf course, and hereby indemnifies and agrees to hold the Released Parties harmless from any and all loss arising from claims by such Owner(s) and by all persons using or visiting such Owner's Lot, for death, personal injury or property damage related to the Golf Course Risks. Notwithstanding anything in the foregoing to the contrary, golfers are not intended to be Released Parties and Owners shall not be deemed to have waived any rights which an Owner may have against any golfer.

Section 10.18. *Golf Easements.*

The Association, Declarant, Builders, and users of the Golf Course are, subject to the Governing Documents, hereby granted non-specific, non-exclusive easements on, over and across all Lots and Common Elements (collectively the "Burdened Property") for all acts necessary, incidental or appropriate to the playing of golf. The acts which are permitted by the foregoing easement include, without limitation, the flight of golf balls over and across the Burdened Property, the landing of golf balls on the Burdened Property, the use of golf carts, maintenance, repair and watering equipment upon the Golf Course, the usual and common noises and other disturbances created by maintenance, repair and watering of the Golf Course and playing of the game of golf (including tournaments), together with all other common and usual occurrences normally associated with the existence, use, maintenance, repair and operation of a golf course. Notwithstanding anything in the foregoing to the contrary, nothing in this Section shall be construed to permit a golfer to physically enter upon any Lot.

ARTICLE 11. COMMON ELEMENTS

Section 11.1. *Owners' Easements of Enjoyment.*

Subject to this Article, every Owner shall have a non-exclusive right and easement for the purpose of access to such Owner's Lot and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 11.2. *Extent of Owners' Easements.*

Subject to the other provisions of this Article, the rights and easements of enjoyment created hereby are subject to the following: the Common Elements may not be used in any manner which violates the statutes, rules, or regulations of any governmental authority with jurisdiction over the Common Elements; and no Owner may place any structure on the Common Elements. In addition, such rights and easements are subject to the following rights of the Association:

11.2.1. the right of the Association to borrow money for any purpose and to mortgage the Common Elements as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest except in accordance with CCIOA; and

11.2.2. the right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

11.2.3. the right of the Association to promulgate and publish standards, guidelines, rules and regulations, with which each Member shall strictly comply; and

11.2.4. the right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Association Bylaws or the rules and regulations of the Association; and

11.2.5. the right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless the same is done in accordance with CCIOA. Notwithstanding the foregoing, the granting of permits, licenses and easements for utilities, roads or for other purposes reasonably necessary or useful shall not be deemed a transfer within the meaning of this subsection; and

11.2.6. the right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

11.2.7. the right of the Association to close or limit the use of the Common Elements while maintaining, repairing and/or making replacements in the Common Elements.

Section 11.3. *Declarant's Use of Common Elements.*

An easement is hereby granted to the Declarant on, over, under, across and through the Common Elements as may be reasonably necessary for the purpose of discharging any of

Declarant's obligations or exercising any Special Declarant Rights and no Owner shall engage in any activity which will temporarily or permanently interfere with the Declarant's easements.

Section 11.4. *Delegation of Use.*

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

Section 11.5. *Payment of Taxes or Insurance by Security Interest Holders.*

Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

Section 11.6. *Conveyance or Encumbrance of Common Elements.*

Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only in accordance with CCIOA.

Section 11.7. *Designation of Common Elements.*

Declarant in recording this Declaration may have designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities, as provided in this Declaration and other applicable documents. The Common Elements is not dedicated hereby for use by the general public.

Section 11.8. *Duty to Accept Property and Facilities Transferred by Declarant.*

The Association shall accept title to any real property, including Improvements thereon, as well as personal property, equipment, and easements, transferred to the Association by the Declarant, together with responsibility to perform all duties and functions of the Association which are set forth in this Declaration, on the plat of Red Hawk Filing No. 3 recorded in the office of the Clerk and Recorder of Douglas County, Colorado, as amended, or otherwise assumed by the Association. Declarant shall also transfer to the Association, and the Association shall accept, any warranties associated with any of such property. As of the date of recording of this Declaration, interests which are planned to be transferred by the Declarant to the Association are planned to consist only of fee simple title to Common Elements to be located in the property described on the attached Exhibit A and/or the Annexable Area, and/or easements.

ARTICLE 12. ALTERNATIVE DISPUTE RESOLUTION

Section 12.1. *Intent of Article; Applicability of Article; and Applicability of Statutes of Limitation.*

12.1.1. Each Bound Party agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit any Claims to the procedures set forth in Section 12.4 (Mandatory Procedures) hereof.

12.1.2. By acceptance of a deed for a Lot, each Owner agrees to abide by the terms of this Article.

12.1.3. Any applicable statute of limitation shall apply to the alternative dispute resolution procedures set forth in this Article.

Section 12.2. *Consensus for Association Action.*

12.2.1. Except as provided in this Section, the Association may not commence a legal proceeding or an action against any Bound Party without the approval of the Members to which at least two-thirds (2/3) of the votes in the Association are allocated. A Member representing Lots owned by Persons other than the Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of two-thirds (2/3) of the total number of Lots in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it.

12.2.2. Prior to any Bound Party commencing any proceeding to which another Bound Party is a Party, including but not limited to an alleged defect of any Improvement, the Respondent shall have the right to be heard by the Members, or the Claimant, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute.

Section 12.3. *Claims.*

Unless specifically exempted below, all Claims between any of the Bound Parties shall be subject to the provisions of Section 12.4 of this Declaration (Mandatory Procedures). Notwithstanding the foregoing, unless all Parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 12.4 of this Declaration (Mandatory Procedures):

12.3.1. any suit by the Association against any Bound Party to enforce the provisions of Article 4 of this Declaration (Assessments);

12.3.2. any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other

ancillary relief as the court may deem necessary in order to enforce any of the provisions of Article 5 of this Declaration (Design Review Committee) or Article 10 of this Declaration (Restrictions);

12.3.3. any suit between or among Owners, which does not include Declarant, a Builder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

12.3.4. any suit in which any indispensable party is not a Bound Party.

Section 12.4. *Mandatory Procedures.*

12.4.1. *Notice.* Prior to proceeding with any claim against a Respondent, each Claimant shall give a Notice to each Respondent, which Notice shall state plainly and concisely:

12.4.1.1. the nature of the Claim, including all Persons involved and Respondent's role in the Claim;

12.4.1.2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

12.4.1.3. the proposed remedy; and

12.4.1.4. the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

12.4.2. *Negotiation and Mediation.*

12.4.2.1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

12.4.2.2. Upon a Termination of Negotiations, Claimant shall have thirty (30) days to submit the Claim to mediation under the auspices of the AAA in accordance with the AAA's Supplemental Rules for Residential Construction Mediation Rules in effect on the date of the notice that is provided for in Section 12.4.1 of this Declaration (Notice). If there are no Supplemental Rules for Residential Construction Mediation Rules then in effect, the AAA's Construction Industry Mediation Rules shall be utilized.

12.4.2.3. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

12.4.2.4. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator shall issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

12.4.2.5. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

12.4.2.6. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 12.4 of this Declaration (Mandatory Procedures) and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 12.4 of this Declaration (Mandatory Procedures). In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

12.4.3. *Binding Arbitration.*

12.4.3.1. Upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Supplemental Rules for Residential Construction Arbitration Rules in effect on the date of the notice that is provided for in Section 12.4.1 of this Declaration (Notice). If there are no Supplemental Rules for Residential Construction Arbitration Rules then in effect, the AAA's Construction Industry Arbitration Rules shall be utilized. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the Parties, there shall be one arbitrator who, to the extent feasible, shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

12.4.3.2. Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

12.4.3.3. The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the

existence, content, or results of any arbitration without the prior written consent of all Parties.

Section 12.5. *Amendment.*

Notwithstanding anything to the contrary contained in this Declaration, for a period of time commencing as of the termination of the 75% Control Period and ending twenty (20) years thereafter, this Article may not be amended without the prior written consent of one hundred percent (100%) of the votes in the Association. An amendment of this Article shall only be effective as to Claims that arise after the effective date of such amendment.

ARTICLE 13. GENERAL PROVISIONS

Section 13.1. *Enforcement; Fines.*

13.1.1. This Section 13.1.1 is subject to Article 12 of this Declaration (Alternative Dispute Resolution). Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in the Governing Documents may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Except as otherwise provided in this Declaration, the Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings. Remedies for violation(s) of the Governing Documents shall be cumulative and no remedy shall be exclusive of other remedies that may be available. In any action instituted or maintained under any of such documents, the prevailing party shall be entitled to recover its costs and attorney fees incurred in asserting or defending the claim, as well as any and all other sums. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the Governing Documents, shall in no event be deemed a waiver of the right to do so thereafter.

13.1.2. Subject to the following sentence, the Association shall have the right to levy and collect fines (as provided in Article 4 of this Declaration (Assessments)) for the violation of any provision of any of the aforesaid documents. Prior to collection of any fines, the Association, the Board of Directors, or an authorized management company of the Association, shall mail a notice of violation to the Person(s) alleged to be in violation of any such provision and such notified Person(s) has a right to a hearing upon submission to the Board of Directors of a written request for hearing, which is properly signed by such Person(s) and dated, within ten (10) days after the notice of violation has been mailed or such other time as the Board of Directors may decide in its discretion from time to time; failure of a notified Person to request a hearing in writing within the required time period shall constitute a waiver of such right to a hearing.

Section 13.2. *Severability.*

All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, including without limitation any provision(s) of Article 12 of this Declaration (Alternative Dispute

Resolution), by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 13.3. *Conflict of Provisions.*

In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 13.4. *Annexation; Withdrawal.*

13.4.1. Additional property may be annexed to this Declaration with the consent, at the time such annexation is to be effective, of Members casting sixty-seven percent (67%) of the Association votes and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed.

13.4.2. Notwithstanding the foregoing, until that date which is seven (7) years after the date of recording of this Declaration in Douglas County, Colorado, the Declarant may annex to this Declaration the Annexable Area or any portion(s) thereof, without consent of any other Owners, Security Interest Holders, or any other Person; however, such annexation is subject to a determination by HUD or VA (if the Declarant desires to attempt to obtain HUD or VA approval of the property being annexed, and if HUD or VA require such approval) that the annexation is in accord with the general plan approved by them and that the structures to be located thereon will be of comparable style, quality, size and cost to the existing Improvements. Each such annexation shall be effected, if at all, by recording an Annexation of Additional Land in the Office of the Clerk and Recorder of Douglas County, Colorado, which document:

13.4.2.1. shall provide for annexation to this Declaration of the property described in such Annexation of Additional Land;

13.4.2.2. shall identify the owner(s) of the Lots thereby created;

13.4.2.3. shall assign an identifying number to each new Lot;

13.4.2.4. shall describe any Common Elements within the property being annexed;

13.4.2.5. shall reallocate the Allocated Interest; and

13.4.2.6. may include such other provisions as the Declarant deems appropriate. Other provisions that may be included in an Annexation of Additional Land include, without limitation, covenants, conditions, restrictions, requirements and/or other provisions, in addition to or different from those contained elsewhere in this Declaration, that apply or will apply to some or all of the property that is thereby being annexed to this Declaration. Any of such other provisions referenced in the preceding sentence may be amended with the consent of the Owners of sixty-seven percent (67%) of the Lots to which such other provisions apply.

13.4.3. In addition to the rights contained in subsection 13.4.2 and notwithstanding anything to the contrary contained in this Declaration, the Declarant (or any Builder so designated by the Declarant) may annex to this Declaration the Annexable Area or any portion(s) thereof, until that date which is seven (7) years after the date of recording of this Declaration in Douglas County, Colorado, by recording a deed by which any such property is conveyed by the Declarant (or any Builder so designated by the Declarant). Each of such deeds shall be deemed to include the following provisions whether or not such provisions are contained in such deed: the property described in such deed shall be annexed to this Declaration; and the lot and/or tract designation of such Lot(s) and/or tract(s) shall be the identifying number and/or letter assigned to each such Lot(s) and/or tract(s); and the Common Elements, if any, included in such deed shall be the tracts, if any, listed on such deed; and the Allocated Interest appurtenant to such Lot shall be that fraction determined in accordance with Section 1.3 of this Declaration (Allocated Interests). Each annexation which is accomplished by recording of a deed in accordance with this subsection shall be deemed to be effective upon the date of recording of such deed. Notwithstanding the foregoing, a deed which does not convey property from the Declarant (or any Builder so designated by the Declarant) shall not be an annexing deed as provided in this subsection, nor shall a deed which otherwise complies with this subsection if the same states on its face that it is not an "annexing deed" and is initialed by the grantor of such deed.

13.4.4. The Declarant hereby reserves the right, from time to time, to record one or more documents in order to clarify the effect of any annexation(s), including without limitation any matters contained in Sections 13.4.1, 13.4.2, and/or 13.4.3. Each such document(s), if any such document(s) are recorded by the Declarant in its discretion, may state the legal description(s) of any property which has been annexed, and may include such other provisions which the Declarant, in its discretion, may determine in order to clarify any matter having to do with annexation of such property to this Declaration.

13.4.5. Except as otherwise specifically stated in the document pursuant to which property is annexed, all provisions of this Declaration, including, but not limited to (as to Lots), those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon the effective date of the annexing document (which shall constitute the date of recording thereof unless otherwise stated in such document). Each annexation to this Declaration, if any, shall be deemed to constitute an amendment to this Declaration.

13.4.6. The property which is described on the attached Exhibit A and each portion of the Community which is annexed to this Declaration by the Declarant shall be subject to a right of withdrawal by the Declarant. Such withdrawal may be accomplished, if at all, in accordance with CCIOA. However, the Declarant's right to withdraw each such portion of the Community shall expire and terminate, as to each portion of the Community, no later than automatic termination of the Special Declarant Rights as provided in Section 1.33 hereof.

Section 13.5. *Minor Violations of Setback Restrictions.*

If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation," for the purpose of this Section, is a violation of not more than four (4) feet beyond the required setback lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

Section 13.6. *Subdivision or Replatting of Lots.*

The Declarant hereby reserves the right to subdivide or replat any Lot(s) owned by the Declarant in the Community. Without limiting the generality of the foregoing, the Declarant reserves the right to move any Lot line(s) on Lot(s) owned by the Declarant, for the purpose of accommodating Improvements which are constructed or are to be constructed; provided that such Lot line adjustments, if any, shall not change the number of Lots in the Community at the time each such Lot line adjustment is approved by the applicable governmental entity. The rights provided for in this Section shall terminate automatically upon termination of the Special Declarant Rights, as provided in Section 1.33 hereof. No Lot may be further subdivided from that existing at the time such Lot becomes subject to this Declaration, except by Declarant.

Section 13.7. *Declarant's and Builder's Use.*

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, as well as any Builder (but only with the express written consent of the Declarant), to perform such reasonable activities, and to maintain upon portions of the Lots and the Common Elements such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Lots and development and construction of Improvements. The foregoing includes, without limitation, locating, maintaining and relocating management offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as it determines in its reasonable discretion from time to time. Any real estate used as a sales office, management office, or a model, shall be a Lot or Common Elements, as designated in this Declaration or any other recorded document. Further, nothing contained in this Declaration shall limit the rights of Declarant or require the Declarant to obtain approvals:

13.7.1. to excavate, cut, fill or grade any property (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements;

13.7.2. to use any Improvements on any property (with the consent of the Owner thereof) as a construction, management, model home or sales or leasing office in connection with the development, construction or sale of any property; and/or

13.7.3. to require Declarant to seek or obtain any approvals under this Declaration for any such activity.

Section 13.8. *Duration, Revocation, and Amendment.*

13.8.1. Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. Except as otherwise provided in this Declaration (including, without limitation, Sections 12.5 (Amendment), Section 13.4 (Annexation; Withdrawal), and subsections 13.8.2 and 13.8.3 of this Declaration), this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests; provided however that, subject to Section 12.5 of this Declaration (Amendment), as long as Declarant owns any portion of the property described on the attached Exhibits A and D, no amendment may be made to this Declaration except with the affirmative vote or agreement of Members holding at least ninety percent (90%) of the Allocated Interests.

13.8.2. Notwithstanding anything to the contrary contained in this Declaration, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of any of the Agencies or of recognized secondary mortgage markets. Such right of amendment shall terminate automatically as provided in Section 1.33 of this Declaration (Special Declarant Rights).

13.8.3. Notwithstanding anything to the contrary contained in this Declaration, this Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate automatically as provided in Section 1.33 of this Declaration (Special Declarant Rights).

13.8.4. Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant to this Declaration or as permitted by CCIOA, may be signed by the Declarant and shall require no other signatory.

Section 13.9. *Registration of Mailing Address.*

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of

Directors or the Association during the 75% Control Period shall be sent by registered or certified mail, postage prepaid, to 9990 Park Meadows Drive, Lone Tree, Colorado 80124, unless such address is changed by the Association during the 75% Control Period; subsequent to termination of the 75% Control Period, the Association shall notify the Owners of a different address for notices.

Section 13.10. *HUD or VA Approval.*

During the 75% Control Period, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more Security Interests, and HUD or VA require such approval: annexation of additional real property (if the Declarant desires to obtain HUD or VA approval of the property that is being annexed and if HUD or VA require such approval); amendment of this Declaration, except as provided in Sections 13.8.2 and 13.8.3 hereof; termination of this Community; dedication of Common Elements; or merger or consolidation of the Association, except as provided in Section 3.11 of this Declaration (Merger).

Section 13.11. *Eminent Domain.*

The taking by eminent domain of a Lot(s) or Common Element(s), or any portion thereof, shall be done in accordance with applicable law, including without limitation CCIOA.

Section 13.12. *Limitation on Liability.*

The Association, the Board of Directors, the Design Review Committee, the Declarant, any Builder, and the officers, directors, members, partners, agents and employees of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 13.15 (Waiver) shall apply to this Section.

Section 13.13. *No Representations, Guaranties or Warranties.*

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, the Design Review Committee, any Builder, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. The release and waiver set forth in Section 13.15 (Waiver) shall apply to this Section.

Section 13.14. *Disclaimer Regarding Safety.*

DECLARANT, THE BUILDERS, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE DESIGN REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN

THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE BUILDERS, THE ASSOCIATION, THE BOARD OF DIRECTORS, AND THE DESIGN REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED IN THIS DECLARATION, OR IN THE ARTICLES OF INCORPORATION, BYLAWS OR 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 COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 13.15 (WAIVER) SHALL APPLY TO THIS SECTION.

Section 13.15. *Waiver.*

By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant, the Association, the Board of Directors, the Design Review Committee, each Builder, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, including without limitation, those contained in Sections 13.12, 13.13, and 13.14.

Section 13.16. *Headings.*

The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

Section 13.17. *Gender.*

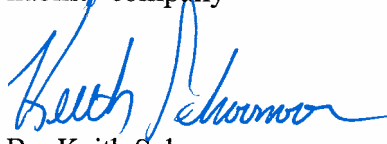
Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

Section 13.18. *Run with Land; Binding Upon Successors.*

The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon this Community and all real property and Improvements which are now or hereafter become a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Builders, the Association and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 25th day of August, 2006.

LENNAR COLORADO, LLC, a Colorado limited liability company



By: Keith Schoonover

Title: Vice President



STATE OF COLORADO

)

)

ss.

DOUGLAS COUNTY

)

The foregoing instrument was acknowledged before me this 25th day of August, 2006, by Keith Schoonover as Vice President of LENNAR COLORADO, LLC, a Colorado limited liability company.

Witness my hand and official seal.

{SEAL}



Notary Public

My commission expires: April 10, 2007

EXHIBIT A
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
RED HAWK FILING 3

The following property as shown on the plat of Red Hawk Filing 3, recorded in the office of the Clerk and Recorder of Douglas County, Colorado, as amended:

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 7 SOUTH, RANGE 67 WEST, THE NORTH HALF OF SECTION 3, AND THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 8 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF CASTLE ROCK, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH QUARTER CORNER OF SAID SECTION 3;

THENCE NORTH 89°01'20" EAST ALONG THE NORTHERLY LINE OF THE NORTHEAST QUARTER OF SAID SECTION 3 A DISTANCE OF 1,313.16 FEET;

THENCE NORTH 00°38'55" WEST A DISTANCE OF 763.97 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF SANTA FE DRIVE;

THENCE SOUTH 11°42'53" EAST ALONG SAID SOUTHWESTERLY RIGHT OF WAY LINE A DISTANCE OF 1,023.41 FEET TO THE NORTHERLY LINES OF THE PARCELS DESCRIBED IN BOOK 1411 AT PAGE 118;

THENCE ALONG SAID NORTHERLY LINES THE FOLLOWING FORTY-NINE (49) COURSES;

1. NORTH 44°37'38" WEST A DISTANCE OF 106.02 FEET TO A POINT OF CURVATURE;
2. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 104°41'17", A RADIUS OF 170.00 FEET, AND AN ARC LENGTH OF 310.62 FEET (CHORD BEARS SOUTH 83°01'44" WEST, 269.18 FEET);
3. SOUTH 30°41'05" WEST A DISTANCE OF 393.54 FEET;
4. SOUTH 50°56'25" WEST A DISTANCE OF 72.93 FEET;
5. SOUTH 65°45'10" WEST A DISTANCE OF 368.89 FEET;

6. NORTH $26^{\circ}31'58''$ WEST A DISTANCE OF 501.19 FEET;
7. NORTH $36^{\circ}24'54''$ WEST A DISTANCE OF 253.42 FEET;
8. SOUTH $89^{\circ}01'14''$ WEST A DISTANCE OF 479.92 FEET;
9. SOUTH $37^{\circ}29'26''$ WEST A DISTANCE OF 239.38 FEET;
10. SOUTH $55^{\circ}55'51''$ WEST A DISTANCE OF 148.32 FEET;
11. SOUTH $72^{\circ}22'39''$ WEST A DISTANCE OF 333.79 FEET;
12. NORTH $03^{\circ}16'29''$ EAST A DISTANCE OF 103.23 FEET TO A POINT OF CURVATURE;
13. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF $102^{\circ}11'47''$, A RADIUS OF 175.00 FEET, AND AN ARC LENGTH OF 312.14 FEET (CHORD BEARS NORTH $47^{\circ}49'25''$ WEST, 272.38 FEET);
14. SOUTH $81^{\circ}04'41''$ WEST A DISTANCE OF 149.92 FEET TO A POINT OF CURVATURE;
15. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF $58^{\circ}19'05''$, A RADIUS OF 175.00 FEET, AND AN ARC LENGTH OF 178.12 FEET (CHORD BEARS SOUTH $51^{\circ}55'09''$ WEST, 170.53 FEET)
16. SOUTH $22^{\circ}45'36''$ WEST A DISTANCE OF 223.92 FEET;
17. SOUTH $09^{\circ}00'52''$ WEST A DISTANCE OF 20.44 FEET TO A POINT OF CURVATURE;
18. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF $57^{\circ}48'56''$, A RADIUS OF 435.00 FEET, AND AN ARC LENGTH OF 438.95 FEET (CHORD BEARS SOUTH $37^{\circ}55'20''$ WEST, 420.56 FEET);
19. SOUTH $66^{\circ}49'48''$ WEST A DISTANCE OF 217.40 FEET TO A POINT OF CURVATURE;
20. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF $73^{\circ}02'48''$, A RADIUS OF 365.00 FEET, AND AN ARC LENGTH OF 465.34 FEET (CHORD BEARS SOUTH $30^{\circ}18'24''$ WEST, 434.46 FEET) TO A POINT OF NON-TANGENCY
21. SOUTH $83^{\circ}46'48''$ WEST A DISTANCE OF 70.00 FEET;
22. NORTH $05^{\circ}35'27''$ WEST A DISTANCE OF 9.51 FEET;
23. NORTH $34^{\circ}33'23''$ WEST A DISTANCE OF 688.20 FEET;
24. NORTH $28^{\circ}01'18''$ WEST A DISTANCE OF 192.36 FEET;
25. NORTH $13^{\circ}17'11''$ WEST A DISTANCE OF 288.99 FEET;
26. NORTH $13^{\circ}18'41''$ WEST A DISTANCE OF 122.10 FEET;
27. NORTH $40^{\circ}43'42''$ WEST A DISTANCE OF 73.33 FEET;

28. SOUTH 89°31'46" WEST A DISTANCE OF 814.02 FEET;
29. SOUTH 51°46'17" WEST A DISTANCE OF 251.17 FEET;
30. SOUTH 39°15'19" WEST A DISTANCE OF 916.08 FEET;
31. SOUTH 23°06'31" EAST A DISTANCE OF 30.62 FEET TO A POINT OF CURVATURE;
32. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 66°59'33", A RADIUS OF 300.00 FEET, AND AN ARC LENGTH OF 350.77 FEET (CHORD BEARS SOUTH 56°36'18" EAST, 331.13 FEET) TO A POINT OF NON-TANGENCY;
33. NORTH 39°16'28" EAST A DISTANCE OF 970.16 FEET TO A POINT OF NON-TANGENT CURVATURE;
34. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 55°41'36", A RADIUS OF 175.00 FEET, AND AN ARC LENGTH OF 170.11 FEET, (CHORD BEARS SOUTH 81°33'45" EAST, 163.49 FEET);
35. NORTH 70°35'27" EAST A DISTANCE OF 256.16 FEET;
36. SOUTH 13°26'27" EAST A DISTANCE OF 502.64 FEET;
37. SOUTH 39°42'13" EAST A DISTANCE OF 77.02 FEET;
38. SOUTH 50°17'47" WEST A DISTANCE OF 50.00 FEET;
39. SOUTH 83°56'07" WEST A DISTANCE OF 366.49 FEET;
40. SOUTH 35°22'10" WEST A DISTANCE OF 661.42 FEET;
41. SOUTH 53°32'02" WEST A DISTANCE OF 101.15 FEET;
42. NORTH 83°14'41" WEST A DISTANCE OF 500.00 FEET;
43. NORTH 08°01'09" EAST A DISTANCE OF 327.14 FEET TO A POINT OF NON-TANGENT CURVATURE;
44. ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 32°58'02", A RADIUS OF 350.00 FEET, AND AN ARC LENGTH OF 201.39 FEET, (CHORD BEARS NORTH 51°00'34" WEST, 198.62 FEET) TO A POINT OF NON-TANGENCY;
45. SOUTH 35°11'59" WEST A DISTANCE OF 346.59 FEET;
46. SOUTH 21E 0°41'30" WEST A DISTANCE OF 519.46 FEET;
47. SOUTH 26°36'29" WEST A DISTANCE OF 596.79 FEET;
48. SOUTH 14°12'54" WEST A DISTANCE OF 159.44 FEET TO A POINT OF CURVATURE;

49. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 64°52'51", A RADIUS OF 180.00 FEET, AND AN ARC LENGTH OF 203.83 FEET (CHORD BEARS SOUTH 18°13'32" EAST, 193.11 FEET) TO A POINT OF NON-TANGENCY ON THE SOUTHERLY LINE OF THE NORTHEAST QUARTER OF SAID SECTION 4;

THENCE NORTH 89°53'59" WEST ALONG SAID SOUTHERLY LINE A DISTANCE OF 167.68 FEET TO THE WESTERLY LINE OF SAID NORTHEAST QUARTER;

THENCE NORTH 01°08'05" WEST ALONG SAID WESTERLY LINE A DISTANCE OF 2657.83 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 4;

THENCE NORTH 89°31'53" EAST ALONG THE NORTHERLY LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 1313.85 FEET TO THE EAST SIXTEENTH CORNER BETWEEN SECTIONS 4 AND 33;

THENCE NORTH 89°31'53" EAST ALONG THE NORTHERLY LINE OF SAID NORTHEAST QUARTER A DISTANCE OF 1313.85 FEET TO THE NORTHWEST CORNER OF SAID SECTION 3;

THENCE NORTH 89°01'18" EAST ALONG THE NORTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 3 A DISTANCE OF 2,625.84 FEET TO THE POINT OF BEGINNING.

CONTAINING 4,714,443 SQUARE FEET OR 108.23 ACRES, MORE OR LESS.

EXHIBIT B
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
RED HAWK FILING 3

The following property as shown on the plat of Red Hawk Filing 3, recorded in the office of the Clerk and Recorder of Douglas County, Colorado, as amended:

All of Private Open Space Tracts "B", "C," "D", "E", "F", "H", "I", "J", "K", "L", "M", and "N" of Red Hawk Filing Number 3, according to the plat thereof recorded in the Office of the County Clerk and Recorder of Douglas County in Reception Number 2006015962.

EXHIBIT C
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
RED HAWK FILING 3

If recorded, the following items are recorded in the office of the Clerk and Recorder of Douglas County, Colorado:

1. Taxes and assessments for the year of recording of this Declaration, and for subsequent years, not yet due and payable.

EXHIBIT D
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
RED HAWK FILING 3

All of the property as shown on the plat of Red Hawk Filing 3, recorded in the office of the Clerk and Recorder of Douglas County, Colorado, as amended, EXCEPTING AND EXCLUDING the property described in the attached Exhibit A.

AMENDMENT TO DECLARATION

THIS AMENDMENT is made this 9th day of January, 2024.

RECITALS

A) LENNAR COLORADO, LLC, a Colorado corporation, created Red Hawk Filing 3 (“Red Hawk Filing 3 Homeowners Association, Inc.,” or the “Association”) by recording a Declaration on September 11, 2006 under Reception No. 2006078479.

B) The Original Declaration provides for and allows for this Amendment to the Declaration (the “Amendment”) in Sections 13.8.1 and 13.8.4, which provide as follows:

Section 13.8. Duration, Revocation, and Amendment

13.8.1 Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. Except as otherwise provided in this Declaration (including, without limitation, Sections 12.5 (Amendment), Section 13.4 (Annexation; Withdrawal), and subsections 13.8.2 and 13.8.3 of this Declaration), this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests; provided however that, subject to Section 12.5 of this Declaration (Amendment), as long as Declarant owns any portion of the property described on the attached Exhibits A and D, no amendment may be made to this Declaration except with the affirmative vote or agreement of Members holding at least ninety percent (90%) of the Allocated Interests.

13.8.4 Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals.

C) Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217, the amendment requirement for this Declaration is 67% of the votes of the Association.

D) All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means.

E) This Amendment has been prepared and determined by the Association and by the Owners that have approved this Amendment to be reasonable and not burdensome.

F) The purpose of this Amendment is to add leasing restrictions.

G) The undersigned, being the Secretary, hereby certifies that 67% of the votes of the Association have consented and agreed to such Amendment, and that the Association has obtained approval for the proposed Amendment pursuant to the terms and conditions of the Colorado Common Interest Ownership Act.

H) As amended by this Amendment, the Original Declaration is referred to as the "Declaration."

NOW THEREFORE,

- 1) Amendments. The Original Declaration is hereby amended as follows:
 - a) **Repeal and Replacement. Article 10, Section 10.13 is hereby repealed in its entirety and replaced as follows:**

Section 10.13. Leases.

The term "lease," as used herein, shall be defined as the regular occupancy of a Lot by any Person other than the Owner, with or without consideration. This includes any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include subleases. Any Owner shall have the right to lease his Lot, or any portion thereof, as long as all leases provide that the terms of the lease and lessee's occupancy of the leased premises shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, Bylaws, design guidelines and rules and regulations of the Association; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

10.13.1. Any lease entered into for a Lot shall:

10.13.1.1. be for a minimum period of thirty (30) days;

10.13.1.2. be in writing and shall provide that the lease is subject to the terms of the Governing Documents. Owners are required to provide their tenants and lessees of the Lot with copies of all current Governing Documents effective at the commencement of the lease. A copy of the lease agreement shall be provided to the Board of Directors upon request;

10.13.2. Exceptions: Exceptions to the 30-day minimum period stipulated in Section 10.13.1.1 shall include:

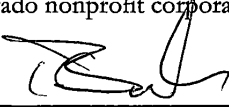
10.13.2.1. Any lease agreement contained in the purchase and sale agreement entered into between the buyer and seller of a Lot;

10.13.3. Except as restricted in this Declaration, and in such rules and regulations as may be adopted by the Board of Directors, the right to lease of a Lot shall not be further restricted.

2) No Other Amendments. Except as amended by the terms of this Amendment and previous Amendments, the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment is executed by the undersigned.

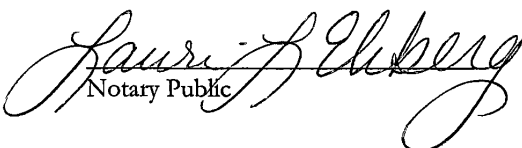
Red Hawk Filing 3 Homeowners Association, Inc.,
a Colorado nonprofit corporation

By: 
Secretary

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing was acknowledged before me this 9th day of December, 2024, by Kevin Becker, as Secretary of Red Hawk Filing 3 a Colorado nonprofit corporation.

Witness my hand and official seal. My commission expires: 06/18/2028


Notary Public

LAURI L EKBERG
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124035142
MY COMMISSION EXPIRES 06/18/2028