

**DECLARATION  
OF  
HILLSIDE COTTAGES**

THIS DECLARATION OF HILLSIDE COTTAGES (this “**Declaration**”) is made as of November 7, 2018 by Hillside Cottages, LLC, a Colorado Limited Liability Company (“**Declarant**”).

**RECITALS**

A. Declarant is owner of that certain real property located in the County of Jefferson, Colorado (the “**Property**”), which is described on Exhibit A attached hereto and incorporated herein.

B. The Property is subject to those rights and encumbrances set forth in Exhibit C attached hereto; and

C. Declarant desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein, pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes §§38-33.3-101 *et seq.*, for the purpose of protecting the value and desirability of said real property and for the purpose of furthering a plan for the improvement, sale, and ownership of said real property, to the end that a harmonious and attractive development of said real property may be accomplished and the health, comfort, safety, convenience and general welfare of owners in said real property, or any portion thereof may be promoted and safeguarded. This Declaration is intended to and shall provide a flexible and reasonable procedure for the further development, administration, maintenance, and preservation of the Community.

**ARTICLE 1  
DECLARATION AND SUBMISSION**

1.1 Conveyances Subject to Declaration. Declarant hereby declares that the Property shall be held, sold and conveyed subject to the covenants, restrictions and easements in this Declaration, which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Declarant hereby submits the Property to the provisions of the Colorado Common Interest Ownership Act.

1.2 Name and Type. The type of common interest community hereby created is a Planned Community. The name of the Planned Community is Hillside Cottages.

1.3 General Common Elements Dedication. The Declarant, in recording the Declaration and the Map in the records of the Clerk and Recorder of the County of Jefferson, Colorado,

has designated all of the Property, except the Lots as General Common Elements. The Map is incorporated herein and made a part of this Declaration. In the event of any inconsistency between the terms of this Declaration and the Map or the Map as it may be amended in the future, the Map or the amended Map shall control.

- 1.4 Conveyance of General Common Elements. Hillside Cottages, LLC, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby sells and conveys to Hillside Cottages Homeowners Association, Inc., and its successors and assigns forever, the real property in Jefferson County, as more particularly described on **Exhibit B** attached hereto and incorporated herein. Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, if any, and all the estate, right, title, interest, claim and demand whatsoever of Hillside Cottages, LLC, either in law or equity, of, in and to the above-described property, subject to all restrictions of record, including, without limitation, this Declaration, easements, restrictions, reservations, and rights-of-way of record and the lien of real estate taxes not yet due and payable.

## **ARTICLE 2 DEFINITIONS**

The following words, when used in this Declaration or any Supplemental Declaration, shall have the meanings set forth below. Each capitalized term not otherwise defined in this Declaration or in the Map (defined below) shall have the meaning specified or used in the Act (defined below).

- 2.1 "**Act**" shall mean the Colorado Common Interest Ownership Act, Colorado Revised Statutes §§38-33.3-101, *et seq.*, as the same may be amended from time to time.
- 2.2 "**Allocated Interests**" shall mean a Lot Owner's proportionate share of all Common Expenses assessed by the Association. A Lot Owner's Allocated Interest is a ratio (which may be expressed as a percentage), the numerator of which is one, and the denominator of which is the total number of Lots within the Community.
- 2.3 "**Architectural Review Committee**" means the committee appointed by the Association to review and approve or disapprove plans for Improvements, as more fully provided in Article 8, in order to ensure harmonious additions, alterations, and Improvements within the Community.
- 2.4 "**Articles**" shall mean the Articles of Incorporation for Hillside Cottages Homeowners Association, Inc., a Colorado nonprofit corporation, currently on-file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

- 2.5 “**Assessments**” shall mean the Assessments levied pursuant to Article 7 below, including interest, late fees, attorney’s fees, fines, and costs.
- 2.6 "**Association**" shall mean Hillside Cottages Homeowners Association, Inc. a Colorado nonprofit corporation, and a homeowners’ association organized under Section 38-33.3-301 of the Act, and its successors and assigns. The Association shall act by and through its Board of Directors and officers unless the Articles, Bylaws or this Declaration specifically require otherwise.
- 2.7 "**Association Documents**" shall mean this Declaration, the Articles, the Bylaws, the Map, any amendments or supplements to the foregoing documents, and any procedures, rules, regulations or policies adopted under such documents by the Association.
- 2.8 “**Board of Directors**” or “**Board**” shall mean the governing body of the Association.
- 2.9 “**Budget**” shall mean an annual, written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared pursuant to Section 7.3 of this Declaration.
- 2.10 "**Bylaws**" shall mean the Bylaws adopted by the Association, as amended from time to time.
- 2.11 "**Clerk and Recorder**" shall mean the office of the Clerk and Recorder in the County of Jefferson, Colorado.
- 2.12 "**General Common Elements**" shall mean the Property (including any improvements thereon) except the Lots. The General Common Elements shall be owned by the Association for the common use and enjoyment of the Owners. The General Common Elements is more specifically described in Exhibit B hereto.
- 2.13 "**Common Expenses**" shall mean the following expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves, including: (a) all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws; (b) all other expenses of owning, administering, operating, servicing, conserving, managing, maintaining, repairing or replacing the General Common Elements, including capital reserves; (c) all expenses incurred by the Association for the benefit of more than one Owner; (d) insurance premiums for the insurance carried under Article 12; and (e) all expenses lawfully determined to be Common Expenses by the Board of Directors.
- 2.14 “**Community**” shall mean the Hillside Cottages common interest community.
- 2.15 "**Declarant**" shall mean Hillside Cottages LLC, a Colorado limited liability company. References in this Declaration to "Declarant" will include any Successor Declarant to the

extent of the rights of Declarant are assigned (as provided by Section 2.40) by Declarant (or any successor Declarant) to such Successor Declarant.

- 2.16 "**Declaration**" shall mean this Declaration together with the any other recorded instruments that create the Community, including any supplements and amendments to those instruments, and also including, but not limited to, plats and maps.
- 2.17 "**Design Standards**" shall mean the Architectural Standards, Design Guidelines and Construction Regulations adopted by the Architectural Control Committee as the same may be amended from time to time.
- 2.18 "**Development Rights**" shall mean and refer to those rights defined as "Development Rights" under Section 103(14) of the Act that are reserved for the benefit of the Declarant in accordance with the specific terms and conditions of this Declaration. All Development 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 Development Rights at any time and from time to time, so long as they are exercised during the Development Period.
- 2.19 "**Environmental Law**" shall mean any federal, state or local law, whether common law, court or administrative decision, statute, rule, regulation, ordinance, court order or decree, or administrative order or any administrative policy or guidelines concerning action levels of a governmental authority (federal, state or local) relating to the environment, public health, occupational safety, industrial hygiene, any Hazardous Materials (including the disposal, generation, manufacture, presence, processing, production, release, storage, transportation, treatment, or use thereof), or the environmental conditions on, under, or about the Property, as amended and as in effect from time to time, including without limitation the following statutes and all regulations thereunder as amended and in effect from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9601, *et seq.*; the Superfund Amendments and Reauthorization of Act of 1986, Title III, 42 U.S.C. §§11001, *et seq.*; the Clean Air Act, 42 U.S.C. §§7401, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§3251 *et seq.*; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§1801, *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§6901, *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251, *et seq.*; the Toxic Substances Control Act of 1976, 15 U.S.C. §§2601, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §§651, *et seq.*; and any successor statutes and regulations to the foregoing.
- 2.20 "**Good Standing**" shall mean that an Owner is no more than 30 days late in the payment of any Assessments, and has none of his, her or its privileges of membership in the Association or ownership in the Community suspended (or, if such privileges have been

suspended, such suspension is being contested in accordance with applicable provisions of the Bylaws).

- 2.21 “**Guest**” shall mean (a) a guest, licensee, or invitee of an Owner; or (b) an occupant (other than an Owner) or tenant of a Lot and any members of his or her household, invitee, or cohabitant of any such Person.
- 2.22 “**Hazard Insurance**” shall have the meaning assigned in Section 12.2.
- 2.23 “**Hazardous Materials**” shall mean (a) any chemicals, materials, or substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants" or words of similar import under any applicable Environmental Law; and (b) any other chemical, material or substance, exposure to which is prohibited, limited, or regulated by any governmental authority, including, without limitation, asbestos and asbestos-containing materials in any form, lead-based paint, any radioactive materials, polychlorinated biphenyls ("**PCBs**"), or substances or compounds containing PCBs and petroleum products.
- 2.24 “**Improvements**” shall mean all improvements, structures, fixtures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball hoops, signs, exterior tanks and exterior air conditioning, cooling, heating, and water softening equipment.
- 2.25 “**including**” or “**include**” or similar words shall mean including, without limitation.
- 2.26 “**Lot**” shall mean any one of the plots of land shown on the Map and which is located within the Property together with all Improvements located thereon.
- 2.27 “**Managing Agent**” shall mean a person or entity engaged by the Association to perform certain duties, powers or functions of the Association as the Board of Directors may authorize from time to time.
- 2.28 “**Map**” shall mean that certain map recorded by the Declarant in the office of the Clerk and Recorder of the County of Jefferson which shows the Property and which sets forth the identifying numbers for the Total Permitted Lots and the boundaries thereof, together with the information relating to the Property which is required by the Act.

- 2.29 "**Member**" shall mean any person or entity that holds membership in the Association.
- 2.30 "**Mortgage**" shall mean any mortgage, deed of trust or other document pledging any Lot, Residence, or interest therein as security for payment of a debt or obligation.
- 2.31 "**Mortgagee**" shall mean any person or entity named as a mortgagee or beneficiary in any Mortgage or any successor to the interest of any such person or entity under such Mortgage.
- 2.32 "**Nonprofit Act**" shall mean the Colorado Revised Nonprofit Corporation Act, Colorado Revised Statutes §§ 7-121-101, *et seq.*, as the same may be amended from time to time.
- 2.33 "**Owner**" or "**Lot Owner**" shall mean the owner of record, whether one or more persons or entities, of fee simple title to any Lot, and also includes the purchaser under a recorded contract for deed covering a Lot with a current right of possession and interest in the Lot, and excluding those having an interest merely as security for the performance of an obligation.
- 2.34 "**Person**" shall mean a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture or any other entity recognized as being capable of owning real property under the laws of the State of Colorado or any combination thereof.
- 2.35 "**Property**" shall mean the real property described in Recital A of this Declaration.
- 2.36 "**Residence**" shall mean the dwelling constructed on a Lot together with its exterior surfaces, roofs, patios, porches, decorative outside walls and fences, basement and garage, as applicable, but excluding the Lot and any appurtenant easements to such Lot.
- 2.37 "**Rules**" shall include, without limitation, the rules and regulations adopted by the Board, the Association and the Architectural Control Committee and any other rules and regulations adopted in accordance with this Declaration or the Bylaws, all as amended from time to time.
- 2.38 "**Security Interest**" shall mean an interest in real estate or personal property created by contract or conveyance that secures payment or performance of an obligation. The term includes a lien created by a Mortgage, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association (but nothing herein shall be construed to permit the pledging of any interest in the Association), and any other consensual or nonconsensual lien or title retention contract intended as security for an obligation.
- 2.39 "**Special Assessment**" shall have the meaning assigned in Article 7.

- 2.40 "**Successor Declarant**" shall mean any person or entity to whom Declarant assigns any portion or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder. Declarant may assign less than all of its rights as Declarant to more than one Successor Declarant, but Declarant may not assign and have outstanding at the same time the same rights of Declarant as to a particular Lot or to a particular portion of the Community to more than one Successor Declarant.
- 2.41 "**Supplemental Declaration**" shall mean an instrument that amends this Declaration.
- 2.42 "**Total Permitted Lots**" shall mean the 22 Lots. This is the maximum number of Lots that the Declarant reserves the right to create and develop.
- 2.43 "**Utilities**" shall mean and include private and public utility lines of any type or nature, including wires, pipes, conduits, cables, fiber optics, and ducts for utility systems used for domestic cold and hot water, sanitary sewer, storm sewer, chilled water, condenser water, heating hot water, steam, steam condensate, natural gas, control compressed air, conditional and non-conditional air, ventilation and exhaust air, electricity, security, fire alarm, emergency communications, systems control and automation, video monitoring, telephone, television, other telecommunications systems, and other mechanical, electrical, and related life safety systems. "Utilities" does not include utility services, such as water, gas, electric, telephone, cable or other services.
- 2.44 "**Voting Interests**" shall mean the votes allocated to each Lot for purposes of voting on matters before the Members of the Association pursuant to Article 5.

### **ARTICLE 3 MAP**

- 3.1 Recordation and Content. Prior to the conveyance of any Lot, the Map shall be filed for record with the Clerk and Recorder. The Map may be amended from time to time as provided in this Declaration. There shall be filed for record as a part of the Map the certificate of a registered land surveyor certifying that the Map contains all the information that is required by Section 209 of the Act. In interpreting the Map, the existing physical boundaries of each Lot, shall be presumed to be its legal boundaries.
- 3.2 Amendments. Except as otherwise provided herein, the Map may be amended or supplemented with the prior written approval of (i) 67% of Owners; and (ii) (to the extent not otherwise included) the Owner of a Lot altered in the proposed amendment or supplement. In addition, the Association or Declarant (subject to Section 14.5) shall be entitled to amend or supplement the Map without the approval of Owners: (a) for the addition or removal of Lots as permitted in this Declaration; and (b) to conform the Map to the actual location of constructed improvements.

**ARTICLE 4**  
**THE GENERAL COMMON ELEMENTS**

- 4.1 Title to the General Common Elements. The Declarant has herein conveyed fee simple title to the General Common Elements within the Property to the Association. If Declarant exercises its Development Right to add one or more Additional Parcels to the Community, then Declarant shall convey to the Association the General Common Elements, if any, located within such Additional Parcel(s).
- 4.2 Duty to Own and Maintain. The Association agrees to own and maintain any property, including all Improvements and personal property transferred to it by the Declarant as General Common Elements. Property interests transferred to the Association by Declarant may include fee simple title, easements, and contractual rights to use the Property. Any property or interest in the Property transferred to the Association by Declarant shall be transferred subject to this Declaration, easements, restrictions, reservations, and rights-of-way of record and the lien of real estate taxes not then due and payable.
- 4.3 Duty to Manage and Care for the General Common Elements. Following completion of any Improvements on the General Common Elements by Declarant, the Association shall manage, operate, care for, insure, maintain, repair, and reconstruct all of the General Common Elements and keep the same in a safe, attractive, and desirable condition for the use and enjoyment of all of the Owners subject to the Owner's rights to approve Budgets for such purposes as set out below. The Board shall determine the specification, scope, extent, nature, and parameters of the Association's maintenance, repair, replacement, and improvement responsibilities from time to time.

**ARTICLE 5**  
**THE ASSOCIATION**

- 5.1 Association. The name of the Association is Hillside Cottages Homeowners Association, Inc. Declarant has caused the Association to be incorporated as a nonprofit corporation under the laws of the State of Colorado.
- 5.2 General Purposes and Powers. The Association is responsible for the operation and management of the Community, the implementation and enforcement of this Declaration, and the maintenance, repair, replacement, and operation of the General Common Elements and other portions of the Property as set out in this Declaration, all so as to further the interests of the Members of the Association. Any purchaser or occupant of a Lot shall be deemed to have assented to, ratified, and approved such designations and management. The Association acting through the Board shall have all the power necessary or desirable to effectuate such purposes. In addition, the Board shall have the specific powers granted



in the Bylaws which shall not be derogated by amendment to the Bylaws inconsistent with this Declaration.

- 5.3 Board of Directors. The affairs of the Association shall be managed by the Board which may delegate authority to a Managing Agent for the Association as more fully described in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.
- 5.4 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions in the Articles of Incorporation and Bylaws of the Association. In the event either the Articles or Bylaws conflict with the Declaration, the Declaration shall control.
- 5.5 Membership. Every Person who is a record Owner of a fee interest in any Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person holds an interest in any Lot, all such persons shall be Members subject to the voting limitations set forth below.
- 5.6 Voting Rights. The Association shall have one class of voting membership. All Members shall be entitled to one vote for each Lot owned. The vote for a Lot, the ownership of which is held by more than one Person, may be exercised by any one of them, unless an objection or protest made by any other holder of an interest in the Lot is made prior to the completion of the vote, in which case the vote for such Lot shall be exercised, as the persons holding a majority of such interest determine between themselves. Should the joint owners of a Lot be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost. In no event shall more than one vote be cast with respect to any one Lot.
- 5.7 Prerequisite Good Standing. Any Owner who is not in Good Standing with the Association shall not be entitled to vote on any matter. All Owners in Good Standing shall be entitled to vote in accordance with the provisions of this Article and this Declaration.
- 5.8 Development Period. The Development Rights shall apply to all of the Property. The Development Rights shall be exercised, if at all, within a period of twenty years following the date hereof (the “**Development Period**”). There are no other conditions or limitations under which the Development Rights or Development may be exercised or will lapse, except as set out herein or in the Act.

Notwithstanding anything herein to the contrary, Declarant or persons designated by the Declarant may appoint and remove the officers and members of the Board of Directors during the Development Period. However, this right to appoint and remove officers and members of the Board shall terminate no later than the earlier of 180 days after conveyance

of seventy-five percent (75%) of the Total Permitted Lots to Owners other than the Declarant, or two years after the last conveyance of a Lot by the Declarant in the ordinary course of business, or two years after any right to add in new Lots was last exercised. In addition, the right to appoint and remove directors is subject to the provisions of § 38-33.3-303(6) of the Act.

Not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Total Permitted Lots to Owners other than the Declarant, at least one (1) member of the Board must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Total Permitted Lots to Owners other than the Declarant, not less than thirty three and one-third percent (33 1/3 %) of the members of the Board must be elected by Owners other than Declarant. Not later than the termination of the Development Period, Owners shall elect a Board consisting of at least three (3) members, at least a majority of whom must be Owners other than Declarant. The Board shall elect the officers of the Association.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Development Period. In that event the Declarant shall have the right to approve matters described in Section 15.4 below before the action of the Association or the Board of Directors shall be effective as to such matters.

- 5.9 Indemnification and Assumption of Risk. The Association shall indemnify every present and former director, officer, agent or employee, member of the Architectural Review Committee, and any former director, officer, agent or employee against loss, costs, and expenses, including attorneys' fees reasonably incurred in connection with any action, suit, or proceeding in which such person may be made a party by reason of being, or having been such director, officer, agent or employee of the Association, except as to matters concerning which such person shall be finally adjudged to be liable for negligence, intentional misconduct, or fraud. It is the intent and purpose of this Section to limit all payments or settlements in indemnification to the actual proceeds of insurance policies received by the Association, provided however, any deductible shall be paid by the Association.
- 5.10 Association Agreements. Any agreement for professional management of the Property or any contract providing for services by the Declarant shall be governed by § 38-33.3-305 of the Act.
- 5.11 Certain Rights and Obligations of the Association.

5.11.1 Contracts, Easements and Other Agreements: The Board on behalf of the Association shall have the right to enter into, grant, perform, enforce, cancel and vacate contracts, easements, licenses, leases, agreements, and/or rights-of-way, for use by Owners, Guests, and other persons, concerning the General Common Elements and any Improvements located thereon. Any such contracts, licenses, leases, agreements, easements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board, without the necessity of consent or joinder by the Owners.

5.11.2 Implied Rights: The Board on behalf of the Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by the Act, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

## **ARTICLE 6 EASEMENTS**

6.1 Easements for Encroachments. If there is an encroachment of General Common Elements upon a Lot, or a Residence upon General Common Elements, a valid easement for the encroachment and maintenance, repair, and replacement thereof shall exist so long as such encroachment does not materially and adversely interfere with the use or occupancy of any portion of the Community. Such easements shall extend for whatever period of time the encroachment shall exist. Such encroachment shall not be considered to be an encumbrance either upon the General Common Elements or upon the Lot. Such encroachments referred to include, but are not limited to, service lines which are located under a Lot, and which serve one or more Lots as now existing or as may be requested in the future by a service provider including, but not limited to, electric, cable television, telephone, water, and sewer; drainage ways; encroachments made by error in original construction of a Residence, by settling, rising or shifting of the earth; or by minor changes in position caused by repair or reconstruction of Residences within the Property. However, this easement shall not relieve an Owner of liability in case of willful misconduct.

6.2 Association Easements. Easements for utilities, water, sewer, and drainage, over and across the General Common Elements shall be those shown upon the Map of the Property, and such other easements as may be established pursuant to the provisions of this Declaration or as may be hereinafter granted over and across the General Common Elements by the Board of Directors of the Association.

The Association is granted an easement to enter on each Lot from time to time as may be necessary to carry out its duties hereunder for the maintenance, repair, or replacement of any part of the Property and Improvements.

- 6.3 Owners' General Common Elements Easement. Each Lot shall have an easement of use and enjoyment in and to the General Common Elements, which shall be appurtenant to and shall pass with the title to the Lot subject to the following rights:
- (a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations now or subsequently contained in this Declaration or the Map.
  - (b) The right of the Board to make such use of the General Common Elements as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.
  - (c) The right of the Board to grant easements, leases, licenses and concessions through or over the General Common Elements.
  - (d) The right of the Board to make reasonable Rules regarding the use of the General Common Elements by Owners and Guests entitled to such use.
  - (e) The rights reserved in this Declaration to the Declarant, the Owners, and the Association.
  - (f) Any other right which the Association may lawfully exercise pursuant to the Act.
- 6.4 Right of Access. Every Owner and such Owner's Guests shall have a non-exclusive easement over, across, and upon the roads, streets, and sidewalks built upon the General Common Elements and identified on the Map (as the same may be amended) from and to any public ways abutting the Property for the purpose of pedestrian and vehicular access to a Lot.
- 6.5 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Property, to enter upon any part of the Property in the performance of their duties.
- 6.6 Recorded Easements. The Property shall be subject to all easements as shown on the Map or any plat, those provided in the Act, and as otherwise set forth in this Article.
- 6.7 Declarant's Easements Rights. Declarant, for itself, its contractors and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the General Common Elements, together with the right to store materials on the General Common Elements, to build and maintain temporary walls, and to make such other use of the General Common Elements as may be reasonably

necessary or incident to any construction of the Residences, or other Improvements on the Property, or to perform warranty work and repairs and construction work on the Residences and General Common Elements, to store materials in secure areas and to control and have the right of access to work and repair until completion. In addition, Declarant, for itself, and its successors and assigns, further reserves an easement through the General Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising any Development Rights from time to time, and at different times until termination thereof pursuant to Section 14.5, and no failure to exercise such rights at any time or for a period of time shall constitute a waiver of the rights contained herein.

6.8 Utility Easements. There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the General Common Elements and the Lots and the structures and Improvements situated on the Property for ingress and egress for utility providers and for the installation, replacing, repairing and maintaining of all Utilities, except that such easement may not be utilized by the utility providers until a written easement agreement setting forth the specific location of the desired easement is executed by the Association and such utility provider. The Board may condition the Association's approval on such matters as it deems appropriate, including location, design, alterations to existing structures and impact on the General Common Elements and the Community, and the Board will not approve any utility easement request if the Board finds that such easement would interfere with the reasonable use and enjoyment of a Lot. Said blanket easement includes future utility services not presently available to the Lots that may reasonably be required in the future. By virtue of this easement, after receiving approval of the Association, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment and to affix and maintain wires, circuits, conduits, pipes, cables, transceivers, fiber optics and ducts on, above, across and under the roofs and exterior walls of the Improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Board as provided above. Upon exercise of the rights contained in this Section, utility providers, at their sole cost and expense, shall repair (or replace if necessary) the Property and all Improvements thereon to their condition as they existed prior to the utility providers performing any work. The foregoing blanket easement for Utilities shall be applicable to specific Utility easements shown on the Map.

6.9 Drainage Easement. An easement is hereby granted to the Association, its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Community for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Community to improve the drainage of water on the Community. There is also hereby created a nonexclusive drainage easement appurtenant to the General Common Elements for the purpose of permitting the drainage of water from, over and across the Property in accordance with the Established Drainage Pattern described in Section 10.3.

- 6.10 Support Easements. Each Lot shall have a non-exclusive easement for horizontal, vertical and lateral support of such Lot, including a non-exclusive easement in and to all structural members, columns, beams, foundations, load bearing walls, and other structural components located in or constituting a part of another Lot for the support of such Lot.
- 6.11 Easements Deemed Appurtenant. The easements, uses, and rights created herein shall be appurtenant to each Lot and all conveyances of and other instruments affecting title to a Lot shall be deemed to grant and be subject to the easements, uses, and rights provided for herein, even though no specific reference to such easements, uses and rights appears in any such instrument.
- 6.12 Reservation of Easements, Exceptions, and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other non-exclusive easements, permits or licenses over the General Common Elements for the best interest of the Owners and the Association.

## **ARTICLE 7 ASSESSMENTS**

- 7.1 Creation of the Lien and Personal Obligation for the Assessment. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, other than the Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association certain Assessments to be fixed, levied and collected from time to time as herein provided. All Assessments created and defined in this Declaration shall be a continuing lien upon the Lot against which each Assessment was levied; and a personal obligation of the Owner of such Lot or of the Persons jointly and severally, who were the Owners of such Lot at the time when the Assessment was levied. No Owner may exempt itself from liability for the Assessment by abandonment of its Lot or by waiver of the use or enjoyment of all or any part of the General Common Elements. The personal obligation for delinquent Assessments shall not pass to the successors in title unless expressly assumed by them.

The Owners have joint and several financial responsibility for the maintenance and repair of structures, General Common Elements, and amenities owned by the Association, including but not limited to private roads, streets and alleyways, perimeter walls and fences, sidewalks, sewers, buildings and/or any other such easements or Improvements in the Community, including those conveyed by the Declarant to the Association from time to time.

- 7.2 Purpose of the Assessments. The Assessments levied by the Association shall be for the purpose of carrying out the responsibilities and obligations of the Association under this Declaration and shall include without limitation the Association's duties pursuant to Article 10; payments for the operation of the General Common Elements and for the administration

of the Association; payments pursuant to service contracts for the benefit of the Owners such as security, utilities in the General Common Elements and similar services; payments for wages and fringe benefits for a Managing Agent or other staff; payments for any insurance obtained by the Association; payment of any taxes assessed to the Association; and maintenance of reserves as deemed appropriate by the Board.

### 7.3 Basis of Assessments.

7.3.1 Annual Assessment for Common Expenses. The Board of Directors shall assess against all Lots an Annual Assessment payable by the Owners thereof in monthly or quarterly installments to pay for the Common Expenses pursuant to an approved Budget as provided below (the “**Annual Assessment**”).

From and after the sale of the first Lot by Declarant to a third party until December 31, 2019, each Lot for which a final certificate of occupancy has been issued by the appropriate governmental entity (“**Occupied Lot**”) shall pay a monthly amount of one hundred fifteen dollars (\$115.00) as its Annual Assessment. The balance required to pay Common Expenses under the approved Budget for this time period shall be assessed to Declarant as a single assessment.

Beginning on January 1, 2020, only Occupied Lots shall be responsible for the payment of the Common Expenses in proportion to such Lot’s allocated interest, represented by the ratio of one divided by the number of Assessed Lots.

7.3.2 Special Assessments. In addition to the Annual Assessment authorized above, the Board of Directors may at any time, from time to time, determine, levy, and assess a special assessment for the purpose of defraying, in whole or in part, payments for any operating deficit, loss or unbudgeted expense, and/or unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolition, replacement, management, administration, or maintenance of the General Common Elements including without limitation any fixtures and personal property related thereto. Only Occupied Lots are liable for payment of special assessments. Special assessments shall be based on a Budget adopted in accordance with Section 7.3.3; provided that if necessary, the Association may, at any time, adopt a new Budget pursuant to Section 7.3.3 prior to levying a special assessment. Such special assessment(s) shall be due and payable as determined by the Board of Directors.

7.3.3 Levy of Assessments. At least sixty (60) days prior to the close of the Association’s fiscal year, the Board shall adopt a proposed Budget for the Association. Within thirty (30) days after adoption of the proposed Budget, the Board shall mail, by ordinary first class mail or otherwise deliver a summary of the Budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the

Budget not less than fourteen (14) or more than sixty (60) days after mailing or other delivery of the summary. Unless at such meeting a majority of all Owners rejects the Budget, the Budget shall be ratified whether or not a quorum is present. In the event the proposed Budget is rejected, the periodic Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board. The omission or failure of the Board of Directors to levy an Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

- 7.4 Individual Purpose Assessment. The Board of Directors shall have the right to levy an assessment against any individual Owner to reimburse the Association for any Common Expense arising from the negligence, misconduct, or failure to comply with this Declaration by such Owner or such Owner's Guests. Such individual assessment shall also be referred to as an Individual Purpose Assessment.
- 7.5 Transfer Fees. From and after the date hereof, each Owner who acquires a Lot from Declarant or upon resale from another Owner shall pay to the Association a one-time transfer fee (the "**Transfer Fee**") in the amount of \$300.00. Payment of the Transfer Fee shall be a mandatory function of membership in the Association and ownership of the Lot. The Transfer Fee shall be collected from the transferee of a Lot as a settlement statement debit and disbursed directly to the Association. If the Transfer Fee is not collected at closing and disbursed to the Association, then it shall be payable on demand by the Association. The Board may change the amount of the Transfer Fee as it deems necessary and appropriate.
- 7.6 Date of commencement of Assessments; Prorations. The Annual Assessment for Common Expenses, shall commence as to each Lot on the first day of the month following the completion of a Residence on that Lot and shall be prorated according to the number of months remaining in the Association's fiscal year. A Residence shall be considered to be completed upon issuance of the final certificate of occupancy for that Residence by the appropriate governmental entity.
- 7.7 Due Date, Non-Payment of Assessments, Remedies of the Association.
- 7.7.1. The Annual Assessment for Common Expenses shall be levied on an annual basis and shall be due and payable on an installment basis as determined by the Board of Directors. Individual Purpose Assessments and Special Assessments shall be due and payable as established by the Board of Directors but may be payable on an installment basis as determined by the Board of Directors. The Transfer Fees shall be payable as provided in Section 7.5.
- 7.7.2. No Owner exempt from the payment of taxes on real property under applicable state or local law shall be obligated to pay any portion of any Assessments that (i)



constitute a passing-on by the Association of real property taxes assessed against the Association or any Owner, or (ii) are intended to defray the cost of any effort by the Association to obtain a reduction in real property taxes that have been or may in the future be assessed against the Association or any Owner. This exemption may not be deleted from this Declaration or otherwise amended.

7.7.3. Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

7.7.4. All Assessments shall become delinquent unless paid by their due date. If such Assessments are not paid by their due date, the Owner obligated to pay such Assessment will be required to pay a reasonable late fee, as determined by the Board of Directors from time to time in its discretion and uniformly applied, and such delinquent Owner's voting rights shall be suspended until all past due Assessments are paid in full. In addition, any past due Assessments shall bear interest at the rate established by the Board not to exceed twenty-one percent (21%) per annum or the maximum permitted by the Act. A Member shall be deemed to be in good standing and entitled to vote at any annual or special meeting of the Members or hold office in the Association only if the Member is not delinquent in the payment of all Assessments levied against the Member's Lot which are then due and owing, and only if such Member and such Member's Lot is in full compliance with this Declaration, the Bylaws, Articles and Rules. Failure to make payment of any Assessment within sixty (60) days of the due date thereof shall cause the total amount of such Owner's Annual Assessment and any Individual Purpose Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. In the event it shall become necessary for the Board to collect any delinquent Assessments, whether by foreclosure of a lien herein created or otherwise, the delinquent Owner shall pay all costs of collection including reasonable attorneys' fees and costs incurred by the Association in enforcing payment. In the event a "Notice of Lien" is filed to enforce collection, the cost of preparation, filing, and release shall be considered a cost of collection.

7.7.5. The Association is hereby granted a priority lien against all Lots for any payment of an Assessment which the Owner fails to make as required by this Declaration. The lien of the Assessment including Individual Purpose Assessments and fines, if any, together with interest, late fees, costs of collection including reasonable attorneys' fees, shall be prior to all other liens and encumbrances to the full extent permitted by the Act. Such lien is to attach at the time of levy of the Assessment and continue until such Assessment, together with interest, late fees, and all costs of collection including reasonable attorneys' fees are paid. The lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons

or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. In addition to the lien herein granted, the Board shall have the right to bring an action at law against any Owner who fails to pay any amounts assessed against his or her Lot, and obtain judgment for the amount of the Assessments due together with late fees, plus all costs of collection, including reasonable attorneys' fees in collecting the judgment.

- 7.7.6. The lien accruing hereunder shall be foreclosed upon as provided by the laws of the State of Colorado for foreclosure of mortgages on real property and/or pursuant to the Act. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage, and encumber or convey the same on behalf of the Association.
- 7.7.7. The lien of all Assessments created and defined by the Declaration shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against such Assessment lien.
- 7.7.8. Sale or transfer of an interest in any Lot shall not affect the liens for unpaid Assessments.
- 7.8 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.
- 7.9 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for payment of the Assessments and any prepayment or provision for prepayment for reserves shall be applied as directed by the Board or credited to the Owners to reduce future Assessments.
- 7.10 Payment by Mortgagee. Any Mortgagee of any Lot may pay any unpaid amount payable with respect to such Lot, together with any and all costs and expenses incurred with respect to the lien and upon such payment that Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as the lien of such Mortgagee's Mortgage.
- 7.11 Failure to Levy Assessment. The failure to levy any Assessment or deliver a statement for any period shall not be deemed a waiver, modification, or a release of any Owner from its obligation to pay, and such Owner shall be obligated to continue to make periodic payments to the Association for such Assessment in the same amount and on the same schedule as last fixed by the Association.

- 7.12 Maintenance Accounts; Accounting. If the Association delegates powers of its Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a Managing Agent, then such other persons or Managing Agent must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or Managing Agent, (b) maintain all reserve accounts of the Association separate from the operational accounts of the Association, and (c) provide to the Association no less than once per month an accounting for the previous month. In addition, the Association shall obtain an annual accounting and financial statement of Association funds (on either a review or audit basis, at the Association's discretion) and annual tax returns prepared by a certified public accountant.

## **ARTICLE 8**

### **ARCHITECTURAL APPROVAL/DESIGN REVIEW**

- 8.1 Approval of Improvements Required. Prior written approval of the Architectural Review Committee shall be required before commencing construction of any Improvement as detailed in the Design Standards , provided, however, that Declarant shall not be subject to the requirements of this Article 8.
- 8.2 Membership of the Committee. The Committee shall consist of at least three but not more than five members, all of whom shall be appointed by the Board of Directors. The Committee, by majority vote, shall adopt such operating and decision-making rules as it deems necessary and appropriate subject to the approval of the Board. The Committee may designate one of its members to take any action or to perform any duties for and on behalf of the Committee. Members of the Committee may, but shall not necessarily be Members of the Association. Members of the Committee appointed by the Board of Directors may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board. The Board, at its election, may appoint itself to serve as the Committee.
- 8.3 Address of the Committee. The address of the Committee shall be that of the principal offices of the Association, unless a Managing Agent has been retained by the Association, in which case the address of the Committee shall be that of the Managing Agent.
- 8.4 Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement, the Person proposing to make such Improvement (“**Applicant**”) shall submit to the Committee, at its offices, such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, and samples of materials and colors as required by the Design Standards defined below and as the Committee may reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement. The Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the

proposed Improvement. Until receipt by the Committee of all required materials in connection with the proposed Improvement, the Committee may postpone review of any materials submitted for approval by a particular Applicant. No Improvement shall be permitted unless and until the final plans, elevations, and specifications therefor have received written approval by the Committee as herein provided. The Committee may waive any provision of this Article in the event the majority of the members of the Committee determine that implementation of any provision of this Article shall cause, in a specific situation, practical difficulty or unnecessary hardship.

- 8.5 Criteria for Approval. The Committee shall adopt guidelines which will clarify the types of designs and materials that will be considered in design approval. These guidelines shall be known as the “Architectural Standards/Design Guidelines and Construction Regulations of the Hillside Cottages” (“**Design Standards**”). The Committee shall have the right to disapprove any proposed Improvement which is not in compliance with the Design Standards as interpreted and implemented in the reasonable discretion of the Committee. In passing upon the Improvement, the Committee shall have the right to take into consideration the suitability of the proposed Improvement to the Property and the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the Improvement as planned on the outlook from the adjacent or neighboring property, among other considerations. The Committee shall also consider whether or not the proposed Improvement is in accordance with this Declaration. Without limitation of the foregoing, the Committee may disapprove the proposed Improvement if the plans and specifications submitted are incomplete, or in the event the Committee deems the materials submitted to be contrary to the spirit or intent of the Declaration. The Committee may condition its approval of any proposed Improvement upon the making of such changes thereon as the Committee may deem appropriate.
- 8.6 Design Review Fee. The Committee may, in its guidelines or rules, provide for the payment of a reasonable fee to accompany each request for approval of any proposed Improvement. The Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement or that the fee shall be determined in any other reasonable manner, such as the estimated cost of the proposed Improvement.
- 8.7 Architectural Criteria. The approval or consent of the Committee on matters properly coming before it shall be in writing and not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. The Committee shall exercise its reasonable judgment to ensure that all attachments, Improvements, construction, landscaping and alterations to Improvements on a Lot or landscaping of a Lot comply with the requirements set forth in this Declaration and in the Rules and Regulations. Decisions may be based upon, but not limited to, preservation of property values within the Community, harmony of exterior appearance of structures with neighboring structures, effective location and use of

Improvements on nearby Lots, preservation of aesthetic beauty, and conformity with the purposes generally set out in this Declaration.

8.8 Decision of the Committee. The decision of the Committee shall be made within a reasonable time after receipt by the Committee of all materials required by the Committee. The decision shall be in writing and, if the decision is not to approve a proposed Improvement, the reasons therefor shall be stated. The decision of the Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee. Each Committee Member shall be entitled to one vote. A majority vote of the Committee shall constitute the action of the Committee. In no event shall the failure of the Architectural Review Committee to take any action on submitted plans and specifications be deemed to be an approval.

8.9 Appeal to the Board of Directors. If the Committee disapproves or imposes conditions on the approval of a proposed Improvement, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board of Directors and the Committee within ten (10) days after notice of such disapproval or conditional approval is given to the Applicant. The Board of Directors shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant and the Committee and shall decide, with reasonable promptness, whether or not the proposed Improvement or the conditions imposed by the Committee shall be approved, disapproved, or modified.

A majority vote of the Board shall constitute the action of the Board. The decision of the Committee or the Board, if the matter is referred to the Board, shall be final and binding on all successor Boards and Committees. If the Board is acting as the Committee, this section shall not apply and no appeal rights shall be available.

8.10 Variances. The Committee and Board, acting together through a majority of each, may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration or in the Rules and Regulations in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in architectural guidelines. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Lots or any General Common Elements, nor deviate substantially from the general intent and purpose of this Declaration.

8.11 Prosecution of Work After Approval. After approval of any proposed Improvement, the proposed Improvement shall be completed within a reasonable time as specified by the Committee or the Board. The Improvement shall be completed in strict conformity with the description of the proposed Improvement, any materials submitted to the Committee, any conditions imposed by the Committee, and in compliance with all building and zoning codes of the County of Jefferson.

- 8.12 Expiration of Committee Approval. If not commenced within one (1) year from approval, or such other time as may be specified in the Rules and Regulations, or if commenced but not pursued diligently, an approval of proposed Improvements shall be deemed lapsed and shall no longer be valid.
- 8.13 No Implied Waiver of Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors. Specifically, the approval by the Committee of any Improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar proposals, plans, specifications, or other materials submitted with respect to any other future Applicant.
- 8.14 No Liability for Committee Action. Except as provided in the Act, there shall be no liability imposed on the Committee, any member of the Committee, any authorized Committee representative, the Association, any member of the Board of Directors, or Declarant for any loss, damage, or injury arising out of or in connection with the performance of the duties of the Committee, if such party acted in good faith and without malice. In reviewing any matter, the Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement be deemed an approval of such matters.
- 8.15 Residence Interiors. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her Residence, or to paint the interior of his or her Residence any color desired. However, the Design Standards may designate certain minimum window treatment standards in order to maintain the overall appearance of the Community.
- 8.16 Records The Architectural Review Committee shall maintain written or electronic records of all applications submitted to it and of all actions taken by it with respect thereto in the same manner as Association Records.

## **ARTICLE 9 LAND USE AND OTHER RESTRICTIONS**

- 9.1 Limitations and Restrictions. All Lots and Residences shall be held, used and enjoyed subject to the following limitations and restrictions, and the Board shall have jurisdiction over the matters set forth in this Article. The Board may, in its sole and absolute discretion, adopt reasonable Rules governing the use of the Property. Such Rules may include, without limitation, reasonable restrictions on activities permitted outside of Residences and reasonable restrictions on matters which have an external effect, including, without limitation, matters which can be seen, heard, or otherwise sensed or felt outside the boundaries of a Lot. The Owner of a Lot and Guests shall comply with any Rules adopted

by the Board. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Board if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in written resolutions or rules promulgated by the Board.

- 9.2 Land Use and Building Type. No Lot shall be used for any purpose other than residential purposes as defined by the rules and regulations of the Jefferson County Department of Zoning.
- 9.3 Declarant'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, to perform such reasonable activities, and to maintain upon portions of the Community such facilities as Declarant deems reasonably necessary or incidental to the construction and management of the Community and the sale of the Lots. Without limiting the generality of the foregoing, Declarant may maintain management offices, construction facilities and equipment, storage areas, signs, model Residences, sales offices, parking areas and lighting facilities. Declarant expressly reserves the right to locate any sales office, management office, or models within any Lot owned by Declarant. The rights retained by Declarant in this Section shall terminate upon conveyance by Declarant of all of the Lots to Owners other than Declarant as provided in Section 14.5.
- 9.4 Building Locations and Height Restrictions. The Committee shall approve the location and height of any structure placed on any Lot. Such approval must be obtained before commencement of any construction or alteration in accordance with Article 8.
- 9.5 Temporary Structures. No temporary house trailer, tent, garage or outbuilding shall be placed or erected upon part of the Property except with the prior written approval of the Board obtained in each instance. No Residence located upon the Property shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans nor shall any Residence when completed be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions.
- 9.6 Restrictions on Garbage and Trash. All trash, garbage, or other refuse shall be stored in an Owner's garage until a designated pickup time occurs. Under no circumstances are trash containers or refuse to be placed, kept or stored in or near side yards or rear yards. Garbage, trash or waste shall be disposed of in such a manner as may be established by the Association, and the burning of garbage, trash or waste in outside incinerators, barbecue pits or the like is prohibited.

Each Owner shall keep his or her Lot at all times in a neat and clean condition. No trash, litter, garbage, grass, shrub or tree trimmings, plant waste, lumber, compost, metal, bulk materials, scrap refuse, or debris of any kind shall be permitted to remain exposed upon any Lot so it is visible from any neighboring Lot or from the street except that containers

containing such materials may be placed outside at proper times for garbage or trash pickup.

The Board of Directors shall have the right and duty, through its agents and employees (as set forth in the Bylaws) to enter upon any Lot and remove such unsightly objects and materials. The cost of such removal shall be chargeable to such Owner by Individual Purpose Assessment.

- 9.7 Nuisances. No noxious or offensive activity shall be carried on upon the Property nor shall anything be done or maintained which may be or become an annoyance or nuisance to the neighborhood or which is or may cause an unreasonable embarrassment, disturbance, or annoyance to others, or detract from its value as an attractive residential community.
- 9.8 No Annoying Lights, Sounds, or Odors. No light shall be emitted from any portion of a Lot which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Property which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, or other light or sound devices shall be located on or used on any portion of the Property except with the prior written approval of the Committee. Owner security systems are encouraged in the Community, but exterior components such as lights or horns must be approved by the Committee.
- 9.9 No Hazardous Activities. No activity shall be conducted on any portion of the Property which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Property and no open fires shall be lighted or permitted on any portion of the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace designed to prevent the dispersal of burning embers.
- 9.10 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects, and conditions shall be enclosed within an approved structure, including all tractors, snow removal equipment, and garden or maintenance equipment, except when actually in use.
- 9.11 Restrictions on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Property except such signs as may be approved in writing by the Board. A sign advertising a Lot for sale or lease may be placed on a Lot; provided however, that standards relating to dimensions, color, style and location of such sign shall be determined from time to time by the Board and shall comply with the local sign codes and with all other applicable statutes, ordinances, and regulations.
- 9.12 Fences and Mailboxes.



- 9.12.1 Mailboxes, porch and area lighting, and letters and numbers used for property identification must meet established Design Standards and shall require prior written approval by the Committee should any addition or change be requested.
- 9.12.2 No fences shall be constructed or permitted, other than those initially installed by Declarant, or those constructed in accordance with the specifications established by the Design Standards.
- 9.13 Compliance with Insurance Requirements. Except as may be approved in writing by the Board, nothing shall be done or kept on the Property which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.
- 9.14 Compliance with Laws. Nothing shall be done or kept on the Property in violation of any law, ordinance, rule, or regulation of any governmental authority having jurisdiction over the Property including without limitation any environmental law, ordinance, or regulation.
- 9.15 Environmental Liability. Owners covenant and agree not to generate, release, discharge, store, or dispose of any hazardous waste, toxic substance, or other Hazardous Materials within the boundaries of the Property or to transport any Hazardous Materials to or from the Property, except in accordance with law. In addition to the foregoing, all Owners covenant not to violate any statute, regulation, ordinance, rule of law, contract, or other agreement which might materially affect the Property.

If any discharge, emission, or disposal of Hazardous Materials solely and directly attributable to any action or inaction by an Owner or its Guests occurs with respect to the Property, such Owner shall cause the cleanup and remediation of any such discharge, emission or disposal of Hazardous Materials, as required by Environmental Laws in effect at such time and with the least interference possible of the use and enjoyment of the Community by other Owners and their Guests.

- 9.16 Restoration in the Event of Damage or Destruction. In the event of damage to or destruction of any Residence, the Owner shall, subject to the approval of the Committee, either: (a) cause the damaged or destroyed Residence to be restored or replaced to its original condition or such other condition as may be approved in writing by the Committee; or (b) cause the damaged or destroyed Residence to be demolished and the Lot to be suitably landscaped, so as to present a pleasing and attractive appearance.

All repair or demolition work shall be performed with due diligence and completed no later than six (6) months following the casualty giving rise to the damage or destruction.

- 9.17 Ownership of Livestock. No Owner may keep or raise chickens, cattle, goats, horses, or pigs, on any Lot within the Community.

- 9.18 Vehicular Parking, Storage, and Maintenance; Driveways. Each Residence shall be served by a minimum of 2 garage spaces. The regulations governing the parking and/or storage of vehicles shall be governed by the Rules, as the same may be amended from time to time.
- 9.19 Safety and Security. Each Owner and occupant of a Residence, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their real and personal property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. The Association shall not be considered an insurer or guarantor of safety or security within the Community, nor shall the Association be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner acknowledges, understands and shall be responsible for informing their tenants and all occupants of their Lot that the Association, its Board and committees are not insurers or guarantors of security or safety and that each person within the Community assumes all risks of personal injury and loss or damage to real and personal property, including Lots and the contents of Lots, resulting from acts of third parties.
- 9.20 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any person or property within the General Common Elements, such Owner shall be liable and responsible for the payment of the same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board of Directors, after Notice and Hearing (as set forth in the Bylaws), from such Owner as an Individual Purpose Assessment against such Owner. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Section shall be made by the Board and shall be final.
- 9.21 Antennae. No exterior television or radio antennae or satellite dishes or any other antennae of any type shall be erected or maintained within the Community without the prior written approval of the Design Review Committee.
- 9.22 Lease of a Lot. Any Owner shall have the right to lease his or her Lot upon such terms and conditions as the Owner may deem advisable, subject to the following:
- (a) No Owner may lease his or her Lot for a term of less than six (6) months;
  - (b) Any such lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association and the Articles of Incorporation, and the Rules of the Association;

- (c) Such lease or rental agreement shall state that the failure of the tenant to abide by the Declaration or Bylaws of the Association, Articles of Incorporation, and the Rules of the Association shall constitute a default and such default shall be enforceable by either the Board of Directors or the landlord/Owner, or by both of them;
- (d) Any Owner who leases his or her Lot shall, within three days after the execution of such lease, forward a copy of the same to the Board of Directors. The Owner shall obtain from the Association and deliver to the tenant copies of this Declaration, Bylaws, Rules and vehicle sticker and/or other identification.

9.23 Restrictions on Mortgaging a Lot. There are no restrictions on the right of an Owner to mortgage or otherwise encumber his or her Lot. There is no requirement for the use of a specific lending institution or particular type lender.

9.24 Temporary Use by the Declarant. Notwithstanding any provision herein contained to the contrary, during the development Period the Declarant, builders who purchase Lots from the Declarant and/or their agents may maintain upon the Property, without charge, such facilities as may be reasonably required, convenient or incidental for construction of the Residences and construction of the General Common Elements.

It shall also be permissible during the actual construction or alteration of a Residence within the Property for reasonable and necessary temporary structures for storage of materials to be erected and maintained by the Declarant or its designees. Such temporary storage structures shall be removed upon completion of the construction, alteration or remodeling.

No maintenance of such facilities or use or activity shall unreasonably interfere with the access, enjoyment or use of the General Common Elements; nor shall any activity be conducted which might be unsafe, unhealthy or hazardous to any person.

## **ARTICLE 10 MAINTENANCE**

10.1 Maintenance by Association. Following completion of the Improvements by the Declarant, the Association shall provide for maintenance, repair, and/or reconstruction of the General Common Elements and the Improvements thereon, including certain Improvements located on the Lots, including but not limited to the following:

- (1) The storm sewers and storm drainage control system, channel improvements including retaining walls and trickle channel, and sprinkler system located on the General Common Elements.

- (2) The private roadways, including curb, gutter, sidewalks, street lights, and mail boxes within the boundaries of the Property.
- (3) The entrance signs and the associated landscaped entries, if any.
- (4) The security gates, if any.
- (5) The landscaping, including sod, flowers, trees, bushes, and other plant materials, irrigation systems and electrical systems when located on the General Common Elements.
- (6) Other maintenance, repair, and/or reconstruction work on the General Common Elements as deemed appropriate or necessary by the Board for the benefit of the Owners.

The Association shall keep the General Common Elements safe, attractive, clean, functional, in good repair, and may construct, maintain, repair, and replace necessary or desirable alterations or Improvements thereon.

- 10.2 Association's Maintenance as Common Expenses. The cost of maintenance and repair of the General Common Elements by the Association (net of any insurance proceeds paid thereon) shall be a Common Expense to be shared by Owners. The Association shall have the right to recover costs from an Owner for repair, replacement and maintenance work which is required due to damage to the General Common Elements caused or permitted by an Owner or such Owner's Guest. The Association may collect such costs as Individual Purpose Assessments.
- 10.3 Maintenance of Drainage Pattern. There shall be no interference with the Established Drainage Pattern initially established by the Declarant over any of the Lots and General Common Elements within the Property, except as approved in writing by the Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "**Established Drainage Pattern**" shall mean the drainage pattern shown and depicted on the Drainage Report and Plan prepared by Jehn Engineering, Inc. and approved by the City of Arvada. The Established Drainage Pattern may include the drainage pattern from the General Common Elements over any Lots within the Property and from any Lot within the Property over the General Common Elements, or from any Lot over another Lot.
- 10.4 Maintenance by Owners. Other than the Association duties set out in Sections 10.1, 10.2, and 10.3 each Owner shall be responsible for the maintenance, repair, and reconstruction of such Owner's Lot or Residence.

The Board shall have the authority to develop objective criteria for the purpose of defining an unsightly condition as it pertains to the exterior maintenance of any Residence or

structure within the Community. Such criteria may be amended or expanded from time to time, as provided in the Rules.

An Owner shall do no act or any work that will impair the structural soundness or integrity of the General Common Elements or impair any casement. No damage to, or waste of, the General Common Elements, or any part thereof, or any other Residence, shall be committed by any Owner or Owner's Guests or shall occur as a result of the construction, operation, use, repair, or replacement of Improvements within such Owner's Lot or constructed by or on behalf of such Owner in or upon any of the General Common Elements. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activities committed by it or its Guests, or as a result of the construction, operation, use, repair, or replacement of Improvements within such Owner's Lot or constructed by or on behalf of such Owner in or upon any of the General Common Elements, that is in violation of this Section, including any Improvements constructed by an Owner in or upon the General Common Elements. In the event a Residence will be unoccupied for a more than twenty (20) consecutive days, the Owner of such Residence shall notify the Managing Agent or the Board of such fact and of the Owner's plan for periodic inspection and maintenance.

In the event that any Owner fails to perform its maintenance obligations in a manner satisfactory to the Association or in the event that the Lot or Residence is damaged or destroyed by an event of casualty but the Owner fails to take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed Lot or Residence, the Board shall notify such Owner that an unsightly condition exists which represents a violation of the Declaration. In such notice, the Board shall direct corrective action, to be performed by the Owner within ten (10) days after the date of the notice, or, at the discretion of the Board, a timetable for corrective action to be performed by the Owner as directed by the Board. If the Owner fails to comply with the Board's directives, the Association may pursue its remedies pursuant to Article 17, and further shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot or Residence to a condition of good order and repair, except that no advance approval shall be required in the event of an emergency. All costs incurred by the Association in connection with such work shall be reimbursed to the Association by the Owner of the Lot upon demand. All unreimbursed costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 7.

- 10.5 Board of Director's Responsibility. The determination of when and the magnitude and the manner of the above described maintenance and repair shall be determined solely at the discretion of the Board.

## ARTICLE 11

## CONDEMNATION

- 11.1 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:
- 11.1.1 If the taking involves a portion of the General Common Elements on which Improvements have been constructed, then, unless within 60 days after such taking Owners who hold at least eighty-five percent (85%) of the Voting Interests in the Association, and Declarant during the Development Period, shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the General Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Board. If such Improvements are to be repaired or restored, the provisions in Article 12 regarding the disbursement of funds in respect to casualty damage or destruction shall apply.
- 11.1.2 If the taking does not involve any Improvements on the General Common Elements, if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed among the Owners in the same proportion as the Allocated Interests are assessed, first to the Mortgagees and then to the Owners, as their interests appear, or otherwise applied by the Board in accordance with the Act.
- 11.2 Condemnation of Lots. If all or a part of a Lot is condemned, then the proceeds of any such condemnation shall be distributed as agreed between the Owner of such Lot and the entity prosecuting the condemnation.
- 11.3 Complete Condemnation. If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the common interest community created by this Declaration shall terminate, the portion of the condemnation award attributable to Lots shall be distributed to Owners thereof, and the portion of the condemnation award attributable to the General Common Elements shall be distributed to Owners in the same proportion as the Annual Assessments for Common Expenses are assessed, first to the Mortgagees and then to the Owners, as their interests appear.

## ARTICLE 12 INSURANCE

- 12.1 Authority to Purchase/General Requirements. Commencing not later than the time of the first conveyance of a Lot, the Association may maintain general liability insurance with a reputable insurance company authorized to conduct business in Colorado in accordance with and as required by the Act. Each such policy shall provide that the insurer to the

extent possible waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, or the Owners and any member of an Owner's household. The name of the insured under the policies shall be the Association for the use and benefit of the individual Owners. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Board of Directors, and the insurance proceeds for that loss shall be payable to the Association as trustee for each Owner. All policies shall provide that such policy cannot be canceled by the insurance company without at least 30 days' prior written notice to each Owner.

- 12.2 Hazard Insurance for General Common Elements. The Association may procure and maintain an "all risks" form policy of hazard insurance, with extended coverage, vandalism, malicious mischief, earthquake, demolition and replacement cost, windstorm, sprinkler leakage (if applicable), debris removal, and water damage endorsements, and such other insurance as the Board may deem necessary or prudent from time to time for the risks associated with the General Common Elements (collectively, "**Hazard Insurance**"). However, the individual Owners shall obtain and maintain property casualty insurance for their Lots, Residences, and personal property.
- 12.3 Certificates of Insurance; Cancellation. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. If any insurance coverage described in this Article is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.
- 12.4 Insurance Proceeds. The insurance proceeds for any loss covered by hazard insurance policies described in this Article shall be payable to the Association and not to any Owner or any holder of a Security Interest. The Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 12.5 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association. Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the common interest community created by this Declaration is terminated.
- 12.5 Repair and Replacement of General Common Elements. Any portion of the General Common Elements for which insurance is required under this Article that is damaged or destroyed must be repaired or replaced promptly by the Association unless:
- 12.5.1 The common interest community created by this Declaration is terminated in accordance with Section 15.2 below;

12.5.2 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

12.5.3 There is an affirmative vote not to rebuild by eighty-five percent (85%) of the total votes of the Association.

In the event of any repair and/or reconstruction of any portion of the General Common Elements, the Board shall promptly repair or reconstruct the same in a workmanlike manner substantially in accordance with this Declaration and in accordance with the original plans and specifications for such General Common Elements unless other action is approved by Owners entitled to cast at least sixty-seven percent (67%) of the votes in the Association. If insurance proceeds are insufficient to properly repair and/or reconstruct the damaged General Common Elements, such excess cost shall be assessed in the same proportion as the Annual Assessment for Common Expenses and in the manner prescribed in Article 7. Further Assessments may be made in a like manner if the amounts collected prove insufficient to complete the repair and/or reconstruction. In the event amounts collected are in excess of the amounts required for such repair and/or reconstruction, the excess shall be returned to the Owners by the Association in the same proportion as the Annual Assessment was levied.

12.6 Other Insurance. The Association may maintain flood insurance if any part of the General Common Elements is located within a “special flood hazard area” on a flood insurance rate map, which insurance coverage shall be equal to the lesser of 100% of the insurable value of the all insurable Improvements within the flood hazard area, to the extent available. The Board may obtain any other type of insurance it considers appropriate in amounts it deems appropriate to insure the interests of the Association and the Owners.

### **ARTICLE 13 MECHANIC’S LIENS**

13.1 No Liability. No labor or service performed or materials or products furnished and incorporated in a Lot or Residence shall be the basis for the filing of a lien against the Lot or Residence of any other Owner not expressly consenting to or requesting the work or against the General Common Elements. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, subcontractors, laborers, materialmen and other persons furnishing labor or materials to its Unit.

13.2 Indemnification. To the fullest extent permitted by law, each Owner shall indemnify, defend and hold harmless each of the other Owners and the Association from and against all liability or loss, including reasonable attorneys' fees, arising from the claim of any lien against the Lot of any other Owner or against the General Common Elements (whether or not such lien or order is valid or enforceable as such) for construction performed or for



labor, materials, services or equipment supplied in connection with Improvements to the indemnifying Owner's Lot or Residence. In the event that any contractor, subcontractor, materialmen, laborer, or any other person or entity files a mechanics' or similar type of lien that burdens or encumbers any portion of the General Common Elements, or any Lot not wholly owned by the Owner of the Lot or Residence in which such labor, materials, services, or products are incorporated, the Owner of the Lot or Residence in which such work was incorporated shall within 30 days of the filing of such lien of record either have such lien removed or post a bond for the benefit of the Association and affected Owners in an amount not less than 150% of the amount claimed by any such person or entity claiming such lien. Such bond shall be sufficient to satisfy the requirements of Colo. Rev. Stat. §38-22-132 (or any successor provision) to remove the lien from the real property.

- 13.3 Association Action. Labor performed or materials furnished for the General Common Elements, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be the basis for the filing of a lien pursuant to law against the General Common Elements. Any such lien shall be limited to the General Common Elements, and no lien shall attach to or be enforceable against an individual Lot or Lots.

#### **ARTICLE 14 RESERVED DEVELOPMENT RIGHTS**

- 14.1 Reservation of Development Rights. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to exercise the following development rights within the Community by recording a Supplemental Declaration and Map: to add and create Lots and General Common Elements and to convert Lots into General Common Elements, provided that no such exercise of a development right shall have a material effect on the practical utility or cost of ownership or development of any Lot, and any and all other declarant rights permitted under the Act. Declarant's Development Rights are not subject to the limitations imposed by Articles 8 and 9 herein.
- 14.2 Other Reserved Rights. Declarant reserves the right for itself and any Successor Declarant, without consent of any Owner being required, at any time and from time to time to: (a) construct Improvements, (b) maintain and relocate sales offices, management offices, signs advertising the Community and models, of any size within one or more Lots and within the General Common Elements; (c) appoint or remove any officer of the Association or any member of the Board appointed by Declarant as set forth in Section 5.8; (d) amend this Declaration or the Map to ensure that the language and all particulars that are used on the Map and contained in this Declaration are consistent or to establish, vacate and relocate utility easements, and access easements through the General Common Elements for the benefit of the Community; and (e) exercise any other Development Rights provided for herein.

- 14.3 Change in Allocated Interests. In the event Declarant or a Successor Declarant exercises the right to add, withdraw, convert, subdivide, re-subdivide, or combine Lots as set forth above or reallocate the Allocated Interests of the resulting Lots after such action shall be adjusted according to the formulas set forth in this Declaration.
- 14.4 Liability of Declarant. The Declarant's obligations and responsibilities shall be specifically limited to matters expressly described in this Declaration as obligations and responsibilities of the Declarant and as to express obligations and responsibilities of the Declarant under the Act. Declarant shall have no implied responsibilities or responsibilities other than those specifically enumerated in this Declaration or in the Act. If any act or omission is asserted to have occurred during the Development, the Association must give the Declarant reasonable notice of and an opportunity to cure such act or omission and to defend against the allegations.
- 14.5 Termination of Rights. Except for such other period as is specifically set forth and provided in this Declaration, the rights reserved to the Declarant for itself, its successors and assigns in this Declaration shall expire on the expiration of the Development Period or at such time as Declarant, and all Successor Declarants, if any, have sold or otherwise conveyed all interest that they may have in the Property, unless such rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board may impose on the subsequent exercise of the rights by Declarant. Further, Declarant reserves the right, at any time, and from time to time, to surrender or terminate some or all of the development or other rights reserved herein by recording a statement to that effect with the Clerk and Recorder. Notwithstanding anything to the contrary in this Article, a public trustee sale or sale in lieu of foreclosure of any Lot shall not be deemed to be a conveyance resulting in the termination of Declarant's rights reserved herein, provided that the Mortgagee instituting or benefiting from such public trustee sale or sale in lieu of foreclosure has been named a Successor Declarant in a collateral assignment of Declarant's rights and such assignment has been recorded prior to the effective date of the conveyance of the Lot. Notwithstanding the termination of the rights reserved to Declarant as provided herein, Declarant or a related party, may continue to own Lots in the Community. By virtue of such ownership, Declarant may continue to influence and impact operation of the Association through the exercise of its voting rights, including election of Board members and the possible appointment of persons related to Declarant to committees of the Board.

## **ARTICLE 15 DURATION OF COVENANTS AND AMENDMENT**

- 15.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Property in perpetuity from and after the date this Declaration is recorded, unless the Community is terminated in accordance with the procedures set forth below.

15.2 Termination of Community.

15.2.1 *Agreement to Terminate.* A written Termination Agreement (defined below) must be executed by Owners holding 85% or more of the Voting Interests in the Association.

15.2.2 *Recording of Termination Agreement.* Upon recording of a Termination Agreement, signed and approved by the Owners as provided in this Section above, with the Clerk and Recorder (the date of such recording being the "**Community Termination Date**"), the entire premises shall thereafter be free and clear of the provisions contained in this Declaration, the Map and the Association Documents. Promptly following the Community Termination Date, the Association shall proceed to liquidate and distribute its assets and General Common Elements to the Owners

15.3 Amendment.

15.3.1 *Generally.* Except as otherwise provided in this Declaration or in the Act, this Declaration and the Map, or any provision, covenant, condition, or restriction therein, may be amended at any time by vote or agreement of Owners holding sixty-seven percent (67%) of the Lots.

15.4 Consent of Declarant Required. Notwithstanding any other provision in this Declaration to the contrary, Declarant shall have veto power for any proposed amendment of this Declaration during the Development Period to the full extent permissible under the Act. Without limitation of the foregoing, if Declarant voluntarily surrenders the right to appoint and remove officers and members of the Board, prior to the termination of the Development Period, Declarant shall continue to have the right to veto any proposed change in the Design Standards, Article 8 and/or Article 9 for the duration of the Development Period.

15.5 Execution of Amendment. Any amendment must be executed by the President of the Association and recorded in the County of Jefferson real estate records, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of the amendment by a sufficient number of Owners. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted under this Declaration and the Act.

**ARTICLE 16  
INDEMNIFICATION**

To the extent (i) permitted by applicable law and (ii) not covered by the insurance required under Article 12 above, each Owner ("**Indemnifying Owner**"), by taking title to a Lot, is hereby

deemed to covenant to indemnify, defend, and hold harmless the Association, each other Owner, and their respective partners, officers, directors, shareholders, members, managers, employees, and agents (each, an "**Indemnified Party**") from and against any and all claims, actions, damages, liabilities and demands asserted by third persons (other than Indemnified Parties), including those for loss of life, personal injury and property damage, occasioned by or arising directly or indirectly, out of or in connection with the use, occupancy, or ownership (as applicable) by such Owner of its Lot and/or Residence. An Indemnified Party shall provide the Indemnifying Owner with prompt notice of any claim or other matter for which the Indemnified Party may seek indemnity under this Article; provided, however, that the failure to provide such notice shall relieve the Indemnifying Owner of its indemnity obligations only to the extent that the Indemnifying Owner is damaged or prejudiced by such failure. The Indemnifying Owner or its covering insurer shall defend the Indemnified Party with respect to any such claim at the Indemnifying Owner's expense, with attorneys selected by the Indemnifying Owner who may also represent the Indemnifying Owner. If the Indemnified Party retains separate attorneys for its defense, it shall do so at its own expense. The Indemnifying Owner shall have sole right to conduct such defense (including decisions concerning the forum) and settle any claim, suit, proceeding, or other matter brought by the third party, provided that the Indemnified Party is released from any liability with respect to such claim. The Indemnified Party shall cooperate with the Indemnifying Owner in the defense of any claim, including the provision of documents and witnesses.

## **ARTICLE 17 GENERAL PROVISIONS**

- 17.1      Supplement to Applicable Law. The provisions of this Declaration shall be in addition to and supplemental to all applicable provisions of law.
- 17.2      Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association, and each Owner and the heirs, personal representatives, successors and assigns of each of them.
- 17.3      Conveyance of Lots. All Lots, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and all other terms and provisions contained in this Declaration, as it may be amended from time to time.
- 17.4      Estoppel Certificates. The Association, shall, from time to time, within ten days after receipt of written request from any Owner execute, acknowledge and deliver to such other Owner, or its designee a certificate ("**Estoppel Certificate**") stating to the best of its knowledge, without inquiry:
- 17.4.1      That the terms and provisions of this Declaration are unmodified and are in full force and effect, or, if modified, identifying any such modifications;

- 17.4.2 Whether there is any existing default hereunder by any other Owners or the Association and, if so, specifying the nature and extent thereof;
- 17.4.3 Whether there are any sums that the Owner executing such Estoppel Certificate is entitled to receive or demand from any of the other Owners, and if there is any such sum, specifying the nature and amount thereof and method of computation;
- 17.4.4 In the case of the Association, confirmation of the current Budget, and whether there are any outstanding, unpaid Assessments, or currently proposed Assessments;
- 17.4.5 Whether an Owner or the Association has performed or is performing work, the cost of which is chargeable in whole or in part to any of the other Owners under the provisions hereof, but has not yet been charged to any such Owner, and if there be any such work, specifying the nature and extent thereof;
- 17.4.6 The nature and extent of any setoffs, claims, counterclaims or defenses then being asserted, or otherwise known by an Owner or the Association against the enforcement of any other Owner's obligations hereunder;
- 17.4.7 Whether any Owner has requested that a matter be submitted to arbitration and the nature of any arbitration proceeding or finding made within 90 days preceding the date of the Estoppel Certificate; and
- 17.4.8 Such other matters as may be reasonably requested.
- 17.5 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under applicable law. Any provision in this Declaration in conflict with the requirements of applicable law shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with applicable law.
- 17.6 Enforcement and Rights of Action.
- 17.6.1 *Mediation.* If a dispute arises between the Owners, between an Owner and the Association, or between the Declarant and the Association or any Owner relating to any provision of the Association Documents (a “**Dispute**”) that is not otherwise resolved informally or through the notice and hearing procedure set forth in the Association Documents, the parties thereto shall proceed in good faith to resolve the matter through mediation. The parties will meet with an impartial mediator and will share equally in the cost of such mediation. The parties to the Dispute may resort to Arbitration or legal proceedings only if a mediation is completed and the

Dispute remains unresolved. The Association's power to foreclose on a lien on any Lot or to remove unauthorized alterations, additions and improvements is not subject to this Section 17.6.1.

17.6.2 *Enforcement.* Except as otherwise provided in this Declaration, the Association, the Board, Declarant or any Owner shall have the right to enforce on behalf of the Association or any Owner, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Likewise, the Association, the Board, Declarant or any Owner shall have the right to enforce compliance with any decision made by the Board pursuant to authority granted to the Association in the Association Documents. Owners shall have a similar right of action against the Association. Failure by the Board, the Association, Declarant or any Owner to enforce any covenant or restriction contained in this Declaration or to enforce compliance with any provision of the Association Documents, shall in no event be deemed a waiver to the right to do so thereafter. In any action instituted or maintained for enforcement of the Association Documents, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court or arbitrator.

17.6.3 *Remedies.* The Association shall also have the following remedies following Notice and Hearing (as set out in the Bylaws) against an Owner who fails to comply with this Declaration, the Design Standards, Bylaws, Rules, or with the decisions of the Board of the Association:

- (a) To levy fines;
- (b) To sue for damages;
- (c) To obtain injunctive relief;
- (d) To enter upon a Lot to perform an Owner's obligations and to recover the cost thereof from such defaulting Owner as an Individual Purpose Assessment;
- (e) To seek any other remedy permitted by law;
- (f) To recover its attorney's fees and costs incurred in enforcing its rights.

17.6.4 *Construction Defect Actions.* In addition to the requirements for initiating any arbitration or litigation as set forth in Section 17.6.1 above, the Association shall not initiate any litigation or arbitration with respect to a construction defect claim unless it proposes that the Association act on behalf of at least two Owners, and without first (i) distributing to all Owners a written description of the basis for the construction defect claim, including a good faith estimate of the range of probable costs for legal fees and other expenses that the association may incur in pursuing the construction defect claim, and (ii) obtaining the written approval of Owners to

which at least 67% of all eligible votes in the Association are allocated. In addition, the following procedures shall govern all construction defect claims, whether brought by the Association or by any Owner:

- (a) Notice. If any Owner, or the Association on behalf of more than one Owner (hereafter the “**Claimant**”), alleges a construction defect in any Residence or the Common Elements, Claimant shall notify each Declarant and any contractor against whom such construction defect claim is targeted (hereafter “**Respondent**”) in writing stating plainly and concisely (i) the nature of the claim, including the persons involved and Respondent’s role in the claim; (ii) the legal basis of the claim; (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the claim (the “**Construction Defect Notice**”). A Construction Defect Notice that is sent by Claimant in conformity with the “notice of claim” requirements of C.R.S. § 13-20-801 *et seq.* (“**Colorado Construction Defect Action Reform Act**” or “**CDARA**”) shall be deemed to qualify as a Construction Defect Notice under this Section 17.6.4.
- (b) Negotiations and Mediation.
1. In addition to satisfying the process described in Section 17.6.4(a) above, the parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the construction defect claim by good faith negotiation. If requested in writing, accompanied by a copy of the Construction Defect Notice, the Association may appoint a representative to assist the parties in the negotiation.
  2. If the parties do not resolve the construction defect claim within 30 days after the date of the Construction Defect Notice, Claimant shall have an additional 30 days to submit the claim to mediation as provided for in Section 17.6.1 above.
  3. If Claimant does not submit the construction defect claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the construction defect claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such construction defect claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than Claimant.
  4. If the parties do not settle the construction defect claim within 30 days after the mediation, or within such other time as determined by the mediator or agreed to by the parties, the mediator shall issue a notice of termination of the mediation proceedings (“**Termination of Mediation**”).

(c) Final and Binding Arbitration.

1. If the parties do not reach a settlement agreement within 15 days of the Termination of Mediation, Claimant shall have an additional 15 days to submit the construction defect claim to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, to an arbitrator qualified to consider and resolve the construction defect claim with the appropriate industry and/or legal experience.
2. No Person shall serve as the arbitrator where that Person has any financial or personal interest in the arbitration, or any family, social, or significant professional acquaintance with any party to the arbitration. Any arbitrator shall immediately disclose in writing to all parties any circumstance likely to affect the arbitrator's impartiality. Claimant and Respondent may object to the service of any arbitrator within fourteen (14) days of receiving such written disclosure.
3. The arbitration proceedings shall be conducted in Jefferson County, Colorado, and the substantive law of Colorado shall be applied to all claims, unless Claimant and Respondent agree otherwise in writing.
4. The arbitrator shall have the authority to establish reasonable terms regarding inspections, destructive testing, and retention of independent consultants.
5. The arbitration award shall be in writing and signed by the arbitrator.
6. Except as may be required by law or for confirmation of an arbitration award, Claimant, Respondent, and the arbitrator are all prohibited from disclosing the existence or contents of any arbitration without the prior written consent of both Claimant and Respondent.
7. If the construction defect claim is not timely submitted to arbitration, or if Claimant fails to appear for the arbitration proceeding, the construction defect claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant on account of such construction defect claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than Claimant.



8. This Section 17.6.4(c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. Such agreement to arbitrate and all terms relating thereto in this section shall apply, without limitation, to any “action” as defined in C.R.S. § 13-20-802.5. The arbitration decision and the award, if any, shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.
- (d) Allocation of Costs. Each party shall share equally in the costs of mediation. However, unless otherwise prohibited by law, the prevailing party at any arbitration shall be entitled to recover its attorneys’ fees, expenses, and other costs (including arbitration fees).
- (e) Enforcement of Resolution. If the parties agree to a resolution of any construction defect claim through negotiation or mediation in accordance with Section 17.6.4(b) above, and any party thereafter fails to abide by the terms of such agreement, or if any party fails to comply with an arbitrator’s decision, then any other party may file suit or initiate proceedings to enforce such agreement or decision without the need to again comply with the procedures set forth in this Section 17.6.4.
- (f) Multiple Party Claims. Multiple party disputes or claims not consolidated or administered as a class action pursuant to the following sentence will be arbitrated individually. Only with the written request of all parties involved, but not otherwise, the arbitrator may: (i) consolidate in a single arbitration proceeding any multiple party claims that are substantially identical, and (ii) arbitrate multiple claims as a class action.
- (g) No Amendment. The terms and provisions of this Section 17.6.3 inure to the benefit of Declarant, are enforceable by Declarant, and shall not be amended without the written consent of Declarant without regard to whether Declarant owns any portion of the Property at the time of such amendment and without regard to whether the Development Period has expired. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS SECTION ARE A SIGNIFICANT INDUCEMENT TO DECLARANT’S WILLINGNESS TO DEVELOP AND SELL RESIDENCES AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS SECTION, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE RESIDENCES FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO A LOT, EACH OWNER AGREES AND ACKNOWLEDGES THAT THE TERMS OF THIS SECTION LIMIT HIS OR HER RIGHTS WITH RESPECT TO THE RIGHT AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A

POTENTIAL CONSTRUCTION DEFECT AFFECTING THE COMMUNITY OR ANY PORTION THEREOF, INCLUDING ANY RESIDENCE.

17.6.5 *Conflicts with Law.* In the event that any provisions of this Section 17.6 conflict with any applicable federal or state statutes which provide non-waivable legal rights, including, without limitation, CDARA or the Colorado Consumer Protection Act, then the non-waivable terms of such statute shall control and all other provisions herein remain in full force and effect as written.

- 17.7 Right to Remove Unauthorized Alterations, Additions or Improvements. The Association, upon the majority approval by the Board and after reasonable notice to the Owner of the offending Lot, may remove any alterations, additions or Improvements constructed, reconstructed, refinished, altered, or maintained in violation of this Declaration, and the Owner shall immediately reimburse the Association for all expenses incurred in connection with such removal.
- 17.8 Notices. All notices, demands, or other communications shall be in writing. Each Owner shall register a mailing address and/or email address with the Association. If no such registration is made, notices shall be sent to such Owner at the address of the Residence and shall be deemed properly given to the Owner if delivered to the last address so registered with the Association, or if none then to the Residence address as provided above.
- 17.9 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect as if such invalid provision had never been included.
- 17.10 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.
- 17.11 Captions. The captions and headings in this Declaration are for convenience only, and shall not be considered in construing any provisions of this Declaration.
- 17.12 Conflicting Documents. In case of conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control.
- 17.13 Declarant's Ownership of Unsold Lots. In additions to its Development Rights as provided herein, Declarant shall enjoy the same rights and assume the same duties with respect to all unsold Lots still owned by Declarant as the initial and subsequent Owners (other than Declarant) have in connection with their Lots.
- 17.14 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

- 17.15 Attorneys' Fees and Costs. If any action is brought in a court of law or put into arbitration as to the enforcement, interpretation, or construction of any of the covenants, conditions, and restrictions of this Declaration, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.
- 17.16 Counterparts. Any amendment to this Declaration may be executed in several counterparts and all counterparts so executed shall constitute one document binding on all signatories thereof, notwithstanding that all signatories have not executed the original or the same counterpart. In the event that any such document is executed in counterparts, those pages from the counterparts on which signatures and/or certificates of notaries public appear may be attached to the original instrument for recordation thereof, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are identical.

*[Remainder of page intentionally blank]*

IN WITNESS WHEREOF, the Declarant has set its hand and seal to this Declaration of Hillside Cottages on the day and year first written above,

DECLARANT:

Hillside Cottages LLC  
a Colorado limited liability company

By: Acorn Building Solutions LLC  
A Colorado limited liability company  
its Manager

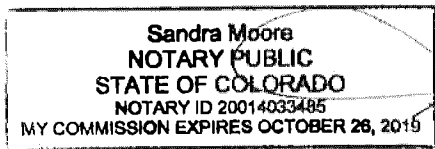
By: Steven I. Wilkie  
Name: Steven I. Wilkie  
Title: Manager

STATE OF Colorado  
COUNTY OF Jefferson ) ss.

The foregoing instrument was acknowledged before me, this 2<sup>nd</sup> day of November 2018,  
by Steve Wilkie as Manager of Hillside Cottages LLC a Colorado limited liability company.

Witness my hand and official seal

My commission expires: 10-26-2019



Sandra Moore  
Notary Public



**EXHIBIT A**  
**Description of the Property**

Hillside Cottages Amendment No. 1, Reception No. 2017115996  
City of Arvada  
County of Jefferson  
State of Colorado.

**EXHIBIT B**  
**General Common Elements**

Tracts E, F, G, H, and J  
Hillside Cottages Amendment No. 1, Reception No. 2017115996  
City of Arvada  
County of Jefferson  
State of Colorado.

**EXHIBIT C**  
**Restrictions of Record**

1. Reservation from the Property of a right of way thereon for ditches or canals constructed by the authority of the United States, and the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as contained in United States Patent recorded June 15, 1874, at Page 139.
2. Terms, agreements, provisions, conditions and obligations of Protective Covenant recorded March 17, 1970, in Book 2168 at Page 198.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, notes or any other facts which might arise as a result of the ALTA/ACSM Land Title Survey prepared by Jehn Engineering dated February 12, 2016, Job No. 2354 216.002.
4. Terms, agreements, provisions, conditions and obligations of Residential Development Agreement recorded March 30, 2017, at Reception No. 2017033386.
5. Easements, Notes, Terms, Conditions, Provisions, Restrictions, Covenants, Agreements and Obligations, if any, as contained on the plat of Hillside Cottages recorded March 30, 2017, at Reception No. 2017033387.
6. Terms, agreements, provisions, conditions, and obligations of Residential Development Agreement recorded November 9, 2017, at Reception No. 2017115995.
7. Easements, Notes, Terms, Conditions, Provisions, Restrictions, Covenants, Agreements and Obligations, if any, as contained on the plat of Hillside Cottages Amendment No. 1, recorded November 9, 2017, at Reception No. 2017115996.