

**DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SUNFIELD**

Name of Common Interest Community: SUNFIELD
Name of Owners Association: SUNFIELD HOMEOWNERS ASSOCIATION
Declarant: LOT HOLDING INVESTMENTS, LLC
Type of Common Interest Community: PLANNED COMMUNITY

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**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
SUNFIELD
(A Common Interest Community)**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the "Declaration") is made on the date hereinafter set forth by **Lot Holding Investments, LLC.**, a Colorado limited liability company, hereinafter referred to as "Declarant."

WITNESSETH:

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

B. Declarant desires to create a residential common interest community on the Property to be known as "**Sunfield**."

C. Declarant has caused "**Sunfield Homeowners Association**", a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado for the purpose of exercising the owners association's rights and obligations as herein set forth.

**ARTICLE I
DEFINITIONS**

The following words used in this Declaration shall have the following meanings:

Section 1. ***Act*** shall mean and refer to the Colorado Common Interest Ownership Act found in Title 38 of the Colorado Revised Statutes. Any reference in the Association Documents to the Act or a section of the Act shall refer to the Act as presently enacted or subsequently amended.

Section 2. ***Agency*** shall mean any agency or corporation that purchases or insures residential mortgages.

Section 3. ***Architectural Design Standards*** shall mean design standards adopted by the Architectural Review Committee from time to time that govern the quality of workmanship, color of materials, harmony of external design with existing structures, and location with respect to topography and finish grade elevation and the master drainage plan and all other appearances of buildings and structures in the Project.

Section 4. ***Articles*** shall mean the Articles of Incorporation for the Association and any amendments that may be made to those Articles from time to time.

Section 5. ***Annual Assessment*** shall mean the Assessment levied pursuant to an annual budget.

Section 6. *Assessments* shall mean the Annual, Special, and Default Assessments levied pursuant to the terms of this Declaration. Assessments are also referred to as a Common Expense liability as defined under the Act.

Section 7. *Association* shall mean Sunfield Homeowners Association, a Colorado nonprofit corporation, and its successors and assigns.

Section 8. *Association Documents* shall mean this Declaration and any Supplemental Declaration, the Articles of Incorporation, the Bylaws, the Plat and any procedures, rules, regulations, Architectural Design Standards, or policies adopted under such documents by the Association, and any amendments thereto.

Section 9. *Builder* shall mean any person who acquires from Declarant one or more Lots for the purpose of constructing thereon a building and selling such building, together with the Lot upon which it is situated to any member of the general public.

Section 10. *Bylaws* shall mean the Bylaws adopted by the Association, as amended from time to time.

Section 11. *Clerk and Recorder* shall mean the office of the Clerk and Recorder in the County of Weld, State of Colorado.

Section 12. *Common Elements* shall mean all real and personal property, if any, now or hereafter owned by the Association for the common use and enjoyment of the Owners. Common Elements shall also mean and refer to any and all personal property and Improvements owned or leased by the Association and shall include, by way of example but without limitation, any exterior signage which identifies the subdivision, exterior lighting, sprinkler systems, recreation equipment, and any other personal property owned by the Association. The Common Elements are to be devoted to the common use and enjoyment of the Owners (subject to the provisions hereof). The definition of Common Elements shall expressly exclude any public streets or alleys. Common Elements shall be owned by the Association. In no event shall the Common Elements fail to be transferred to the Association on a date which is not later than sixty (60) days after the completion of the transfer of all Lots from the Declarant or the Declarant's successors and assigns to third party purchasers.

Each Owner and his or her guests may use the Common Elements in accordance with the purpose for which they are intended, in common with the lawful use by all other Owners. The Executive Board may adopt Rules and Regulations governing the use of the Common Elements, provided that such Rules and Regulations are nondiscriminatory. Duly adopted Rules and Regulations are binding upon each Owner and guests of Owner.

Section 13. *Common Expenses* shall mean: (i) all expenses expressly declared to be common expenses by this Declaration or by the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Elements; (iii) insurance premiums for the insurance required or permitted under this Declaration; and (iv) all expenses lawfully determined to be Common

Expenses by the Executive Board. Common Expenses benefitting fewer than all the Units may, in the discretion of the Executive Board, be assessed exclusively against those Units benefitted.

Section 14. ***Declaration*** shall mean this Declaration and the Plat and amendments and supplements to the foregoing.

Section 15. ***Executive Board*** shall mean the governing body of the Association.

Section 16. ***First Mortgage*** shall mean any Mortgage that is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 17. ***First Mortgagee*** shall mean any person named as a Mortgagee or beneficiary in any First Mortgage, and any successor to such person.

Section 18. ***Improvements*** shall mean and refer to all improvements now or hereafter constructed including, without limitation, all buildings, exterior lighting, benches, walks, landscaping, sprinkling systems, irrigation ditches, and parking areas within the Project.

Section 19. ***Lot*** shall mean and refer to a numbered area of land designated for separate ownership or occupancy as shown on the recorded Plat. Lot shall also mean a "Unit" as defined in the Act. Lot shall not include any Common Elements, tracts or outlots.

Section 20. ***Manager*** shall mean a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Executive Board may authorize from time to time.

Section 21. ***Member*** shall mean and refer to every person or entity that holds membership in the Association by virtue of the ownership of a Lot.

Section 22. ***Mortgage*** shall mean any mortgage, deed of trust or other document pledging any Lot or interest therein as security for payment of a debt or obligation.

Section 23. ***Mortgagee*** shall mean any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 24. ***Notice*** shall mean and refer to: (i) written notice hand delivered or sent by prepaid United States mail to the mailing address of a Lot or to any other mailing address designated in writing by the Owner or to the last known address of the intended recipient, or (ii) notice through an Association publication which is hand delivered or sent by prepaid United States mail to the Owners; or (iii) notice delivered by electronic mail or facsimile to an Owner at the electronic mail address or facsimile number designated by the Owner.

Section 25. ***Owner*** shall mean any person, corporation, partnership, association, contract seller, or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in a portion of one or more Lots and shall include the

purchaser under any executory land sales contract wherein the Administrator of Veterans' Affairs is the seller, whether or not recorded, and whether owned by said Administrator or his assigns. The term Owner shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee as herein defined or other person or entity having an ownership interest in any portion of a Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 26. *Parcel* shall mean each platted, numbered, and recorded division of vacant land as depicted on the Plat.

Section 27. *Plat* shall mean the final plat for Sunfield, and any amendments thereto, recorded in the real estate records of Weld County, Colorado, depicting any portion of the Property subject to this Declaration.

Section 28. *Project* shall mean the common interest community created by this Declaration and as shown on the Plat.

Section 29. *Property* shall mean the real property described in **Exhibit A** together with such additional property as is subsequently subjected to this Declaration in accordance with the provisions set forth herein below.

Section 30. *Related User* shall mean any member of the family of an Owner who resides with such Owner, guests and invitees of an Owner, employees and agents of an Owner, and occupants, tenants, and contract purchasers residing in a Unit.

Section 31. *Rules and Regulations* shall mean those rules and regulations as may be adopted by the Executive Board for the management, preservation, safety, control and orderly operation of the Project and governing the use of the Common Elements provided, however, that such Rules and Regulations shall be uniform and nondiscriminatory. Copies of all such Rules and Regulations shall be furnished to Owners prior to the time that they become effective.

Section 32. *Single Family* shall mean an individual living alone, or any number of persons living together as a single household who are interrelated by blood, marriage, adoption or other legal custodial relationship; or not more than two (2) unrelated adults and any number of persons related to those unrelated adults by blood, adoption, guardianship or legal custodial relationship.

Section 33. *Successor Declarant* shall mean any person or entity to whom Declarant assigns any 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.

Section 34. *Supplemental Declaration* shall mean an instrument which amends this Declaration.

Section 35. *Supplemental Plat* shall mean a supplemental plat of the Project which depicts any change in the Project. The initial phase recordings are not supplemental and do not require amendment to this document.

Section 36. *Undefined Terms*. Terms not otherwise defined in this Declaration, including the Plat, shall have the same meaning specified or used in the Act.

Section 37. *Unit* shall mean a numbered lot as shown on the recorded Plat. Unit shall not include Common Elements, tracts or outlots.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ALLOCATION

Section 1. *Name*. The name of the Project is Sunfield. The Project is a planned community pursuant to the Act.

Section 2. *Property*. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the Town of Milliken, Weld County, Colorado, and is more particularly described on **Exhibit A**.

Section 3. *Expansion Property*. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration may be expanded only as specifically provided in this Declaration.

Section 4. *Maximum Number of Units*. Declarant reserves the right to create up to a total of three hundred (300) Units.

Section 5. *Identification of Units*. The identification number of each Unit is the lot and block number shown on the Plat.

Section 6. *Description of Units*. Each Unit presently consists of surveyed and platted undeveloped vacant land.

Section 7. *Allocation of Interests*. The percentage of liability for Common Expenses shall be determined by using a formula in which the numerator is one (1) and the denominator is the total number of Units subject to this original Declaration, or subject to this Declaration from time to time. The initial allocation of interests is set forth on Exhibit A to this Declaration.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION STRUCTURE AND
OPERATIONS

Section 1. *Association Membership.* Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

Section 2. *Transfer of Membership.* An Owner shall not transfer, pledge, or alienate their membership in the Association in any way, except upon the sale or encumbrance of their Lot and then only to the purchaser or Mortgagee of their Lot. The Association shall not create a right of first refusal on any Lot and Owners may transfer ownership of their Lots free from any such right.

Section 3. *Membership.* The Association shall have one class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Lot. Except as otherwise provided for in the Association Documents, each Member shall be entitled to vote in Association matters as set forth in this Declaration and the Bylaws. Each Owner, including Declarant while Declarant owns any Lot, is subject to all the rights and duties assigned to Owners under the Association Documents.

Section 4. *Voting.* There shall be one vote per Lot.

Section 5. *Declarant Control.* Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act and as set forth in the Association Documents. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers are set out in the Act, the Articles and Bylaws of the Association. Declarant may voluntarily relinquish such power by recording a notice executed by Declarant with the Clerk and Recorder but, in such event, Declarant may at its option require that during the period Declarant would otherwise be entitled to appoint and remove directors and officers, specified actions of the Association or the Executive Board as described in the recorded notice be approved by Declarant before they become effective.

Section 6. *Books and Records.* The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 7. *Manager.* The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board.

Section 8. *Cooperation with Other Associations.* The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other homeowner associations and with governmental entities, to share the costs and/or responsibility for any maintenance, repair, replacement or other matters, to perform maintenance, repair or replacement for any persons in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers or others who may perform services for other homeowner associations or any districts, or to otherwise cooperate with any other homeowner associations or any governmental entities in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Executive Board in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with other homeowner associations or any districts to collect assessments, other charges or other amounts which may be due to such entity and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by such entity.

Section 9. *Rights of Action.* The Association on behalf of itself and any aggrieved Owner, shall be granted a right of action against any and all Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Owner shall have the right, but not the obligation, to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or litigation shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorney fees in connection with such arbitration or litigation. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter. Construction Defect Actions are governed exclusively by the provisions of Exhibit C to this Declaration.

Section 10. *Implied Rights and Obligations.* The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act, and by the Colorado Revised Nonprofit Corporation Act.

ARTICLE IV

POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION

Section 1. *Powers.* Except as provided in the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association, to:

- a. Adopt and amend bylaws and rules and regulations and Architectural Design Standards;

- b. Adopt and amend budgets for revenues, expenditures and reserves, and collect Assessments;
- c. Hire and terminate managing agents and other employees, agents, and independent contractors;
- d. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project;
- e. Make contracts and incur liabilities;
- f. Regulate the use, maintenance, repair, replacement, and modification of Common Elements, if any;
- g. Cause additional Improvements to be made as a part of the Common Elements, if any;
- h. Acquire, hold, encumber, and convey in the name of the Association any right, title, or interest to real or personal property, except that Common Elements, if any, may be conveyed or subjected to a security interest only if Members entitled to cast at least sixty-seven percent of the votes agree to that action and if all Owners to which any Limited Common Element as defined in the Act ("Limited Common Element") is allocated agree to convey that Limited Common Element or subject it to a security interest. Notwithstanding the foregoing, the Association may, on vote only of the Executive Board and without the vote of Owners, convey any tracts or outlots shown on the plat to the Town of Milliken, the Centennial Crossing Metropolitan District or the Thompson River Parks and Recreation District;
- i. Grant easements, leases, licenses, and concessions through or over the Common Elements, if any;
- j. Annex additional property, pursuant to the terms of this Declaration;
- k. Impose and receive any payments, fees or charges for the use, rental, or operation of the Common Elements, if any;
- l. Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after Notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents;
- m. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;
- n. Provide for indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;
- o. Assign its right to future income, including the right to receive Assessments;
- p. Exercise any other powers conferred by the Declaration or Association Bylaws;

- q. Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;
- r. Delegate powers to a master association as provided in C.R.S. § 38-33.3-220. If powers are delegated to a master association, the executive board of the master association must be elected pursuant to C.R.S. § 38-33.3-220.
- s. Merge or consolidate the project with another common interest community of the same form of ownership.
- t. Exercise any other powers necessary and proper for the governance and operation of the Association.

ARTICLE V

MECHANICS' LIENS

Section 1. *No Liability.* If any Owner shall cause any material to be furnished to their Lot or any labor to be performed therein or thereon, no Owner of any other Lot shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. 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, laborers, materialmen, and other persons furnishing labor or materials to their Lot.

Section 2. *Indemnification.* If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against any Common Elements or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be canceled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and hold all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses, or damages including, without limitation, reasonable attorney fees resulting therefrom.

Section 3. *Association Action.* Labor performed or materials furnished for the Common Elements, if any, if duly authorized by the Association in accordance with this Declaration or its Bylaws, shall be deemed to benefit the particular Common Element only, and shall not be the basis for the filing of a lien pursuant to law against any of the Lots.

ARTICLE VI

EASEMENTS

Section 1. *Recorded Easements.* The Property shall be subject to all easements as shown on the plat of Sunfield Subdivision, recorded in the real estate records of Weld County on March 27, 2019 at Reception No. 4476426, those of record including those shown on Exhibit D to this Declaration, those provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Declaration.

Section 2. *Utility Easements.* The utility easements within the Project are for ingress and egress, installation, replacing, repairing and maintaining all utilities serving property within the Project, including, but not limited to water, sewer, gas, telephone, cable TV, and electricity. Said easement includes future utility services not presently available to the Units which reasonably may be required in the future. Companies providing utilities may install and maintain the necessary equipment within such easement on any of the Units provided that such companies promptly restore the easement property and all improvements to the condition existing prior to the installation or maintenance activity. Utility facilities shall be underground except as may be authorized by the Executive Board from time to time. Utility easements shall not be used for utilities serving other property except as permitted by the Executive Board in subsequent recorded easements.

Section 3. *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 easements, permits, or licenses on, under or across the Common Elements, serving property within the Project. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the Common Elements, if any, and Limited Common Elements, if any, appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association.

Section 4. *Use of Easement Area.* Within reserved easements, as shown on recorded Plats, or herein reserved, no Owner shall be permitted to install any structure, tree or shrub planting which is likely to cause damage to or prevent reasonable access to the utility facilities. This restriction does not apply to installations made by the Developer. An Owner shall not alter, inhibit, or change the direction of water flow in drainage channels established in said easements or in any way that discharges drainage onto adjacent Units. The easement area of each Unit and all Improvements in it, including fences, shall be maintained continuously in good repair by the Owner, except for those Improvements for which a public utility shall be responsible. It shall be the responsibility of the Owner to notify the appropriate public utility of any known flaws, defects, or damage to any utility Improvements on said Owners Unit.

Section 5. *Emergency Access Easement.* An easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property to the extent reasonable and necessary in the proper performance of their duties.

ARTICLE VII **MAINTENANCE**

Section 1. *Maintenance by Owners.* Each Owner shall maintain and keep in repair his Unit, landscaping, and any structures or buildings thereon, including the fixtures thereof in order to avoid damaging other Units and to maintain a good appearance for the Project.

Section 2. *Maintenance by Association.* The Association shall be responsible for the maintenance and repair of the Common Elements, and such maintenance and repair shall be the Common Expense of all Owners. Maintenance of the Common Elements shall include, but shall not be limited to, upkeep, repair and replacement of all landscaping, walls, fences, gates, signage, irrigation systems, and Improvements located in the Common Elements, except public improvements. In the event the Association does not maintain or repair the Common Elements, if any, Declarant shall have the right, but not the obligation, to do so at the expense of the Association.

Section 3. *Association Maintenance as Common Expense.* The cost of maintenance and repair by the Association shall be a Common Expense of all of the Owners, to be shared by each Owner equally. If maintenance is necessitated by damage caused by the negligence, misuse, or tortuous act of an Owner or Owner's agent, then the person or Owner causing the damage shall be responsible for reimbursing the Association for all costs incurred in the repair.

ARTICLE VIII **INSURANCE**

Section 1. *General Insurance Provisions.* The Association shall acquire and pay for, out of the Assessments levied in accordance with this Declaration, any insurance policies required by the Act and such other insurance as the Executive Board may, within its discretion, determine desirable for the protection of the Common Elements, if any. Such insurance required by this Exhibit or the Act shall conform to the requirements set forth in C.R.S. § 38-33.3-313(4)(a)-(d) which are as follows:

- a. Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association.
- b. The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household.

- c. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.
- d. If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 2. *Property and Commercial General Liability Insurance.* Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall maintain, to the extent reasonably available:

- a. **Insurance on Common Elements.** Property insurance on the Common Elements and also on property that must become Common Elements, for broad form covered causes of loss, except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.
- b. **Commercial General Liability Insurance.** Commercial general liability insurance in a minimum amount of one million dollars (\$1,000,000.00) or otherwise larger amount deemed sufficient in the judgment of the Executive Board against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements, insuring the Executive Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as the Unit Owner and board member. The Unit Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

Section 3. *Fidelity Insurance.* Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, independent contractors, employees, and on the part of all others, including any Manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such insurance must be obtained by or for the Manager and its officers, employees, and agents, as applicable. Such fidelity insurance or bond shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such fidelity bonds shall be a minimum of an amount equal to three (3) months Assessments plus replacement reserves.

Section 4. *Workers' Compensation Insurance.* The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 5. *Notice.* If any insurance required by this Exhibit is not reasonably available, or if any policy of such insurance is canceled 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 Unit Owners.

Section 6. *Common Expenses.* Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 7. *Other.* An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit.

ARTICLE IX

ASSESSMENTS

Section 1. *Obligation.* Each Owner, including Declarant while an Owner of any Unit, is obligated to pay to the Association: (i) the Annual Assessments; (ii) Special Assessments; and (iii) Default Assessments.

Section 2. *Budget.* Within thirty (30) days after the adoption of any proposed budget for the Common Interest Community, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary (or, in the alternative, together with a ballot and information sufficient to satisfy the provisions of Section 109 of the Colorado Revised Nonprofit Corporation Act). Unless a majority of the total votes in the Association reject the proposed budget, the budget is ratified. There are no quorum requirements for this meeting. In the event the proposed budget is rejected, the budget last ratified by the Owners continues until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 3. *Annual Assessments.* Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, if any, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping of the Property, care of grounds within the Common Elements, if any, routine repairs,

replacements and renovations within and of the Common Elements, if any, wages, common water and utility charges for the Common Elements, if any, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous Assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of Improvements within the Common Elements, if any, on a periodic basis, as needed.

Annual Assessments shall be payable in monthly installments or on such other dates as the Executive Board determines. The omission or failure of the Association to fix the Annual Assessments for any Assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

Section 4. *Apportionment of Annual Assessments.* The Common Expenses shall be allocated among the Lots on the basis of the allocated interest for Common Expenses in effect on the date of Assessment, provided however that the Association reserves the right to allocate all expenses related to fewer than all of the Lots to the Owners of those affected Lots only. The initial allocation is set forth on Exhibit A to this Declaration. Notwithstanding the foregoing, the amount of Annual Assessment against Lots on which a certificate of occupancy has not been issued may be set at a lower rate than the rate of Annual Assessment against those Lots on which a certificate of occupancy has been issued pursuant to C.R.S. § 38-33.3-315(3)(b), as amended, since such Lots do not receive certain benefits including the same services as other Lots. The lower rate of Assessment against such Lots shall be determined by the Board based upon the costs and expenses of the services actually provided to such Lots.

Section 5. *Special Assessments.* In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of Improvements within the Common Elements, if any, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Amounts assessed pursuant to this Section shall be assessed to Owners according to their allocated interests for Common Expenses, subject to the right of the Association to assess only against affected Units any extraordinary maintenance, repair or restoration work on those Units, which shall be borne by the Owners of those affected Units only, and any extraordinary insurance costs incurred as a result of the value of a particular Unit or the actions of a particular Owner (or his agents, servants, guests, tenants or invitees), which shall be borne by that Owner. Notice of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly

to the Owners, and no payment shall be due less than ten (10) days after such notice shall have been given.

Section 6. *Default Assessments.* All monetary fines assessed against an Owner pursuant to the Association Documents shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 7. *Effect of Nonpayment; Assessment Lien.* Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid on or before its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- a. Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- b. Assess an interest charge from the due date at the yearly rate of twelve percent (12%), or such other lawful rate as the Executive Board may establish;
- c. Suspend the voting rights of the Owner during any period of delinquency;
- d. Suspend the rights of the Owner, and the Owner's family, guests, lessees, and invitees, to use Common Element facilities during any period of delinquency;
- e. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- f. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- g. Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Unit shall constitute a lien on such Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

Liens for Assessments and their priority shall be as provided in the Act.

Section 8. *Personal Obligation.* In addition to being a lien against the Lot, each Assessment is the personal obligation of the Owner of the Unit at the time the Assessment

became due and shall not become a personal obligation of successors in title unless they agree to assume the obligation. Transfer of a Lot subject to unpaid Assessments shall not affect the Association's right to foreclose its lien against the Lot. No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements, if any. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 9. *Payment by Mortgagee.* Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, 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 Unit for the amounts paid with the same priority as the lien of the Mortgage.

Section 10. *Statement of Status of Assessment Payment.* Upon payment of a reasonable fee set from time to time by the Executive Board, the Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent or Manager, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Executive Board, and every Unit Owner. If no statement is furnished to the Unit Owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for unpaid Assessments which were due as of the date of the request.

Section 11. *Maintenance of Accounts; Accounting.* If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer, or disbursement of Association funds to other persons or to a Manager, then such other persons or Manager must: (i) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or Manager; (ii) maintain all reserve and working capital accounts of the Association separate from the operational accounts of the Association, and (iii) provide to the Association an annual accounting and financial statement of Association funds prepared by the Manager, a public accountant, or a certified public accountant.

Section 12. *Working Fund.* The Association or Declarant may require the first Owner of each Unit (other than Declarant) to make a non-refundable payment to the Association in an amount equal to one-sixth (1/6) of the annual Common Expense Assessment against that Unit, in effect at the initial sale by Declarant of each Unit, as aforesaid, and shall be for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of assessments as the same become due.

ARTICLE X
RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Section 1. *General Provisions.* Declarant shall have the following Rights (“Special Declarant Rights”) with respect to the Project and to all of the Property:

- a. *Reservation of Development Rights.*** Declarant reserves the right to exercise all “Development Rights” as defined from time to time in the Act including, without limitation, the right or combination of rights hereby reserved by Declarant, as follows:
- (i) The right to redesignate uses, to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements, subdivide Units or complete or make improvements, as the same may be indicated on plats filed of record or filed with the Declaration.
 - (ii) The right to construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements or to convert Common Elements into Units.
 - (iii) The right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions, as permitted under the Act.
 - (iv) The right to withdraw all or any part of the Real Estate from the Community and the right to withdraw all or any part of the expansion property.
 - (v) The right to subject additional phases of the Expansion Property to the provisions of this Declaration and expand the Project (Units and Common Elements) to include the maximum number of Units and entire Expansion Property.
 - (vi) The right to make amendments to the Declaration or other Governing Documents to meet or comply with any requirements of FHA or VA.
 - (vii) The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary.
 - (viii) The right to merge or consolidate the Community with another community of the same form of ownership.
 - (ix) To make the Community subject to a master association.

- (x) The right to appoint or remove any officer of the Association or any Director during the Declarant Control period.
 - (xi) The right to exercise any additional reserved right created by any other provision of this Declaration.
 - (xii) The right to amend the Declaration in connection with the exercise of any development right.
 - (xiii) The right to amend the Plat in connection with the exercise of any development right.
 - (xiv) The right to add real estate to the common interest community.
 - (xv) The right to create Units, Common Elements and Limited Common Elements within the common interest community.
 - (xvi) The right to subdivide Units or convert Units into Common Elements.
 - (xvii) The right to withdraw real estate from the common interest community.
- b. Limitation on Development Rights.** The Development Rights reserved in this section may be exercised at any time but not more than ten (10) years after the recording of the initial Declaration in the real estate records of Weld County, Colorado;
- c. Phasing of Development Rights.** No assurances are made by Declarant as to whether Declarant will exercise its Development Rights or the order in which such Development Rights will be developed. The exercise of Development Rights as to some portions of the Property will not obligate Declarant to exercise them as to other portions.
- d. Special Declarant Rights.** Declarant reserves the following Special Declarant Rights as defined from time to time in the Act, which rights are not subject to the limitations, restrictions or notice or approval requirements of this Declaration, including without limitation, the right or combination of rights as follows:
- (i) To complete any Improvements indicated on the Plat;
 - (ii) To exercise any development right;
 - (iii) To install and maintain sales offices, management offices, model homes, and signs advertising the common interest community, without obtaining prior approval and without compliance with architectural restrictions;

- (iv) To use easements through the Common Elements and Lots for the purpose of making Improvements within the common interest community or within property which may be added to the common interest community;
 - (v) To make the common interest community subject to a master association;
 - (vi) To merge or consolidate a common interest community of the same form of ownership; and
 - (vii) To appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control.
- e. **Models, Sales Offices and Management Office.** Declarant, its duly authorized agents, representatives, and employees may maintain any Unit owned by Declarant or any portion of the Common Elements as a model unit, sales office, or management office, and may post and maintain signs and displays in order to promote sales of Units. Declarant may assign the rights reserved hereunder to any individuals or entities including, but not limited to contractors, builders, and real estate agents for such periods of time and under such conditions as determined by Declarant. In addition, during periods of construction, Declarant may maintain a construction trailer on the Common Elements.
- f. **Construction: Declarant's Easement.** Declarant reserves the right to perform warranty work, repairs and construction in Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and make repairs until completion. All work may be performed by Declarant without the consent or approval of the Executive Board. Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey access, utility, and drainage easements to a governmental entity.
- g. **Declarant's Property.** Declarant reserves the right to remove and retain all its property used in the sales, management, construction, and maintenance of the property, whether or not they have become fixtures.
- h. **Limitations on Special Declarant Rights.** Unless terminated earlier by a document executed by Declarant and recorded in the real estate records of Weld County, Colorado, any reserved Development Rights and Special Declarant Rights may be exercised by Declarant, as long as Declarant: (a) is obligated under any warranty or obligation; (b) holds a Development Right to create additional Units or Common Elements; (c) owns any Unit; (d) owns any security interest in any Unit; or (e) exercises such rights

before ten (10) years have elapsed after recording of this Declaration in the real estate records of Weld County, Colorado. Earlier termination of certain rights may occur in accordance with the Act.

- i. **Interference With Special Declarant Rights.** While the Declarant is entitled to exercise its Special Declarant Rights, neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant and any entity to whom Special Declarant Rights have been assigned.
- j. **Rights Transferable.** Any Special Declarant rights or other Declarant rights created or reserved under this Declaration may be transferred by an instrument evidencing the transfer recorded in Weld County, Colorado. Such instrument shall be executed by the transferor, Declarant, and the transferee.

ARTICLE XI

ARCHITECTURAL REVIEW AND OTHER RESTRICTIONS

Section 1. *Association Power.* The Association shall have the right and power to prohibit any activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Elements, if any, by promulgating Rules and Regulations which restrict or prohibit such activities.

Section 2. *Review.* No buildings, structures or other Improvements including fences and landscaping shall be constructed, modified or altered unless first approved in writing by the Architectural Review Committee, provided however, that the Declarant and Builders whose plans and specifications have received Declarant's prior written approval shall be exempt from seeking or obtaining Architectural Review Committee approval during Declarant's or such Builder's development of, construction on, or sales of any Unit. The Architectural Review Committee shall exercise reasonable judgment to the end that all buildings, structures, modifications, alterations, or additions to the Units conform to and harmonize with existing surroundings and structures. The Architectural Review Committee has the absolute right to deny any requested buildings, structures, modifications, alterations, or additions which the Architectural Review Committee reasonably determines do not conform to and harmonize with existing surroundings and structures.

Section 3. *Membership of Architectural Review Committee.* The Architectural Review Committee shall consist of three (3) members, all of whom shall be appointed by Declarant during the Appointment Period (as hereafter defined). The Association shall have the right to appoint such members after the end of the Appointment Period. The "Appointment Period" shall mean the period of time commencing as of the date of recordation of this Declaration and continuing until the earliest to occur of the following

events: (a) when all Units in the Project have been conveyed to persons other than Declarant and certificates of occupancy have been issued for the residences constructed thereon; (b) ten (10) years after the date this Declaration is recorded; or (c) when, in its discretion, Declarant voluntarily relinquishes such right. During the Appointment Period, Declarant shall not be obligated to appoint members to the Architectural Review Committee. In such event, Declarant or Declarant's designated representative shall exercise all rights and obligations of the Architectural Review Committee as set forth in this Exhibit. Members of the Architectural Review Committee may but shall not necessarily be members of the Association. Members of the Architectural Review Committee to be appointed by the Association shall be appointed by the Executive Board. Members of the Architectural Review Committee appointed by the Executive Board may be removed at any time by the Board, and shall serve for such term as may be designated by the Executive Board, or until resignation or removal by the Board. During the Appointment Period, Declarant shall give the Association written notice of the appointment or removal of any member of the Architectural Review Committee. After the Appointment Period, the Association may at any time and from time to time change the authorized number of members of the Architectural Review Committee, but the number of members of the Architectural Review Committee shall not be less than three (3). A majority of the Architectural Review Committee shall constitute a quorum of the Committee, and a majority of Committee members present at any meeting where a quorum is present shall be required for Committee action. Notice of all Architectural Review Committee meetings shall be furnished to each member of the Committee.

Section 4. *Plan Review Procedure.* Prior to commencement of any onsite work, the Owner or such Owner's designated representative (hereinafter referred to as "Applicant") must obtain the written approval of the Architectural Review Committee, provided however, that the Declarant and Builders whose plans and specifications have received Declarant's prior written approval shall be exempt from seeking or obtaining Architectural Review Committee approval during Declarant's or such Builder's development of, construction on, or sales of any Unit.

- a. Plan Submittal.** The Applicant must submit to the Architectural Review Committee the following minimum items (in addition to other items which the Architectural Review Committee deems necessary or advisable for it to act under the circumstances):
 - (i) Site plan;
 - (ii) Complete construction plans;
 - (iii) Specifications, including color schemes and material samples for the building, addition or alteration; and
 - (iv) Payment in full of all anticipated costs as set forth below.
- b. Plan Approval.** Upon receipt by the Architectural Review Committee of all items set forth above, the Architectural Review Committee shall thereafter have thirty (30) days to furnish Applicant with written notice of approval or rejection of the plans as submitted. If rejected, the Architectural Review Committee shall furnish a written explanation of the basis for its rejection

and shall, if practical, furnish suggested modifications which would render the plans acceptable, subject to resubmission for review and approval upon completion of any such modifications. The Architectural Review Committee may condition its approval upon certain modifications being made to the plans, in which event such plans shall be deemed approved only upon submission to the Architectural Committee of one (1) complete set of all revised plans fully incorporated and reflecting all such required modifications.

- c. **Failure to Respond.** If, after receipt of a complete submission, the Architectural Review Committee has not responded to the Applicant in writing within the thirty (30) day period as provided above, the Applicant shall notify the Architectural Review Committee of such failure in writing by certified mail, return receipt requested. Thereafter, unless the Architectural Review Committee furnishes written notice of approval or rejection as required above within fifteen (15) days following receipt of said notice from the Applicant, the plans as submitted shall be deemed approved. In the event the Architectural Review Committee has notified Applicant of the necessity of submitting additional documentation, the thirty (30) day and fifteen (15) day periods set forth above shall not begin until Applicant has submitted all required documentation.

Section 5. Notice of Completion. Upon completion of the construction, modification or alteration of any Improvements, the Applicant shall furnish written notice to the Architectural Review Committee of same, provided however, that the Declarant and Builders whose plans and specifications have received Declarant's prior written approval shall be exempt from furnishing written notice to the Architectural Review Committee during Declarant's or such Builder's development of, construction on, or sales of any Unit. Thereafter, the Architectural Review Committee or its designee shall have the right to inspect the Improvements to assure compliance with the approved plans and the Applicant shall cooperate with the Architectural Review Committee or its designee to arrange the inspection. If the Applicant fails or refuses to permit such inspection, or if upon inspection it is determined that such Improvements do not comply with the approved plans, the Architectural Review Committee may furnish Applicant with written notice of noncompliance and exercise all remedies permitted herein, at law or in equity.

Section 6. Remedies Upon Noncompliance. If at any time the Architectural Review Committee determines an Owner or Applicant is not in compliance with the Architectural Design Standards or approved plans, including without limitation the failure to submit plans for approval prior to commencing any onsite work, the Architectural Review Committee shall furnish notice of noncompliance to the Owner. Upon such notice, the Owner shall immediately cease all work other than is required to bring the Improvements into compliance. If the Owner fails to immediately cease all such work, or fails to bring the Improvements into such compliance within a reasonable period of time not exceeding thirty (30) days, the Architectural Review Committee shall have all rights and remedies available pursuant to this Declaration, at law or in equity. Such rights and remedies include but are not limited to the following:

- a. **Injunctive Relief.** The Architectural Review Committee may seek appropriate injunctive relief in order to compel the Owner to cease all work and bring the Improvements into compliance or authorize the Architectural Review Committee to undertake all steps and actions, on the Owner's behalf and expense. Said expense shall be a personal obligation of the Owner and a charge and lien against said Owner's Unit as with Assessments as provided herein.
- b. **Damages, Costs, and Attorney Fees.** The Architectural Review Committee may recover from the Owner all damages, costs, and attorney fees suffered or incurred in connection with the existence or remedy of any Improvements found by a court of competent jurisdiction to be in noncompliance with this Declaration, the Architectural Design Standards or approved plans, as applicable. Said damages, costs, and attorney fees shall be a personal obligation of the Owner and a charge and lien against said Owner's Lot as with Assessments as provided herein.

Section 7. *Authority to Hire, Assess Costs, and Raise Funds.* If authorized by the Executive Board, the Architectural Review Committee may hire or retain such professionals or other persons as it deems necessary for the purposes described herein. The Architectural Review Committee shall also have the power to require the Owner submitting matters to it for approval to pay reasonably necessary costs of the submission prior to their review and as a necessary condition thereof. Any excess funds shall be returned, but the submitting Owner shall remain liable to pay any additional expense(s) if prepayment is insufficient.

Section 8. *Records.* The Architectural Review Committee shall maintain written records of all applications submitted to it and all actions taken thereon.

Section 9. *Restrictions on Use.* Use and enjoyment of each Unit shall be subject to the following restrictions and such additional restrictions as are adopted by the Owners holding not less than sixty-seven percent (67%) of the votes possible to be cast under this Declaration:

- a. **Land Use.** No Unit or portion thereof shall be used for any purpose other than a Single Family residence. No group housing or board and care homes shall be permitted.
- b. **No Further Subdivision.** No Unit or any building shall be further subdivided or separated into smaller units by any Owner, and no portion less than all of any such Unit or building or any easement or other interest therein shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar corrective instruments.
- c. **Nuisances.** No noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done thereon which may become an annoyance

to the neighborhood. No annoying light, sound, or odor shall be emitted from any Unit onto any other Unit(s) which can be considered offensive or intrusive to other Unit Owners or occupants.

- d. **Temporary Structures.** No structures of a temporary character such as trailers, mobile homes, tents, shacks, garages, barns, or other outbuildings shall be used on any Unit at any time as a residence either temporarily or permanently.
- e. **Accessory Buildings.** No accessory buildings, storage barns, or sheds shall be constructed or moved onto any Unit without written consent of the Architectural Review Committee. Said structures shall not be unreasonably prohibited so long as full consideration is given to architectural integration of materials, colors, and placement on the property.
- f. **Move and Set Structures.** All structures within the Project shall be new construction and no previously erected building, structure, or Improvement shall be moved and set upon any Unit from any other location. Exceptions may be made for prefabricated storage buildings with written approval of the Architectural Review Committee.
- g. **Signs.** No sign of any kind shall be displayed to the public view on any Unit except as specifically permitted by the ordinances of the Town of Milliken and in no event shall any sign exceed two feet by three feet (2'x3').
- h. **Oil, Gas, and Mining.** No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon, in or under any Unit, except that this restriction shall not be construed to prohibit Declarant from permitting the placement or maintenance of oil or gas pipelines in or under any Unit. Oil wells, tanks, tunnels, mineral excavations, or shafts not be permitted upon any Unit. No derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any Unit.
- i. **Animals, Livestock and Poultry.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Unit, except for dogs, cats, or other household pets, provided that they are not kept, bred, or maintained for any commercial purposes and do not constitute a nuisance. No Owner may keep more than three (3) dogs and three (3) cats. Household pets shall not be permitted to roam freely around the properties and shall be kept under the strict supervision and control of their Owners at all times. Without limiting the foregoing, continuous and/or frequent barking or howling by dogs is hereby defined as a nuisance.
- j. **Garbage and Refuse Disposal.** No Unit shall be used or maintained as a dumping ground for rubbish, trash, or garbage. Trash, garbage, or other

waste shall not be kept except in sanitary and secure containers. All containers shall be kept in a clean and sanitary condition and shall not be kept in public view except during the scheduled day of pick up.

k. Storage of Materials. Storage of materials shall be done in accordance with the following provisions:

- (i) No occupant or Owner of any Unit shall store or permit to be stored or to accumulate, upon any Unit, any debris, any piles of manure, piles of dirt, machinery or equipment or any part thereof, old or rusted pieces of metal, rubber or any type of junk, or other miscellaneous items unless concealed from public and neighbor views within an enclosed structure.
- (ii) Storage of building materials is permitted only to facilitate continuous building projects in progress. Unit Owners shall supervise and assure secure storage of all building materials during construction to prevent damage to other structures or littering throughout neighborhood as a result of heavy winds.
- (iii) No tanks for the storage of gas, fuel, oil or other flammable materials shall be erected, placed, or permitted above or below the surface of any Unit. Any firewood pile shall be screened and located within the confines of a privacy fence approved by the Architectural Review Committee.

l. Hazardous Activities. No activities shall be conducted on any Unit which are or might be unsafe or hazardous to any person or any property. No firearms shall be discharged upon any Unit and no open fires shall be lighted or permitted on any Unit except in a contained barbecue unit while attended and in use for cooking purposes or within an approved fireplace or fire pit. No burning of trash, leaves, or other materials shall be allowed. The storage of any type of explosive devices, compounds, chemicals, or materials is prohibited.

m. Motor Vehicles, Recreational Vehicles, Disabled Vehicles, Vehicle Storage and Repair. Only the motor vehicles normally used for family travel and work, which shall be properly licensed, shall be permitted to remain on a Lot. No boat, trailer, house trailer, camper, tractor-trailer or semi-truck, motor home, or recreational vehicle shall be parked on any driveway or any street within the Project. No boats, trailers, campers, trucks greater than one ton, recreational vehicles, or motor homes shall be parked within the Project for more than seventy two (72) hours within any 7-day period. No tractor-trailer or semi-truck shall be allowed at any time on any street in the Project except for delivery of materials during construction or moving vans, while being used to move personal property to or from a Unit. Nothing contained herein shall prevent the Owner or Owners of any Unit

from storing any of said vehicles (except tractor-trailers or semi-trucks) in a garage on their Lot. No automotive repairs shall be done on any street, driveway, or any parking area which may be seen from the view of adjacent properties. No disabled or unlicensed (including expired licenses) vehicles shall be allowed to remain on the street, driveway, or other parking area which may be seen from the view of adjacent properties. No grease or oil or other unsightly fluids shall be permitted to accumulate in any driveway, sidewalk, or street area. The restrictions set forth above shall not restrict the parking of trucks or other commercial vehicles for a reasonable time upon a Lot, which vehicles are necessary for the construction of the residential dwelling on said Lot.

- n. **Antennas.** No exterior radio antennas, television antennas, or other antennas may be erected unless approved in writing by the Architectural Review Committee. Any facility for the transmission or reception of audio or visual signals shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. Notwithstanding the foregoing, neither the restrictions nor the requirements of this Section shall apply to those antennas (which may include some satellite dishes and other devices) that are specifically covered by the Telecommunications Act of 1996, as amended from time to time. As to antennas which are specifically covered by the Telecommunications Act of 1996, as amended, the Committee shall be empowered to adopt rules and regulations governing the types of antennas that are permissible hereunder, and to the extent permitted by the Telecommunications Act of 1996, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location, and maintenance.
- o. **Home Occupations/Businesses.** The conduct of a home occupation or business within a residence shall be permitted provided that the following requirements are met: Home occupations or businesses must be conducted inside the residence and not occupy more than fifteen percent (15%) of the total floor area of the residence. Home occupations or businesses must be conducted only by the residents of said dwelling with no nonresidents employed at the residence. No retail sales shall be conducted on the Unit or in public view. Home occupations or businesses must be conducted within the scope of the zoning ordinances of the Town of Milliken. Customer visits must be limited to an occasional frequency. Customer parking must be in the driveway or immediately in front of the residence. There shall be no signage or other evidence of a home occupation or business from the outside of the residence.
- p. **Dog Runs.** Dog runs must first be approved by the Architectural Review Committee and shall not be located on any Lot where they are visible from a street or public view.

- q. Maintenance and Repair of Landscaping and Improvements:** Maintenance and repair of landscaping and Improvements shall be subject to the following provisions:
- (i) Each Owner shall provide prudent and regular exterior maintenance upon each Unit including painting, repairs and/or replacement of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass and other landscaping, walks, driveways and other surfaces, and all other exterior Improvements to maintain the value of said property. Owners shall comply with mandatory landscaping requirements as set forth in the Architectural Design Standards adopted by and available from the Architectural Review Committee. Owners benefiting from fencing and other Improvements immediately adjacent to their Lot, but installed by Declarant, are solely responsible for any and all maintenance and repairs on the side facing such Owner's Lot, except Owners shall have no obligations for utility Improvements. Owners shall not allow weeds or other unsightly vegetation on unimproved Lots to exceed twelve inches in height.
 - (ii) Failure to maintain: In the event an Owner of any Unit in the Project shall fail to maintain the premises and the Improvements thereon as provided herein, the Association or the Architectural Review Committee, after Notice to the Owner and a reasonable opportunity for the Owner to perform all necessary work, may undertake such work on behalf of and at the Owner's expense. Any such expense shall be reimbursed to the Association or Architectural Review Committee within thirty (30) days of the furnishing of Notice to such Owner that such reimbursement is owed, together with costs of collection thereof, attorney fees, and interest thereon. Said obligation shall be a personal obligation of the Owner and a charge and lien against each Owner's Unit as provided herein for Assessments.
- r. Non-Owner Occupants.** All covenants, restrictions, rules, regulations, and provisions of this Declaration shall be binding on non-Owner occupants without exception. Property Owners who lease their property shall be required to furnish to lessees copies of this Declaration along with a written lease referencing this Declaration; leasing or being absent from the property shall not release property Owners from liabilities and responsibilities described herein.
- s. Water and Sewer.** No individual water supply system or sewage disposal system shall be permitted on any Unit and all dwellings must attach to water and sewer in conjunction with Town of Milliken ordinances and construction standards.

- t. **No Violation of Law.** Nothing shall be done or kept in or on any portion of the Project by a Unit Owner or occupant which would be in violation of any statute, rule, ordinance, regulation, permit, or validly imposed requirement of any governmental body having jurisdiction over the Project. The Association shall have no duty or obligation to enforce any such statute, rule, ordinance, regulation, permit or validly imposed requirement.
- u. **Fencing.** No fencing of any type shall be constructed by any Lot Owner on any Lot within the Project without prior approval in writing by the Architectural Review Committee.
- v. **No Imperiling of Insurance.** Nothing shall be done or kept in or on any portion of the Project which might result in an increase in the premiums with respect to insurance obtained for all or any portion of the Project or which might cause cancellation of such insurance, except with the prior written consent of the Architectural Review Committee.
- w. **Architectural Design Standards.** The Architectural Review Committee has the power and authority to adopt Architectural Design Standards and make additional requirements for any residential construction or reconstruction within the Project. The Architectural Review Committee may modify or amend the Architectural Design Standards so long as such modifications and amendments are consistent with this Declaration.
- x. **Intersection Obstructions.** No Owner shall construct or install any fence, berm, shrub, hedge, tree, or other Improvement which obstructs sight lines at an intersection. The Architectural Review Committee shall, in its discretion, have the right to determine if any such fence, berm, shrub, hedge, tree, or other Improvement obstructs such sight lines.
- y. **Underground Lines.** All electric, television, telephone, and other lines running from any property line of a Lot to a residence or other structure shall be placed underground.
- z. **Trash Burning.** Trash, leaves, and other similar materials shall not be burned within the Project.
- aa. **Drainage.** No Owner shall change the topography or drainage pattern of a Lot including, not by limitation, any drainage easement areas, from the topography or drainage pattern established by the Declarant unless such change is approved by the Architectural Review Committee. Any Owner who in any way materially modifies the topography or drainage pattern of a Lot without such consent shall be liable for any and all damages stemming therefrom, and may be required to return such topography or drainage patterns to their original state. If any Owner fails to fully abide by this provision, the Association or the Architectural Review Committee, after

Notice to the Owner and a reasonable opportunity to perform all necessary work restoring drainage patterns, may undertake such work on behalf of and at the Owner's expense. Any such expense shall be reimbursed to the Association or Architectural Review Committee within thirty (30) days of the furnishing of Notice to such Owner that such reimbursement is owed, together with costs of collection thereof, attorney fees, and interest thereon. Said obligation shall be a personal obligation of the Owner and a charge and lien against each Owner's Lot as provided herein for Assessments.

Section 10. *Variance.* The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Exhibit hereof, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 11. *Waivers; No Precedent.* The approval or consent of the Architectural Review Committee or any representative thereof, or of the Board of Directors, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee or any representative thereof, or by the Board of Directors, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

ARTICLE XII

MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of First Mortgages on Units. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Exhibit apply to this Declaration and also to the Articles, Bylaws, and Rules and Regulations of the Association.

Section 1. *Distribution of Insurance or Condemnation Proceeds.* In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Unit.

Section 2. *Right to Pay Taxes and Charges.* Mortgagees who hold First Mortgages against Units may jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 3. *Audited Financial Statement.* Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety (90) days an audited financial statement of the Association for the immediately preceding fiscal year, at the expense of such Mortgagee or Agency.

Section 4. *Notice of Action.* Any First Mortgagee and any Agency which holds, insures, or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Unit number), will be entitled to timely written notice of:

- a. Any proposed termination of the common interest community;
- b. Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured, or guaranteed by such Agency;
- c. Any delinquency in the payment of Assessments owed by an Owner subject to the Mortgage where such delinquency has continued for a period of sixty (60) days;
- d. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association pursuant to this Declaration.

Section 5. *Action by Mortgagee.* If this Declaration or any Association Documents require the approval of Mortgagees, then if any Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee is given proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

Section 6. *Subordination of Liens to VA/FHA Mortgages.* The liens authorized by this Declaration shall be at all times subordinate to the lien of any loan evidenced by a first mortgage/deed of trust insured or guaranteed by the Department of Veterans Affairs ("VA") or the Federal Housing Administration ("FHA"), and to any executory land sales contract wherein the VA or FHA is seller regardless of whether the contract is recorded. Sale or transfer of any Lot or Unit pursuant to foreclosure of any VA/FHA mortgage/deed of trust or any proceeding in lieu thereof, or any deed in lieu of foreclosure relating thereto, shall extinguish the liens which became due prior to the time such first mortgagee acquired title to such Lot or Unit. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including any deed in lieu of foreclosure, nor cancellation or forfeiture of any such executory land sales contract, shall relieve any Lot or Unit from liability for any assessment charges or other charges subject to liens authorized by this Declaration which hereafter accrue, nor from the liens thereof, except as set forth above.

Section 7. *Required Consent of VA/FHA to Certain Amendments.* While the Declarant is in control of the Association (i.e., Unit Owners other than Declarant have not yet elected a majority of the Executive Board), amendments to the Declaration, Articles of Incorporation or Bylaws of the Association must first be approved by the VA or FHA if either VA or FHA has approved the Community for VA guaranteed or FHA insured loans. Further, the Association may not be merged or consolidated with another association without the prior written consent of the VA or FHA if either VA or FHA has approved the Community for VA guaranteed or FHA insured loans.

ARTICLE XIII

ANNEXATION OF ADDITIONAL PROPERTY

Section 1. *Annexation.* Property may be annexed subject to the following:

- a. Additional property may be annexed to this Declaration with the consent of the Owners of Lots to which at least two thirds (2/3) of the Association votes are allocated. Notwithstanding the foregoing, Declarant may annex to this Declaration additional property within the lands described on the attached **Exhibit B**, until that date which is ten (10) years after the date of recording of this Declaration in the County of Weld, Colorado, without consent of any other Owners, security interest holders, or any other person; provided, however, that if Declarant desires to attempt to obtain Veterans' Administration or Housing and Urban Development approval of the property being annexed, then such annexation shall be subject to a determination by Veterans' Administration or Housing and Urban Development that the annexation is in accord with the general plan approved by it and the structures to be located thereon will be of comparable style, quality, size, and cost to the existing Improvements. Each annexation by Declarant shall be effected, if at all, by recording a plat or map of the property to be annexed (unless such plat or map has previously been recorded), and by recording, in the Office of the Clerk and Recorder of Weld County, Colorado, one of the following: (i) a deed from Declarant that provides for conveyance of a portion of the property described on the attached **Exhibit B** to any person other than Declarant, in which case each such lot in the property so conveyed shall constitute a Lot and the allocated interests shall thereupon automatically be reallocated to be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Lots then within the community upon recording of such deed, and any other portion(s) of such property so annexed shall constitute Common Elements; or (ii) an annexation of additional land, which document shall provide for annexation to this Declaration of the property described in such annexation of additional land, shall state that Declarant (or other person) is the Owner of the Lots thereby included, shall assign an identifying number to each new Lot, shall describe any Common Elements within the property being annexed, shall reallocate

the allocated interests among all Lots, and may include such other provisions as Declarant deems appropriate (including, without limitation, covenants, restrictions, or other provisions which will be applicable to such annexed property and which are in addition to or more restrictive than the provisions of this Declaration). All provisions of this Declaration, including, but not limited to those provisions regarding obligations to pay Assessments to the Association and any right to cast votes, shall apply to annexed property immediately upon recording of a deed or an annexation of additional land with respect thereto, as aforesaid. In addition to the foregoing, Declarant may amend this Declaration at any time during the ten (10) year period noted hereinabove, in order to add additional real estate to the community from such locations as Declarant may elect in its sole discretion.

- b. Declarant reserves the right at any time to record one or more documents in order to clarify the effect of any annexations which occur by deed, as permitted in subsection (a) above. Such documents may state the legal descriptions of any property which has been annexed by deed, may state the reallocated allocated interests after such annexations, and may include other provisions which Declarant may determine to be appropriate in order to clarify any matters having to do with annexation of such property to this Declaration.
- c. Each portion of the community which is annexed to this Declaration by an annexation of additional land, as provided in the preceding subsection (a), shall be subject to a right of withdrawal by Declarant. Such withdrawal may be accomplished, if at all, in accordance with the Act. However, Declarant's right to withdraw each such portion of the community shall expire and terminate, as to each portion of the community which has been annexed to this Declaration, upon the first conveyance of any Lot in such annexed portion of the community to any person other than Declarant.
- d. Declarant may exercise its development rights in all or any portion of the real property described in the attached **Exhibit B** over which such rights have not already been exercised, and no assurances are made to the boundaries or order of exercise of any such development rights.

Section 2. Acquisition of Common Elements. Declarant may convey to the Association additional real estate, improved or unimproved, located within the common interest community or adjacent thereto, which upon conveyance or dedication to the Association shall be accepted by the Executive Board on behalf of the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its members.

ARTICLE XIV

DURATION OF COVENANTS AND AMENDMENT

Section 1. *Term.* The covenants and restrictions of this Declaration shall run with and bind the land for twenty (20) years and shall be automatically extended for successive twenty-year periods, unless an instrument is signed revoking or terminating the Project pursuant to the provisions of this Declaration or the Act.

Section 2. *Amendment.* Except in cases of amendments that may be executed by the Declarant or the Association under the Act, and except in cases that require Declarant consent, this Declaration, or any provision of it, may be amended only by vote or agreement of Owners holding not less than sixty-seven percent (67%) of the votes possible to be cast under this Declaration.

Section 3. *Declarant Rights.* To the extent permitted under the Act, provisions in this Declaration for the benefit of Declarant, including provisions reserving or creating Special Declarant Rights, may not be amended without the consent of Declarant.

Section 4. *Execution of Amendments.* Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by including within or attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Plat to the fullest extent permitted under the Act and this Declaration.

Section 5. *Revocation.* This Declaration will not be revoked nor shall the common interest community created hereby be terminated (except as provided above regarding total destruction and/or total condemnation), without the consent of the Owners to which at least 67% of the votes in the Association are allocated evidenced by a written instrument duly recorded with the Clerk and Recorder.

ARTICLE XV

GENERAL PROVISIONS

Section 1. *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 the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 2. *Enforcement.* Except as otherwise provided in this Declaration, the Executive Board, Declarant, Architectural Review Committee, or any Owner shall have the right to enforce, 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. Failure by the Executive Board of the Association, Declarant, Architectural Review Committee, or by any Owner to enforce any restriction, condition, covenant, reservation, lien, or charge now or hereafter imposed by the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Before the Association or Executive Board institutes a Construction Defect Action against Declarant or any Construction Professional (terms defined in **Exhibit C** to this Declaration), or in the event any other claim for any other alleged matter whatsoever, including but without limitation, a breach of the Declaration, Articles or Bylaws brought by the Association against the Declarant or against members of the Executive Board appointed by the Declarant, the Executive Board shall comply with the requirements of Exhibit C to this Declaration. The provisions this Section 2 and of Exhibit C are for the benefit of the Declarant, are enforceable by Declarant, and may not be removed or amended from this Declaration without the consent of Declarant regardless of whether Declarant owns any portion of the Real Estate at the time of such amendment.

Section 3. *Registration of Mailing Address.* Each Owner and each security interest holder, insurer, or guarantor of a security interest, shall register their mailing address with the Association. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the period of Declarant control shall be sent by registered or certified mail, postage prepaid, c/o Lot Holding Investments, LLC, 301 Centennial Drive, Milliken, Colorado 80543 unless such address is changed by the Association during the period of Declarant control. Subsequent to the termination of the period of Declarant control, the Association shall notify the Owners of a different address for notices.

Section 4. *Veterans' Administration or Department of Housing and Urban Development Approval.* Approval of either the Veterans' Administration or the Department of Housing and Urban Development shall be governed as follows:

- a. During the period of Declarant control, the following actions shall require the prior approval of the Veterans' Administration or the Department of Housing and Urban Development if, at the time any such action is taken, the Department of Housing and Urban Development has insurance or the Veterans' Administration has a guarantee on one or more security interests:
 - (i) annexation of additional real property,
 - (ii) amendment of this Declaration,
 - (iii) termination of the common interest community, or
 - (iv) merger or consolidation of the Association.
- b. Notwithstanding the provisions hereof, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration which any

government mortgage agency requires to be amended or repealed as a condition to making, purchasing, insuring, or guaranteeing mortgages, or is required in order to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Authority, or other government mortgage agency, may be amended or repealed solely by Declarant and no approval, consent, or vote of any other person or entity shall be required. Any such amendment or repeal shall be effective upon the recordation of a certificate, executed by the Declarant, setting forth the amendment or repeal in full.

Section 5. *Limitation on Liability.* The Association, Board of Directors, Architectural Review Committee, Declarant, and any member, agent, or employee of any of the same, shall not be liable to any person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice.

Section 6. *No Representations or Warranties.* No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by the Declarant or its agents and employees, in connection with any portion of the community, or any Improvement, or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 7. *Disclaimer Regarding Safety.* DECLARANT AND THE ASSOCIATION HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

Section 8. *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.

Section 9. *Conflicts Between Documents.* In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 10. *Conflict With Act.* In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with the Act, the terms or provisions of the Act shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be

construed in accordance with the Act, and any conflict with or violation of the Act by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms).

DECLARANT:

LOT HOLDING INVESTMENTS, LLC

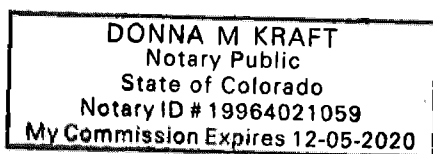


By: Bret Hall, Manager

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me on April 27, 2020 by Bret Hall as Manager of Lot Holding Investments, LLC, a Colorado limited liability company. WITNESS my hand and official seal.

My commission expires: 12-5-2020



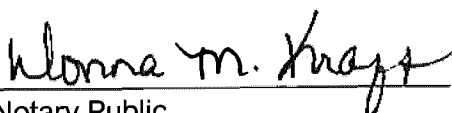

Notary Public

EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNFIELD
LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THIS DECLARATION

Block 1: Lots 6 – 12;
Block 6: Lots 1 – 6;
Block 8: Lots 1 – 16;
Block 10: Lots 14 – 22;
Block 12: Lots 1 – 4;
Block 17: Lots 1 – 9; and

Tracts A, B and C,

Sunfield Subdivision, Town of Milliken, Weld County, Colorado, according to the plat recorded in the real estate records of Weld County on March 27, 2019 at Reception No. 4476426.

ALLOCATION OF INTERESTS AND COMMON EXPENSE LIABILITY

The Common Expense Liability is apportioned equally among the 53 Lots described above, with each Lot responsible for 1/53rd of the Common Expense Liability.

EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNFIELD
PROPERTY SUBJECT TO ANNEXATION

All or any portion of Sunfield Subdivision, Town of Milliken, Weld County, Colorado, according to the plat recorded in the real estate records of Weld County on March 27, 2019 at Reception No. 4476426, EXCEPTING and EXCLUDING the property described in Exhibit A attached to this Declaration.

EXHIBIT C
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNFIELD

a. Procedure to Authorize Construction Defect Action.

- i. Before the Association or Executive Board institutes a Construction Defect Action against Declarant or any Construction Professional (defined below), or in the event any other claim for any other alleged matter whatsoever, including but without limitation, a breach of the Declaration, Articles or Bylaws brought by the Association against the Declarant or against members of the Executive Board appointed by the Declarant, the Executive Board shall comply with the requirements of this Exhibit C, and all additional requirements of the Act.
- ii. For the purpose of this Exhibit only:
 1. “*Construction Defect Action*” (a) Means any civil action or arbitration proceeding for damages, indemnity, subrogation, or contribution brought against a Construction Professional to assert a claim, counterclaim, crossclaim, or third-party claim for damages or loss to, or the loss of use of, real or personal property or personal injury caused by a defect in the design or construction of an improvement to real property, regardless of the theory of liability; and (b) Includes any related, ancillary, or derivative claim, and any claim for breach of fiduciary duty or an act or omission of a member of the Association’s Executive Board, that arises from an alleged construction defect or that seeks the same or similar damages.
 2. “*Construction Professional*” has the meaning set forth in C.R.S. §13-20-802.5(4).

iii. Meeting to Consider Commencement of Action–Disclosures–Required Terms.

1. The Executive Board shall mail or deliver written notice of the anticipated commencement of the action to each unit owner at the owner’s last-known address described in the Association’s records, to the Declarant, and to the last-known address of each Construction Professional against whom a Construction Defect Action is proposed; except that this notice requirement does not apply to: (a) Construction Professionals identified after the notice is mailed; or (b) Joined parties in a Construction Defect Action previously approved by Owners pursuant to Subsection a.iv.of this Exhibit.
2. The notice given pursuant to this Subsection a.iii must call a meeting of the Unit Owners, which must be held no less than ten days and no more than fifteen days after the mailing date of the notice, to consider whether to bring an action.

A failure to hold the meeting within this time period voids the subsequent vote. A quorum is not required at the meeting. In no event shall the time period for providing the notice required pursuant to subsection a.iii.1 of this Exhibit, holding the meeting required pursuant to this Subsection a.iii.2 and voting as required by Subsection a.iv of this Exhibit exceed ninety days. The notice must state that:

- (A) The conclusion of the meeting initiates the voting period, during which the Association will accept votes for and against proceeding with the action. The disclosure and voting period shall end ninety days after the mailing date of the meeting notice or when the Association determines that the action is either approved or disapproved, whichever occurs first.
 - (B) Any Construction Professional against whom the Construction Defect Action is proposed will be invited to attend and will have an opportunity to speak (directly or through representatives) to the Unit Owners concerning each alleged construction defect and to present documents and display exhibits responsive to each alleged construction defect; and
 - (C) The presentation at the meeting by the Construction Professional or the Construction Professional's designee or designees may, but is not required to, include an offer to remedy any defect in accordance with C.R.S. §13-20-803.5(3) of the "Construction Defect Action Reform Act."
3. The notice given pursuant to this Subsection a.iii must also contain a description of the nature of the action, which description identifies alleged defects with reasonable specificity, the relief sought, a good-faith estimate of the benefits and risks involved, and any other pertinent information. The notice shall also include the following disclosures:
- (A) For Construction Defect Actions, that the alleged construction defects might result in increased costs to the Association in maintenance or repair or cause an increase in assessments or special assessments to cover the cost of repairs.
 - (B) If the Association does not file a claim before the applicable legal deadlines, the claim will expire.
 - (C) Until the alleged defects are repaired, sellers of Units within the Community might owe Unit buyers a duty to disclose known defects.
 - (D) The Executive Board (intends to enter)(has entered) into a fee arrangement with the attorneys representing the association, under which (the attorneys will be paid a contingency fee equal to _____ percent of the [net][gross] recovery of the amount the association recovers from the defendant(s)) (the Association's attorney will be paid [an hourly fee of \$_____] [a fixed fee of \$_____]).

- (E) In addition to attorney fees, the Association may incur up to \$_____ for legal costs, including expert witnesses, depositions, and filing fees. The amount will not be exceeded without the Executive Board's further written authority. If the Association does not prevail on its claim, the Association may be responsible for paying these legal expenses.
- (F) If the Association does not prevail on its claim, the Association may be responsible for paying its attorney fees.
- (G) If the Association does not prevail on its claim, a court or arbitrator sometimes awards costs and attorney fees to the opposing party. Should that happen in this case, the Association may be responsible for paying the opposing party's costs and fees as a result of such award.
- (H) There is no guarantee that the Association will recover enough funds to repair claimed construction defect(s). If the claimed defects are not repaired, additional damage to property and a reduction in the useful life of the common elements might occur.
- (I) Until the claimed construction defects are repaired, or until the construction defect claim is concluded, the market value of the Units in the Association might be adversely affected.
- (J) Until the claimed construction defect(s) are repaired, or until the construction defect(s) action is concluded, owners in the Association might have difficulty refinancing and prospective buyers might have difficulty obtaining financing. In addition, certain federal underwriting standards or regulations prevent refinancing or obtaining a new loan in projects where a construction defect is claimed, and certain lenders as a matter of policy will not refinance or provide a new loan in projects where a construction defect is claimed.

iv. **Approval by Unit Owners – Procedures.**

1. Notwithstanding any provision of law or any requirement in the governing documents, the Executive Board may initiate the action only if authorized within the voting period by Unit Owners to which seventy-five percent of the votes in the Association are allocated, or the highest percentage allowed by law, whichever is less. Such approval is not required for the Association to proceed with a Construction Defect Action if the alleged construction defect pertains to a facility that is intended and used for nonresidential purposes and if the cost to repair the alleged defect does not exceed fifty thousand dollars (\$50,000.00). Such approval is not required for the Association to proceed with a Construction Defect Action when the Association is the contracting party for the performance of labor or purchase of services or materials.

2. Notwithstanding any other provision of law, an Owner's vote shall be submitted only once and may be obtained in any written format confirming the Owner's vote to approve or reject the proposed Construction Defect Action. The Association shall maintain a record of all votes until the conclusion of the Construction Defect Action, including all appeals, if any.
- v. **Notice to Construction Professional.** At least five business days before the mailing of the notice required by Subsection a.iii of this Exhibit, the Association shall notify the Declarant and each Construction Professional against whom a Construction Defect Action is proposed by mail, at its last-known address, of the date and time of the meeting called to consider the action pursuant to Subsection a.iii of this Exhibit.
- b. **Attorney Client Privilege Preserved.** Nothing in this Exhibit shall be construed to:
 - i. Require the disclosure in the notice or the disclosure to a Unit Owner of attorney-client communications or other privileged communications.
 - ii. Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or
 - iii. Limit or impair the authority of the Executive Board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.
 - c. **Liability of Directors or Officers for Failure to Maintain an Action Against the Declarant or Contractors.** No officer or Director of the Association shall be liable to any person for failure to institute, maintain or conclude such cause of action if the following criteria are satisfied:
 - i. the officer or Director was acting within the scope of their duties;
 - ii. the officer or Director was acting in good faith;
 - iii. the act or omission was not willful, wanton or grossly negligent.
 - d. **Alternative Dispute Resolution.** Any claim of a defect or general claim shall, upon the demand of the Association, or the Declarant or its contractor, be submitted to mediation or binding arbitration, subject to the following requirements:
 - i. if the parties cannot agree upon utilizing binding arbitration or mediation, but one of the parties wants to utilize an alternative dispute resolution method, binding arbitration shall be utilized;
 - ii. the arbitrator or mediator must be a person qualified, either with applicable industry experience or legal experience with respect to the claim of defect or general claim, to consider and result the applicable claim;
 - iii. if the parties cannot agree upon an arbitrator or mediator, the parties shall follow the arbitration procedures of the American Arbitration Association;
 - iv. the fees and costs of the arbitrator or mediator and its consultants shall be borne equally by the Association and the Declarant or its contractor;

- v. the arbitrator or mediator shall have authority to establish reasonable terms regarding inspection, destructive testing, and retention of independent consultants;
 - vi. the arbitrator or mediator shall hold at least one hearing in which the parties, their attorneys, and expert consultants may participate;
 - vii. the arbitrator or mediator shall issue a written report determining all claims, including any defenses raised by the Declarant or its contractor, and which shall include a recommendation for settlement (in the case of mediation) or binding arbitration award;
 - viii. all then applicable statutes of limitation on any claim subject to the mediation shall be tolled during the period of mediation or arbitration, but no longer than a period of one hundred twenty (120) days;
 - ix. the Declarant or its contractor shall have the right to allow subcontractors to participate in the arbitration or mediation proceedings to determine indemnification rights and obligations, provided that the Association is not made to bear the cost of resolution of such indemnity issues; and
 - x. any arbitration shall be determined in accordance with the American Arbitration Association, Commercial Arbitration Rules with Expedited Procedures in effect on the date hereof, as modified by this Exhibit. Any issue about whether a claim is covered by this Exhibit shall be determined by the arbitrator. There shall be no substantive motions or discovery, except the arbitrator shall authorize such discovery as may be necessary to insure a fair private hearing, which shall be held within one hundred twenty (120) days of the demand, and shall be concluded within three (3) days. These time limits are not jurisdictional. The arbitrator shall apply substantive law and may award injunctive relief, but shall not have the power to award punitive damages.
- e. **Use of Funds from Cause of Action.** In the event the Association receives funds as a result of any settlement, arbitration or judgment based upon a cause of action, after the payment of any fees and costs incurred in connection with the prosecution of such action, the Association shall:
- i. deposit the proceeds in a special, interest-bearing account; and
 - ii. utilize the proceeds only for the purpose of performing remedial or repair work to correct the conditions which were the subject of the defect or general claim.
- f. **Amendment.** The arbitration provisions of this Exhibit C are for the benefit of the Declarant, are enforceable by Declarant, and may not be removed or amended from this Declaration without the consent of Declarant regardless of whether Declarant owns any portion of the Real Estate at the time of such amendment.

EXHIBIT D
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNFIELD
RECORDED EASEMENTS

Right of Way for the Hillsboro Ditch.

Easements, if any, contained in Deed recorded April 22, 1902 at Book 190 at Page 320,

As amended by instrument recorded June 20, 2.000 at reception no 2776008

Easements, if any, contained in deed recorded February 19, 1921 in Book 619 at Page 456.

Easements, if any, contained in a document recorded April 17, 1950 at Book 1267 at Page 522

Easements, if any, contained in a document recorded December 29, 1970 at reception no.
1559661

Easements, if any, contained in a document recorded June 20, 1983 at reception no. 1930852

Easements, if any, contained in map of Ehrlich Hillsboro Annexation recorded September 11,
1984 at Reception Number 1981142

Easements, if any, contained in Ordinance No. 185 recorded October 17, 1984 at reception no.
1985357

Easements, if any, contained in a document recorded January 15, 1987 at reception no.
2084908.

Easements, if any, contained in a Surface Owner's Agreement recorded May 30, 2000 at
reception no. 2771423

Easement(s) for the purpose(s) stated therein and rights incidental thereto, as granted in a
document recorded September 1, 2000 at reception no. 2791088

Easements, if any, contained in a Notice of Right to Use Surface of Lands recorded October 25,
2000 at Reception Number 2802472.

Easements, if any, contained in a document recorded December 13, 2000 at reception no.
2812979

Easements, if any, contained in a Notice of Oil and Gas Interests and Surface Use recorded
December 6, 2000 at Reception Number 2811306.

Easements, if any, contained in a Notice of Oil and Gas Interests and Surface Use recorded
December 6, 2000 at Reception Number 2812953.

Easements, if any, contained in a document recorded March 5, 2001 at reception no. 2830063

Easements, if any, contained in a document recorded March 5, 2001 at reception no. 2830064

Easements, if any, contained in a document recorded March 5, 2001 at reception no. 2830065

Easements, if any, contained in a document recorded April 10, 2002 at reception no. 2941813

Easements, if any, contained in the Agreement recorded July 17, 2003 at reception no. 3084918

Easements, if any, contained in a document recorded October 22, 2003 at reception no.
3119387

Easements, if any, contained in oil and gas lease recorded May 24, 2016 at reception no.
4205797