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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR HILLSIDE AT STONY CREEK**

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**DECLARATION  
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FOR HILLSIDE AT STONY CREEK**

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This Declaration of Covenants, Conditions and Restrictions for Hillside at Stony Creek (this "Declaration") is made as of December 7, 1999, by Hillside at Stony Creek V, Limited Liability Company ("Declarant").

**RECITALS**

A. Declarant is the owner of certain real estate (the "Property"), which is located in the County of Jefferson, State of Colorado. The real property initially subjected to this Declaration is described on the attached Exhibit A and is depicted on the plat of Hillside at Stony Creek attached hereto as Exhibit B (the "Plat").

B. The Property is a part of a planned development district commonly known as "Hillside at Stony Creek". Declarant desires to establish certain easements, covenants, conditions and restrictions to provide for the cooperative development, improvement, use, operation, maintenance, repair and enjoyment of property located within such planned development district. Further, Declarant now desires to create a Planned Community (the "Planned Community") and to establish certain mutually beneficial easements, covenants, restrictions and equitable servitudes for the cooperative development, improvement, use, operation, maintenance, repair and enjoyment of the Planned Community under a general plan for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Planned Community.

C. Declarant has caused to be incorporated under the laws of Colorado, Hillside at Stony Creek Homeowners Association, Inc., a Colorado nonprofit corporation, for the purpose of exercising the functions set forth herein.

**DECLARATION**

A. Declarant hereby declares that the Property is a Planned Community within the meaning of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as amended, (the "Act") and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following covenants, conditions, restrictions and equitable servitudes in furtherance of, and the same shall constitute, a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Property and to enhance the value, desirability and attractiveness of the Property. This Declaration shall (i) run with the land at law and as an equitable servitude; (ii) bind all Persons having or acquiring any interest in the Property or any part thereof; (iii) inure to the benefit of and be binding upon every part of the Property and every interest therein; and (iv) inure to the benefit of, be binding upon, and be enforceable by Declarant and its successors in interest and assigns, each "Owner" and his or her heirs, successors in interest and assigns; and the "Association" and its successors in interest.

B. Each capitalized term not otherwise defined in the Declaration or in recorded plans, plats, or maps for this Planned Community shall have the meaning specified or used in the Act. Provisions of the Act supersede all provisions of this Declaration.

ARTICLE 1

DEFINITIONS

1.1 Definitions. Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings specified below.

1.1.1 "Act" means the Colorado Common Interest Ownership Act codified at Colorado Revised Statutes ("C.R.S.") §§ 38-33.3-101 et seq., as amended.

1.1.2 "Annual Budget" means the Association's budget for costs and expenses, as described in Section 4.6, as required or permitted under this Declaration and which the Board must present to the Association each year for approval.

1.1.3 "Architectural Review Committee" or "Committee" or "ARC" means the committee described in Section 5 of this Declaration.

1.1.4 "Articles" means the Articles of Incorporation of Hillside at Stony Creek Homeowners' Association, Inc., a Colorado nonprofit corporation presently formed by Declarant, which has been filed in the office of the Secretary of State of the State of Colorado, as such Articles may be amended from time to time.

1.1.5 "Assessments" means the Regular Assessments and Special Assessments. In addition to the definition included in the Act, Assessments shall include all Compliance Expenditures charged to an Owner. Assessments shall also include any and all reasonable charges for altering, changing, or copying any and all documents as required or requested for an Owner, and includes all charges levied for the benefit of the Association, including but not limited to (i) annual costs and expenses of the Association, (ii) large, single item expenditures of the Association, and (iii) charges against a particular Owner or Lot for the purpose of reimbursing the Association for expenditures and costs of the Association incurring any violation of the Governing Documents by an Owner, on an Owner's residents, guests or invitees.

1.1.6 "Association" means the Hillside at Stony Creek Homeowners' Association, a Colorado nonprofit corporation, an association of unit owners as described in Article 4 of this Declaration.

1.1.7 "Board of Directors" or "Board" means the board of directors of the Association.

1.1.8 "Bylaws" means the Bylaws of the Association which may be adopted by the Board, as such Bylaws may be amended from time to time.

1.1.9 "Common Area" means any portion of the Property together with all improvements thereon and personal property owned by the Association for the primary benefit of all Members and the Property as a whole. The Declarant establishes the Common Area by conveying such property to the Association and to Jefferson County. 7

1.1.10 "Compliance Expenditures" means reasonable costs incurred in collecting the delinquent Assessment, charge, fine or Compliance Expenditure including, reasonable attorneys' fees and costs, a late charge in an amount determined from time to time by the Board, but not more than 10% of the delinquent Assessment, charge, fine or Compliance Expenditure; and interest on (i) the delinquent Assessment, charge, fine or Compliance Expenditure, (ii) the costs of collection described in Section 4.8.1, and (iii) the late charge described in Section 4.8.2, at an annual percentage rate equal to 5% per annum over the prime interest rate published from time to time by The Federal Reserve Bank, adjusted on each day on which there occurs a change in such prime interest rate (provided that the percentage rate shall never exceed the maximum allowed by law), commencing fifteen (15) days after the Assessment became due.

1.1.11 "Declarant" means the Hillside at Stony Creek V, Limited Liability Company. The term Declarant shall also include one or more successors in interest or assigns of the Property or of any Special Declarant Rights, provided that the then existing Declarant designates such successor in interest as a "Declarant" in a Recorded writing.

1.1.12 "Declaration" means this instrument as it may be amended from time to time.

1.1.13 "Design Guidelines" means rules and procedures that the Board shall promulgate supplemental to the Development Guide that defines allowable improvements and design criteria. It also sets forth terms and conditions that permit the construction, alteration or removal of the improvements specified by such Design Guidelines and /or the Development Guide.

1.1.14 "Developer" means a Person, other than Declarant, that purchases or owns a portion of the Property for purposes of subdivision, development, building for him or herself or for resale, or resale of a Lot(s).

1.1.15 "Development Guide" means the Official Development Plan for Hillside at Stony Creek, as amended from time to time, which is Recorded at Reception Number 93171345, in ODP Book 71 at Pages 48 and 49 and which sets forth the land use and development standards for the Property.

1.1.16 "Development Period" means the period of time during which Declarant may exercise Development Rights and Special Declarant Rights. The Development Period shall commence upon the recording of this Declaration and shall terminate 10 years later unless reinstated or extended by agreement between Declarant and the Association.

1.1.17 "Development Rights" means the rights reserved by Declarant in this Declaration to (i) add real estate to the Property and make such real estate subject to this Declaration; (ii) create Lots or Common Area within the Property; (iii) further subdivide Lots or convert Lots into Common Area; and (iv) withdraw land from the Property. Declarant may exercise such rights from time to time with respect to any portion of the Property described in Exhibit A with no assurances made regarding the extent to, or the order in which, such rights are exercised.

1.1.18 "Director" means a member of the Board of Directors.

1.1.19 "First Mortgage" means any unpaid and outstanding mortgage, deed of trust or other security instrument encumbering the Property or a portion thereof that is Recorded and that has priority of record over all other Recorded liens except those liens made superior by statute (e.g., general ad valorem tax liens and special assessments, mechanic's liens and the Association's lien for Assessments).

1.1.20 "First Mortgagee" means any Person named as a mortgagee or beneficiary under any First Mortgage, or any successor in interest of any such Person under such First Mortgage.

1.1.21 "Governing Documents". Means those documents which govern the operation of the Association including: (i) its Articles of Incorporation, (ii) its By-Laws, (iii) its Rules and Regulations, (iv) any approved Plans or Specifications, (v) this Declaration, (vi) the Development Guide, and (vii) the Design Guidelines, as one or more of the same may be amended from time to time.

1.1.22 "Improvement" means every structure and all appurtenances thereto of every type and kind including, but not limited to, buildings, outbuildings, fixtures, utilities, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, facilities associated with regular or cable or satellite television, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, poles, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers, and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone, or other utilities, as well as those construction activities necessary to build these items.

1.1.23 "Landscaping Plan" means those documents which from time to time maybe adopted by the Stony Creek Home Owners Association as part of the Design Guidelines and which govern the type and placement of any plantings or landscaping materials on any Lot.

1.1.24 "Lot" means and refers to any plot of land designated as a lot and shown upon any Recorded subdivision plat of the Property, or any portion thereof, including all appurtenances and improvements now or hereafter located thereon. The term "Lot" does not include the Common Area and public streets. The term "Lot" is synonymous with the term "Unit" as defined in the Act. The total number of Lots planned and platted for the Property shall not exceed 121 Lots.



1.1.25 "Member" means any Person who is a member of the Association pursuant to Section 4.2. 9

1.1.26 "Membership" means the right, solely incident to being an Owner, to belong to the Association.

1.1.27 "Owner" means a Person or Persons (including Declarant or any Developer) who is the owner of fee simple title of Record to a Lot from time to time. The term "Owner" shall not include (i) a contract purchaser except a contract vendee under an installment land sales contract; (ii) the vendor under an installment sales contract; or (iii) a Person holding an interest in a Lot merely as security for the performance of an obligation, unless and until such a security holder becomes an owner in fee simple of a Lot.

1.1.28 "Period of Declarant Control" means that period commencing upon recordation of this Declaration and terminating no later than either sixty (60) days after conveyance of seventy-five percent (75 %) of the Lots that may be created to Owners other than Declarant, or two years after the last conveyance of a Lot by Declarant in the ordinary course of business, or two years after any right to add new units was last exercised. Notwithstanding the foregoing, Declarant may voluntarily: (i) terminate the Period of Declarant Control by a written recordable instrument, which election shall be in the sole discretion of Declarant; or (ii) surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, Declarant may require for the duration of the Period of Declarant Control that specified actions of the Association or the Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

1.1.29 "Person" means a natural individual or any entity with the legal right to hold title to real property.

1.1.30 "Planned Community" means the total community which was planned as a whole and approved as a whole by Jefferson County.

1.1.31 "Plans and Specifications" means any and all documents and other materials designed to guide or control the construction of an Improvement including, but not limited to, those indicating size, shape, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on building products and construction techniques, samples of exterior colors or materials, plans for utility services, and all other documentation or information relevant to the particular Improvement.

1.1.32 "Property" means initially all of the real property described on the attached Exhibit A along with any and all Improvements now in place or hereafter constructed thereon.

1.1.33 "Records" means the official real property records of Jefferson County, Colorado. The phrase "to Record" means to file for recording in the Records. The phrases "of Record" and "Recorded" mean having been recorded in the Records.

1.1.34 "Regular Assessments" means those Assessments levied by the Association pursuant to Section 4.7.1

1.1.35 "Residence" means a single-family home constructed on a Lot and Improvements, sidewalks, grounds, and landscaped areas on such Lot.

1.1.36 "Restrictions" means those conditions, covenants and restrictions contained in the Governing Documents.

1.1.37 "Rules and Regulations" means the rules and regulations adopted by the Board pursuant to Section 4.9.7, as amended from time to time.

1.1.38 "Special Declarant Rights" means the rights hereby reserved for the benefit of Declarant to perform the acts specified in parts 2 and 3 of the Act and Article 9 and 11.10 of this Declaration.

1.1.39 "Special Assessments" means those Assessments levied by the Association pursuant to Section 4.7.2.

## ARTICLE 2

### DEVELOPMENT OF THE PROPERTY/ANNEXATION

2.1 Subdivision and Development by Declarant. Declarant has subdivided the Property into Lots for single-family residential development. Declarant intends to develop some or all of such areas and, at Declarant's option, to designate areas as Common Area or for other purposes for the benefit of the Property. Declarant contemplates that the Property will be developed pursuant to the Plat and in conformance with the Development Guide, as they may be amended or modified from time to time, as a Planned Community in which the development of, and restrictions upon, each portion thereof will benefit each other portion and the whole.

2.2 Withdrawal. Declarant reserves the right during the Period of Declarant Control to withdraw all, or a portion of, the Property from this Planned Community. This right to withdraw shall apply separately, in accordance with C.R.S. § 38-33.3-210(4)(a), to the real property or any portion thereof described in Exhibits A. The effect of withdrawal is to terminate the effect of the Restrictions on the withdrawn lands.

2.3 Annexation. Additional lands may be annexed to the Property and subjected to the Declaration from time to time with the consent of 75 % of the votes in the Association and, during the Period of Declarant Control, with the consent of Declarant. Notwithstanding the foregoing, up to and including 10 years from the date of recording of this Declaration, Declarant may annex into the Property any portion of, or all of, the Additional Lands without the consent of the individual Owners and without the consent of any First Mortgagees. Each annexation shall be effected by recording an amendment to this Declaration entitled "Declaration of Annexation" in the Records. The Declaration of

Annexation must comply with C.R.S. §§ 38-33.3-209 and 38-33.3-210 and must contain: (i) a reference to this Declaration, which reference shall state the recording information related to this Declaration; (ii) a statement that the provisions of this Declaration shall apply to the annexed land as set forth herein; (iii) an adequate legal description of the annexed land; (iv) an amendment to the Plat or, if such an amendment is not necessary, a new certification of the Plat in accordance with C.R.S. § 38-33.3-209; (v) a statement indicating ownership of the annexed land and consent of the owner to annexation; and (vi) during the Period of Declarant Control, Declarant's written consent upon such terms as are acceptable to Declarant in its sole discretion if the added land is not then owned by Declarant. If such annexation affects, alters, or modifies the Owners Interest, Declarant shall duly reallocate the Allocated Interests to reflect the annexed land. //

2.3.1 Impact of Annexation. Upon the recording of a Declaration of Annexation in the Records, the portion of the Additional Lands described in the Declaration of Annexation shall become part of the Property and the covenants, conditions, and restrictions contained in this Declaration shall apply to the annexed land in the same manner as if it had been originally subject to this Declaration; and thereafter, the rights, privileges, duties and liabilities of the Persons subject to this Declaration shall be the same with respect to the annexed land as with respect to the lands originally covered by this Declaration.

2.3.2 Improvements on Annexed Land. Improvements constructed on any Additional Lands annexed by Declarant shall be consistent, in terms of quality of construction, with Improvements constructed on the Property prior to such annexation and shall comply with the terms of the Development Guide. Portions of the annexed lands shall not constitute Common Area unless specifically so designated in the course of development or in the Declaration of Annexation.

2.4 Conveyance and Acceptance of Common Area. Prior to transferring ownership of the first Lot in the Property to an Owner other than Declarant, Declarant has conveyed the Common Area contained in the Property to the Association or Jefferson County. Declarant expressly reserves the right in the course of development of the Property to convey to the Association, and the Association shall accept, certain areas such as open spaces and drainage ways which for any reason are not intended to be developed or other property or facilities which are deemed by Declarant to be most suitable as Common Area of the Association.

### ARTICLE 3

#### GENERAL RESTRICTIONS/PERMITTED USES

3.1 Design Guidelines. All Improvements must conform to the standards set forth in the Official Development Plan, and after the Board adopts Design Guidelines, all Improvements thereafter constructed on the Property shall also conform to the standards set forth in the Design Guidelines.

3.2 General Restrictions. All of the Property shall be owned, held, conveyed, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

3.2.1 Residential and Common Area. Lots shall be improved and used solely for residential use for single-family homes in a manner consistent with the provisions of the Development Guide and the Restrictions. The Common Area may be improved and used for the primary benefit of the Owners and occupants of Lots subject to the Restrictions. In addition, Declarant or the Board (except during the period of Declarant Control) may permit, in its sole and absolute discretion, other Improvements and uses within any specific residential area consistent with the Official Development Plan.

3.2.2 Improvements and Use. Except as provided in Section 3.2.1, no Lot shall be improved or used except as a part of a Residence. Each Residence shall be designed to accommodate no more than a single family and occasional guests. Each Residence may include such other Improvements, as are necessarily or customarily incident to a single-family Residence.

3.2.3 Residence Alterations. Until the Board promulgates Design Guidelines permitting the following improvements and setting forth the terms and conditions under which they may be allowed, no Person shall erect, modify, repair, replace, paint or maintain any of the following on the Property:

- (a) any exterior radio or television antenna, satellite dish, or aerial or other reception/receiver or transmission device;
- (b) facilities for hanging, drying or airing clothing or household fabrics;
- (c) any entryways, fence, fence pillars or walls;
- (d) any sign of any kind to the public view, provided, however, an owner may display a sign no larger than three feet by two feet on or from a Lot advertising such Lot (whether or not improved) for sale or lease; or
- (e) tents or shacks or other temporary buildings, improvements or structures.

3.2.4 Rentals. No commune or similar type living arrangements shall be permitted anywhere on the Property. Nothing in this Declaration, however, shall prevent the rental of any Residence by the Owner thereof for residential purposes, on either a short or long-term basis, subject to all the provisions of the Restrictions and the Rules and Regulations (if applicable). Any lease by an Owner to another Person shall include a provision that the tenant under such lease shall comply with the Restrictions. Notwithstanding the inclusion of such provision, the Owner shall remain the responsible party for any acts committed by such Owner's tenant, or such tenant's guests, in violation of the Restrictions.

3.2.5 Unightly Objects. No unsightly object shall be permitted to remain on any Lot or any other portion of the Property, or on any Public Right-of-Way within the Property Boundaries, if it is visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, mobile homes, recreational vehicles, graders, trucks (other than pickups), boats, tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow

removal equipment and garden and maintenance equipment shall be kept at all times (except when in actual use) fully screened from view. Further, no repair or maintenance work shall be done on any of the foregoing or on any automobile, other than minor emergency repairs, except in an enclosed garage or other structure approved by the ARC. Refuse, recyclable materials, garbage and trash shall be kept at all times in covered containers and any such containers shall be kept fully screened from view. Service areas, storage areas and compost piles shall be fully screened from view. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept stored or allowed to accumulate on any portion of the Property except within an enclosed structure or appropriately screened from view; provided, however, that normal household waste or recyclable materials in covered containers can be set out up to 24 hours before a scheduled garbage or recycling pick-up. 13

3.2.6 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any part of the Property and no odors shall be permitted to arise therefrom so as to render any portion of the Property unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any portion of the Property or to its occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than devices used exclusively for security and emergency purposes) shall be located, used or placed on the Property unless the Board promulgates Design Guidelines allowing such devices.

3.2.7 No Further Subdividing. No Lot shall be further divided or subdivided, nor may any easement or other interest less than the whole Lot be conveyed by the Owner thereof, without the prior written approval of the Board; provided, however, that Declarant may further divide and subdivide any Lot or other property owned by Declarant and convey any easement or other interest less than the whole, all without the approval of the Board; Further, nothing contained in this Section 3.2.7 shall be deemed to require the approval of the Board for the transfer or sale of any Lot, including Improvements thereon, to more than one Person to be held by them as tenants in common or joint tenants, or for the granting of any mortgage on any Lot, or for the sale or transfer of any Lot pursuant to the terms of any mortgage or by way of a deed in lieu of foreclosure thereof. No Owner shall have the right to partition or seek partition of the Common Area or any Lot.

3.2.8 Drainage. There shall be no interference with the established drainage patterns over any land within the Property unless adequate provision is made for proper drainage and approved by the Board. In the event of any such interference which has not been approved by the Board, the Developer or the Owner interfering with the established drainage patterns shall be liable for any damage resulting from such interference.

3.2.9 Insurance Rates. Nothing shall be done or kept on or at the Property which will increase the rate of insurance on any policy or policies held by the Association without the approval of the Board. Nothing shall be done or kept on or at the Property which would result in the cancellation of any insurance policy held by the Association or which would violate any law.

3.2.10 No Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Property which are, or might be, unsafe or hazardous to any Person or the Property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except within a contained barbecue unit while attended and in use for cooking purposes or within a safe, interior fireplace.

3.2.11 No Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth; provided, however, that Declarant or the Association may, by appropriate written permit, grant, license or easement agreement, allow the drilling of wells and the installation of infiltration galleries for the extraction of water.

3.2.12 Vehicles. In addition to the provisions of Section 3.2.5, the use and storage of all vehicles including, but not limited to, gliders, trucks, automobiles, graders, boats, tractors, pickups, mobile homes, trailers, buses, campers, recreational vehicles, bicycles, motorcycles, motor scooters, wagons, sleighs and snowmobiles, shall be subject to Rules which may prohibit or limit the use thereof within specified parts of the Property, and which may also provide parking and storage requirements.

3.2.13 Limits For Parking. No commercial vehicles, tractors, mobile homes, trailers, campers, camper trailers, boats or boat trailers may be parked on the Property for more than fourteen (14) consecutive hours in any given day and twenty eight (28) total hours in any three day period, except with the prior written consent of the Board. No tractor-trailer trucks shall be permitted on the Property except as reasonably necessary for Association purposes permitted under the Restrictions, or for the delivery or removal of personal property to and from Residences, or as required for construction activities as allowed in Section 3.4.1

3.2.14 Construction Activities. In the case of any Board approved construction by an Owner or the Association or its servants and agents, the Board may grant a temporary waiver of any provision in the Restrictions; provided that such waiver shall be limited to a reasonable period for such construction. Such waiver shall be in recordable form, but need not be Recorded. Specifically, no such construction activities shall constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities so long as such construction (i) is pursued to completion with reasonable diligence; (ii) is in compliance with applicable federal, state and local laws and ordinances and any governmental rules and regulations adopted pursuant thereto; and (iii) conforms to usual construction practices in the area. No construction activities shall be carried on in such a way as to create a health hazard.

3.2.15 Animals. No animals, livestock, poultry or bees of any kind shall be raised, bred, kept or boarded in or on the Property; provided, however, that no more than two dogs, cats, or other domestic animals which are bona fide household pets, or any combination of the foregoing not to

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exceed two household pets may be kept on each Lot, so long as such pet(s) is/are (i) not kept for any commercial purpose; (ii) kept under control at all times; and (iii) not kept in such number or in such manner as to violate any federal, state or local laws or ordinances or so as to create a nuisance. Notwithstanding anything to the contrary contained in the foregoing, the Board shall have, and is hereby granted, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or as to create a nuisance, or that any Owner is otherwise in violation of this Section 3.2.14 and to take such action or actions as it deems necessary to correct any such violation including the imposition of fines. It is expressly understood that any Owner's right to keep household pets is coupled with a responsibility for such Owner's pet(s) and accordingly, each Owner of a household pet is financially responsible and liable for any damage caused by such pet. For purposes of this Section 3.2.14, a "pot belly pig" is not considered a household pet.

3.2.15 Violation of Restrictions. If any Developer or Owner or their respective family, guests, licensees, lessees, invitee, agents or employees violates these Restrictions, the Board may invoke any one or more of the following remedies: (i) impose a fine upon such Developer or Owner for each violation, in accordance with Association Rules; (ii) cause the violation to be cured and charge the cost thereof to such Developer or Owner; and (iii) obtain equitable relief against the continuance of such violation; and (iv) obtain legal relief for any damages caused to the Association by such violation. Before invoking any remedy under (i) or (ii), the Board shall give such Developer or Owner 24 hours written notice except that the Board may immediately suspend the right to use any portion of the Common Area by any Developer or Owner and their respective family, agents, employees, guests, licensees, lessees, and invitee without notice for any period during which any Assessment owed by such Developer or Owner is past due and unpaid.

3.2.16 Waste. No Owner or his or her respective family, agents, employees, guests, licensees, lessees, invitee, agents or employees may damage, deface or commit waste upon any portion or all of the Common Area.

3.3 Exemption of Declarant. Notwithstanding anything in this Declaration to the contrary, during the Period of Declarant Control neither Declarant nor any of Declarant's activities shall in any way be subject to the control of, or under the jurisdiction of, the Board or the Architectural Review Committee, if created. Without limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant or its agents, employees or assigns or any Developer to (i) excavate and grade; (ii) construct and alter drainage patterns and facilities; (iii) construct any and all other types of Improvements; (iv) maintain no more than 5 model homes and 5 construction, sales and leasing offices and similar facilities of a size and in the locations determined by Declarant from time to time; and (v) post signs incidental to construction, sales and leasing, on the Common Area and Lots owned by Declarant.

3.4 Landscaping Restrictions. All plans for landscaping of residential lots must be submitted to the Architectural Review Committee for approval. The review will consider compatibility to the community landscape plan approved by Jefferson County and Landscaping Design Guidelines adopted from time to time by the Board. The plan must be implemented within six months of home purchase.

3.4.1 Fences. All fences bordering open space areas must be open fences as shown on the Landscaping Plan set forth in Exhibit C. 16

3.5 Exemption for Casualty Loss. In the event that any of the Residences or the Common Area suffer a casualty loss, such that reconstruction is necessary, this Declaration shall not prevent or limit the right of Declarant or the Association, their officers, agents, employees and assigns to (i) excavate and grade; (ii) construct and alter drainage patterns and facilities; or (iii) construct any and all other types of Improvements.

## ARTICLE 4

### ASSOCIATION

4.1 Organization. The Association is a non-profit Colorado corporation created for the purposes, charged with the duties, and invested with the powers prescribed by law and the Act, and set forth in its Articles, this Declaration, Neither the Articles, Bylaws nor any Rules and Restrictions promulgated by the Board shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In case of conflict between the Declaration and the Articles, Bylaws, Rules, or Restrictions, this Declaration shall control.

#### 4.2 Membership and Voting

4.2.1 Generally. Every Person who is an Owner (including Declarant) shall be a Member of the Association and shall remain a Member for so long as that Person continues to be an Owner; except that when the Association owns any Lot, the Association shall not be a Member. The Association shall have only one class of Members. Each Member shall be entitled to one vote for each Lot owned by such Member; except that the Association shall not be entitled to a vote for any Lot owned by the Association. Each Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. Except as expressly provided in this Article 4, no other Voting Rights are created by this Declaration. No change in the Membership of a Person shall be effective for voting purposes until the Board receives written notice of the change together with satisfactory evidence of the change.

4.2.2 Multiple Owners. When an Owner consists of more than one Person, while each such Person shall be a Member of the Association, only one of such co-Owners shall be entitled to exercise the single vote to which the Lot is entitled. Such co-Owners must designate one co-Owner to exercise the single vote in a written instrument delivered to the Secretary of the Association not later than five (5) days prior to a meeting of the Association. Such written instrument shall remain in full force and effect until revoked by a written instrument filed with the Association or replaced by a subsequent written instrument filed with the Association replacing the designated co-Owner with another designated co-Owner. If such co-Owners fail to designate a co-Owner, then such co-Owners shall be treated as having abstained from any vote made by the Members at any meeting held at any time prior to the timely receipt of the written instrument by the Board. Only the designated co-Owner may



cast a vote or issue a proxy on behalf of such co-Owners and the vote cast by the designated co-Owner shall bind all co-owners. Fractional votes shall not be allowed. 17

4.2.3 Designated Representative. In all cases in which a Member is not a natural person, such Member shall designate one natural person as the designated representative of such Member in a written instrument delivered to the Secretary of the Association not later than five (5) days prior to a meeting of the Association. Such written instrument shall remain in full force and effect until revoked by written instrument filed with the Association or replaced by a subsequent written instrument filed with the Association replacing the designated representative with another designated representative. If such Member fails to designate a representative, then such Member shall be treated as having abstained from any vote made by the Members at any meeting held at any time prior to the timely receipt of the written instrument by the Board. Only the designated representative may cast a vote or issue a proxy on behalf of such Member and the vote cast by the designated representative shall bind the Member.

4.2.4 Proxies. The vote allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner, designated co-Owner, or designated representative and delivered to the Secretary of the Association not later than five (5) days prior to a meeting of the Association. An Owner, designated co-Owner or designated representative may not revoke a proxy given pursuant to this Section 4.2.4 except by actual notice of revocation to the Secretary of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates 11 months after its date, unless it provides otherwise, and no proxy shall be valid in any event for more than three years after its execution. A proxy shall automatically cease upon a change in the Membership of a Person on the books of the Association.

4.3 Board of Directors. The affairs of the Association shall be governed by the Board of Directors which may, by resolution, delegate any portion of its authority to an executive committee or an officer, executive manager or director for the Association. The qualifications and number of Directors, the term of office of Directors, the manner in which to elect Directors and the manner in which to replace Directors upon removal or resignation shall be as set forth in the Bylaws; provided, however, that the Bylaws shall contain the following provisions:

4.3.1 Declarant Appointments. Subject to Section 4.3.2, during the Period of Declarant Control, Declarant may appoint and remove the officers and Directors of the Board.

4.3.2 Transfer of Declarant Appointments to Owners. Not later than 60 days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one Director and not less than twenty-five percent (25 %) of the Directors of the Board must be elected by Owners other than Declarant; not later than 60 days after conveyance of fifty percent (50%) of the Lots, at least two Directors and not less not less than fifty percent (50%) of the Directors of the Board must be elected by Owners; not later than 60 days after conveyance of 75% of the Lots, at least three Directors and not less than 100% of the Directors of the Board must be elected by Owners.

4.3.3 Required Owner Control. Except as otherwise provided in C.R.S. § 38-33.3-220(5), not later than the termination of the Period of Declarant Control, the Owners shall elect a Board of at least three Directors, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant. The Directors elected under this Section 4.3.3 shall take office upon termination of the Period of Declarant Control.

4.3.4 Removal of Director. Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a vote of sixty-seven percent (67%) of all Members present and entitled to vote at any meeting of the Members at which a quorum is present, may remove any Director with or without cause, other than a Director appointed by Declarant during the Period of Declarant Control.

4.3.5 Required Delivery of Association Property. Within 60 days after the Owners other than Declarant elect a majority of the Directors, Declarant shall deliver to the Association all property of the Association held by or controlled by Declarant including, without limitation, the following items:

4.3.5.1 The original or a certified copy of the Recorded Declaration as amended, the Articles, Bylaws, minute books, other books and records, and any Rules which may have been promulgated;

4.3.5.2 An accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the Period of Declarant Control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for, or charged to, the Association.

4.3.5.3 The Association funds or control thereof;

4.3.5.4 All of Declarant's tangible personal property that has been represented by Declarant to be the property of the Association or all of Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Area, and inventories of these properties;

4.3.5.5 A copy, for the nonexclusive use by the Association, of any specifications and plans used in the construction of the Improvements in the Common Area.

4.3.5.6 All insurance policies then in force, in which the Owners, the Association, or its Directors and officers are named as insured.

4.3.5.7 Copies of any certificates of occupancy that may have been issued with respect to any Improvements located on the Property;

4.3.5.8 Any other permits issued by governmental bodies applicable to Hillside at Stony Creek and which are currently in force or which were issued within one year prior to the date on which Owners other than Declarant took control of the Association;

4.3.5.9 Written warranties of the contractors, subcontractors, suppliers, and manufacturers that are still effective;

4.3.5.10 A roster of Owners and First Mortgagees and their addresses and telephone numbers, if known, as shown on Declarant's records;

4.3.5.11 Employment contracts in which the Association is a contracting party; and

4.3.5.12 Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the Persons performing the services.

4.4 Officers. The Board will select the officers of the Association. Officers may also serve as Directors of the Board. The same individual may simultaneously hold more than one office, except the office of president and secretary.

4.5 Articles and Bvlaws. The purposes and powers of the Association and the rights and obligations with respect to Memberships may and shall be amplified by provisions of the Articles and Bylaws of the Association. Such Articles and Bylaws may include any reasonable provisions concerning corporate matters, but such provisions shall comply with this Declaration.

4.6 Determination of Budgets. The Board shall annually determine the total amount required to be raised through Regular Assessments. The Board shall base such determination upon an Annual Budget adopted by the Board and approved annually by the Association in accordance with Section 4.6.3. The Annual Budget shall cover all costs and expenses expected to be incurred by the Association in performing its functions or in providing services, required, contemplated or permitted under this Declaration. The Annual Budget shall show, in reasonable detail, the various matters proposed to be covered by the budget, the estimated costs and expenses of the Association, amounts deemed necessary or desirable as reasonable reserves and the total amount to be raised through Regular Assessments to cover such estimated costs and expenses and reasonable reserves.

4.6.1 Surplus Funds. The Board may establish reasonable reserves. Any surplus funds of the Association remaining after payment of, or provision for, expenses, costs, obligations and any provision for reserves shall not be credited to the Owners, but shall be added to any reserve accounts maintained by the Association.

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4.6.2 Budget Revision. The Board may revise the Annual Budget as necessary from time to time. The Board may raise or lower Regular Assessments as required to meet such revised Annual Budget. Without limiting the generality of the foregoing, the Board may modify the Annual Budget (and, accordingly, the Regular Assessments) due to the Annexation of land to the Property in accordance with the Declaration. The Association shall approve such a budget revision, in accordance with Section 4.6.3.

4.6.3 Budget and Budget Revision Approval. Within thirty (30) days after adoption by the Board of any proposed Annual Budget or budget revision for the Association, the Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the Annual Budget or budget revision to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the Annual Budget or budget revision. Such meeting shall occur not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority (i.e., more than 50%) of all Owners reject the Annual Budget or budget revision, the Annual Budget or budget revision is ratified, whether or not a quorum is present. In the event that the Owners reject the proposed Annual Budget or budget revision, the Board must continue the Annual Budget last ratified by the Owners until such time as the Owners ratify a subsequent Annual Budget or budget revision proposed by the Board.

4.7 Assessments. The Board may levy Regular Assessments and Special Assessments.

4.7.1 Regular Assessments. A Regular Assessment is that sum which the Association must levy against each Lot in order to fund the Annual Budget. The Board in its sole and absolute discretion shall determine the amount for each Regular Assessment based on the Annual Budget. Each individual Regular Assessment levied against each Lot shall be equal to the individual Regular Assessments levied against each other Lot.

4.7.1.1 Expenses Initially Paid by Declarant. Declarant shall pay all expenses of the Association until the Association levies a Regular Assessment. In no event, however, shall Declarant have any obligation whatsoever to subsidize or otherwise contribute to a maintenance fund or other reserves to cover future costs and expenses.

4.7.1.2 Initial Regular Assessments. The Association shall levy the initial Regular Assessment against each Lot prior to the sale of the first Lot to a Person other than Declarant or a Developer. This provision applies to the Property and any Additional Lands annexed pursuant to Section 2.3.

4.7.2 Undeveloped Lot Assessment. Notwithstanding anything contained in 4.7.1., it is expressly recognized and understood that Owners of undeveloped Lots (i.e., those Lots upon which a single-family residence has not been constructed and for which a so-called "Certificate of Occupancy" has not been issued) utilize and benefit from the Common Areas to a lesser extent than Owners of developed Lots (i.e., those Lots upon which a single-family residence has been constructed

and for which a Certificate of Occupancy has been issued). In recognition of this fundamental difference and notwithstanding anything to the contrary contained in this Section 4.7.1, the assessment due and payable from any Owner of an undeveloped Lot shall be 25 % of the Regular Assessment otherwise applicable to such Lot until such time as a Certificate of Occupancy is issued in connection with an Improvement constructed upon such Lot. After the Association levies the initial Regular Assessment, the Association shall levy Regular Assessments at least annually. 21

4.7.3 Special Assessments. The Association may levy, from time to time, one or more Special Assessments for the purpose of defraying in whole or in part the cost of any construction, restoration, unexpected repair or replacement of an Improvement owned by the Association or for carrying out the other powers and duties of the Association in accordance with this Declaration. Each Special Assessment levied against each Lot shall be equal to the individual Special Assessment levied against each other Lot. Each Owner shall pay all Special Assessments assessed against such Owner's Lot.

4.7.4 Commencement of Assessments. The obligation to pay Assessments shall commence as to each Lot on the first day of the month following either (i) for Additional Lands annexed under the provisions of Article 2, the month in which the Lot is made subject to this Declaration, or (ii) for lands described in Exhibit A, the month in which the Board first levies Regular Assessments, whichever is later. Subject to the foregoing provisions, the Board of Directors shall have the power and authority to determine all matters in connection with Assessments including the power and authority to determine where, when and how Owners shall pay Assessments to the Association and each Owner shall comply with all such determinations.

4.8 Obligation to Pay Assessments, Fines and Compliance Expenditures. Each Owner of a Lot is deemed to covenant (whether it is so expressed in a deed) and shall be obligated to pay and shall pay to the Association at least annually or when otherwise due and payable: (i) Assessments; (ii) reasonable and uniformly applied charges for use of facilities (as determined by the Board) and fines imposed by the Association for violation of the Restrictions; and (iii) any Compliance Expenditures. Each Assessment, charge, fine and Compliance Expenditure is a separate, distinct and personal debt and obligation of the Owner against whose Lot the same is assessed. All Assessments, charges, fines and Compliance Expenditures shall be payable in full without offset for any reason whatsoever. The obligation of each Owner to pay Assessments, charges, fines and Compliance Expenditures is entirely independent of any obligation of the Association to such Owner or of Declarant or any other Owner to such Owner. No Owner may be exempt from liability for payment of any Assessment, charge, fine or Compliance Expenditure by waiver of the use or enjoyment of any of the Common Area or by abandonment of the Lot against which the Assessments are made. Any Assessment, charge, fine or Compliance Expenditure that is not paid within fifteen (15) days after the same becomes due is delinquent. If any Assessment, fine, charge or Compliance Expenditure is delinquent, the Association may use all procedures allowed under Colorado law for the collection of such delinquencies and Compliance Expenditures.

4.8.1 Lien for Assessments Fines and Compliance Expenditures. The Association shall have a lien against each Lot to secure payment of any Assessment, charge, fine or Compliance Expenditure or other amount due and owing to the Association with respect to the Owner of that Lot. The

Association may foreclose the lien in the manner for foreclosure of mortgages in the State of Colorado. The Association shall have the right, but not the obligation, to prepare and record in the Records a "Notice of Lien" which shall set forth (i) the amount of any Assessment, charge, fine or Compliance Expenditure or other amount due and owing to the Association; (ii) the date such amount was due and payable and the date from which interest accrues; (iii) all costs and expenses including reasonable attorney fees and costs incurred in collecting the unpaid amount as of the date of recording of such Notice of Lien; (iv) the Lot affected by the lien; and (v) the name or names, last known to the Association, of the Owner or Owners of the Lot. All properties dedicated to, and accepted by, a local public authority, the Common Area shall be exempt from the lien for Assessments, charges, fines and Compliance Expenditures.

4.9 Duties and Powers of the Association. Subject to and in accordance with this Declaration, the Association shall have all of the rights and powers conferred upon it by law, the Act, this Declaration, the Articles and the Bylaws. Without limiting the generality of the foregoing, the Association shall have the following powers and shall perform each of the following duties for the benefit of the Members of the Association:

4.9.1 Repair and Maintenance. The Association shall maintain in good repair and condition all lands, Improvements, and other property owned, controlled or maintained by the Association.

4.9.1.1 General Common Area Maintenance. The Association shall maintain the Common Area and any Improvements installed thereon. The common area is represented as Tracts A, B, C, D, E, F, G, and H and contains parks, passive and active open space, utility, drainage and right of way easements, all set aside to benefit the Property.

4.9.1.2 Under Drain System Maintenance. The common drainage portion of the Under Drain system ("Under Drain") that lies beneath the streets or roadways of this Planned Community, the Common area, or the Utility Easements, whether such common drainage portion is located within or outside of the boundaries of the Planned Community, shall be owned, operated, maintained, repaired or replaced by the Association. There shall be an easement granted to the Association, its agent or contractor upon, across, over, in and under each Lot and the Common Area in accordance with Section 6.3 of this Declaration, as is reasonably necessary, for the performance of such maintenance, repair or replacement of such Under Drain provided that, any such easement shall be subordinate to the rights granted to the Southwest Metropolitan Water and Sanitation District, (the "District") by grant of right-of-way, easement, plat, dedication, or platted easement for the operation and maintenance of the District facilities.

4.9.1.3 Third Party Under Drain System Rights. The District may require the repair, reconstruction, replacement or relocation of such Under Drain if the District determines in its reasonable commercial discretion that its public water or sanitary sewer system is being endangered by the Under Drain.

4.9.2 Payment of Taxes. The Association shall pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by the Association, to the extent that such taxes and assessments are not levied directly upon the Members. The

Association shall have all rights granted by law, but not the obligation, to contest the legality and the amount of taxes and assessments levied upon any property owned by the Association.

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4.9.3 Insurance. The Association shall obtain and maintain in effect policies of insurance and fidelity adequate, in the opinion of the Board, in kind and amount, to comply with C.R.S. § 38-33.3-313.

4.9.3.1 Casualty - Common Area. In the event of damage or destruction to all or a portion of the Common Area due to fire or other casualty, the Association shall apply the insurance proceeds to reconstruct or repair the damage. If the insurance proceeds are insufficient to repair or reconstruct the damaged or destroyed Common Area, the Association shall present to the members a demand for a Special Assessment to cover the difference between the insurance proceeds and the cost of repair or reconstruction. Unless at least 90% of the Lot Owners vote not to repair or reconstruct the damaged or destroyed Common Area, such Special Assessment shall be due and payable as provided by resolution of the Board, but shall not be due sooner than sixty (60) days after written notice thereof. If at least 90% of the Owners vote not to repair or reconstruct the damaged or destroyed Common Area, the insurance proceeds shall be applied to demolish, if necessary, the damaged or destroyed Common Area, remove the debris thereby created, and landscape the area to the satisfaction of the Board. The Association shall place any excess insurance proceeds in the Association's reserve accounts.

4.9.3.2 Insurance - Minimum Standards for Insurance Carriers. All policies carried by the Association shall be written with companies licensed to do business in Colorado that hold a rating of AXI or better in the financial category as established by A.M. Best Company, Inc., or the most nearly equivalent rating.

4.9.4 Assessments. To determine, levy and collect Assessments.

4.9.5 Fines, Fees and Charges. To determine, levy and collect charges, fines, fees and Compliance Expenditures.

4.9.6 Association Property. Subject to the provisions of C.R.S. § 38-33.3-312, to accept, own, convey, lease, encumber, operate and maintain all Common Areas which may be conveyed to it by Declarant (or otherwise acquired by the Association), together with all Improvements of whatever kind and for whatever purpose located therein.

4.9.7 Rules and Regulations. To make, establish and promulgate, and in its discretion to amend or repeal and reenact Rules and Regulations, not in contradiction of this Declaration, as it deems proper covering any and all aspects of its functions or those of the Architectural Review Committee. Without limiting the generality of the foregoing, such Rules and Regulations may set dues and fees and establish the regulations governing the operation, use and occupancy of any association property. Each Member may examine such Rules and Regulations at any time during normal business hours at the principal office of the Association. Such properly promulgated Rules and Regulations shall have the same purpose and effect as the Restrictions included in this Declaration and shall be treated as incorporated herein.

4.9.8 Enforcement. To enforce, on its own behalf and on behalf of all Owners, all of the covenants, conditions and restrictions set forth in the Restrictions, and to perform all other acts reasonably necessary to enforce any of the provisions of the Restrictions.

4.9.9 Management Company. To retain the services of a professional management company to manage some or all of the affairs of the Association provided that (i) such company shall be licensed to do business in Colorado, to the extent required by law; (ii) the term of any contract for such services shall not exceed 1 year and shall be terminable on thirty (30) days written notice, with or without cause and without the payment of a termination fee; and (iii) each and every management contract made between the Association and a manager or managing agent during the Period of Declarant Control shall terminate absolutely and, no later than thirty (30) days after the expiration of the Period of Declarant Control.

4.9.10 Borrowing. Subject to the provisions of C.R.S. § 38-33.3-312, to borrow money and to incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, mortgages, pledges, hypothecations or other evidences of debt and securities therefor encumbering the Common Area, or portions thereof.

4.9.11 Easements. To grant easements, leases, licenses and concessions over the Common Area to serve the Property.

4.9.12 Design Guidelines and Architectural Review. To adopt, promulgate, amend or repeal Design Guidelines as provided in Article 5; to create the Architectural Review Committee as provided in Article 5; to appoint and remove members of the Architectural Review Committee as provided in Article 5; and, if the Board has not created or has terminated the Architectural Review Committee as provided in Article 5, to sit as the Architectural Review Committee with all of the powers of the Architectural Review Committee provided in this Declaration.

4.9.13 Assignment. To assign its right to future income, including the right to receive Assessments.

4.9.14 Contracts with Declarant. To make contracts with Declarant for construction, repair, replacement and maintenance of the Common Area.

4.9.15 Other. To carry out all duties of the Association set forth in the Restrictions.

4.10 Non-Liability of Officials. To the fullest extent permitted by law, neither Declarant, the Board, the Architectural Review Committee, or any other committees of the Association or any member thereof, nor any officers, directors, partners, agents or employees of Declarant or of the Association, shall be liable to any Owner, Developer, or to the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of Plans or Specifications (whether or not defective), course of action, act, inaction, omission, error, negligence, or the like made in good faith and which Declarant, the Board, the Architectural Review Committee



or any such other committees or member thereof, officers, directors, partners, agents or employees reasonably believed to be within the scope of their respective duties.

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4.11 Indemnification. Each Member, to the fullest extent permitted by law, the Declarant, and every Director, officer, committee member, partner and shareholder of the Association and of Declarant (to the extent a claim may be brought by reason of Declarant's appointment, removal, or control over members of the Board or its control over the Association or any committee thereof) shall be and is hereby indemnified by the Association. Every other Person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, or at the request of, the Association may, in the discretion of the Board, be indemnified by the Association. Any indemnification under this Section 4.11 shall be limited to all expenses and liabilities reasonably incurred by or imposed upon such Person in connection with any proceeding to which such Person may be a party or in which he or she may become involved, or incurred in any settlement thereof by reason of such Person being or having served in such capacity on behalf of the Association (or in the case of such Declarant by reason of having appointed, removed, controlled or failed to control members of the Board, or controlled, or failed to control the Association). The Association shall provide indemnification whether or not such Person is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred.

4.12 Non-Liability for Certain Changes and Amendments. Neither Declarant, the Association, nor their successors or assigns shall be liable to, or subject to injunction by, any Owner or to one another in the event that any change in zoning of the Property is sought or obtained, or in the event that any subdivision map amendment or change in density shall be sought and obtained including, but not limited to, any change in the Plat or in area or density among the various Lots shown on the Plat.

4.13 Financial Statement. The Association shall provide a financial statement (which need not be audited) for the immediately preceding fiscal year, free of charge, to a Member so requesting or to any First Mortgagee of a Lot so requesting within a reasonable time after written request therefor by any such party.

4.14 Association Books and Records. The Association shall make available to Owners and First Mortgagees, current copies of the Governing Documents and other books, records, and financial statements of the Association. "Available" shall mean available for inspection, upon request, at the office of the Association or its Managing Agent during normal weekday business hours or under other reasonable circumstances.

4.15 Termination of Contracts and Leases of Declarant. The following contracts and leases, if entered into before the Board elected by the Owners pursuant to Section 4.3.3 takes office, may be terminated without penalty by the Association, at any time after the Board elected by the Owners pursuant to Section 4.3.3 takes office, upon not less than ninety (90) days' notice to the other party:

4.15.1 Any management contract, employment contract, or lease of recreational or parking areas or facilities;

4.15.2 Any other contract or lease between the Association and Declarant or an affiliate of Declarant; or

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4.15.3 Any contract or lease that is not bona fide or was unconscionable to the Owners at the time entered into under the circumstances then prevailing.

4.15.4 This Section 4.15 does not apply to any lease the termination of which would terminate the Planned Community created by this Declaration or reduce its size, unless the real estate subject to that lease was included in the Planned Community for the purpose of avoiding the right of the Association to terminate a lease under this Section or a proprietary lease.

4.16 Title to Property Upon Dissolution. In the event of dissolution of the Association, the Common Area shall, to the extent permitted by law and where reasonably possible, be conveyed or transferred to an appropriate governmental or quasi-governmental agency or agencies, or to a nonprofit corporation, association, trust or other organization, to be used for the common benefit of the Owners for similar purposes for which the Common Area was held by the Association. To the extent the foregoing is not possible, the Common Area shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed first for the payment of debts and obligations incurred by the Association and then to the Owners in an equitable manner determined by the Board (which determination will be conclusive) based upon each Owner's pro rata portion of the Property. To the extent that Association property is not transferred or sold as provided above, title shall pass to the Lot Owners according to the provisions of C.R.S. § 38-33.3-218 (6)(a).

4.17 Termination. The termination of this Planned Community shall at all times be subject to C.R.S. § 38-33.3-218, as amended.

## ARTICLE 5

### ARCHITECTURAL REVIEW COMMITTEE

The provisions of this Article 5 shall have no effect unless and until the Board promulgates any Design Guidelines.

5.1 Generally. The Board may, by a majority vote of the Directors, create and terminate the Architectural Review Committee. The Architectural Review Committee shall have the powers granted it under this Declaration. If the Board has promulgated Design Guidelines, and if the Board has not created or has terminated the Architectural Review Committee, then the Board shall sit as the Architectural Review Committee and shall have all of the powers granted to the Architectural Review Committee under this Declaration.

5.2 Members of Committee. The Architectural Review Committee shall always consist of either three or five members, which members need not be Members of the Association. The Board may reduce the number of members of the Committee to three and increase it to five as often as it wishes.

Each member of the Committee shall hold office until such time as such member has resigned or has been removed and the Board has appointed his or her successor.

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5.3 Appointment and Removal. The Board shall have the right to appoint and remove all members of the Committee, except that during the Period of Declarant Control, Declarant may appoint and remove all members of the Committee. The Board may remove members of the Committee at any time without cause, except that during the Period of Declarant Control, only Declarant may so remove members of the Committee.

5.4 Design Guidelines. The Architectural Review Committee may recommend to the Board, or the Board on its initiative may develop, guidelines consistent with the Development Guide regarding anything relevant to the Committee's functions including, but not limited to: the construction, alteration or removal of specified Improvements; the terms and conditions on which such Improvements may be constructed, altered or removed; design and landscaping standards for Improvements; materials, colors, textures and other aesthetic matters concerning Improvements; procedures for the submission of Plans and Specifications by an Owner to the Architectural Review Committee and for the Architectural Review Committee's review, approval, denial or approval with conditions of Plans and Specifications; and fines or other reasonable penalties for violation of any provision of this Article 5. The Board, in its discretion, may adopt or promulgate such guidelines as Design Guidelines and, once so adopted or promulgated, the Design Guidelines shall have the same force and effect as any other Rule promulgated by the Board under this Declaration. Until such guidelines have been adopted or promulgated by the Board as Design Guidelines, they shall have no effect.

5.5 Review of Proposed Construction. If any part of this Declaration requires the approval of the Architectural Review Committee, it shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which in its sole discretion are relevant. Except as provided in Article 2 and Section 3.2 above, prior to commencement of any alteration of, or addition to, any Residence or Improvement, the Plans and Specifications therefor shall be submitted to the Architectural Review Committee, and construction thereof may not commence unless and until the Committee has given written approval to such Plans and Specifications. The Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties as the Board shall assign to the Committee from time to time, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Committee. The Committee shall have the power to approve or disapprove Plans and Specifications submitted for its approval based on considerations of whether the proposed construction, alteration or addition violates the Restrictions or the Development Guide or the Design Guidelines, or their spirit, changes the appearance of any structure in relation to the aesthetic harmony of the surrounding structures, or other considerations, including but not limited to, landscaping, color schemes, exterior finishes and materials and similar features, as the Committee may adopt from time to time. The Committee may condition its approval of Plans and Specifications on such changes therein as it deems appropriate, and may require submission of additional Plans and Specifications or other information prior to

approving or disapproving the material submitted. The Committee may require such detail in Plans and Specifications submitted for its review and such other information as it deems proper. The Committee may require a reasonable fee to accompany each application for approval. Until receipt by the Committee of all required Plans and Specifications and other information, the Committee may postpone review of anything submitted for approval. Upon certified receipt and acceptance by the Committee of all required Plans and Specifications and other information, the Committee shall have thirty (30) days in which to approve or disapprove in writing such Plans and Specifications. If the Committee fails to approve or disapprove properly submitted Plans and Specifications within such thirty (30) day period, the submitted Plans and Specifications shall be deemed to have been disapproved. 28

5.6 Failure to Comply with Architectural Review Process. Any construction, addition or alteration of any Improvement, requiring the approval of the Committee, which the Committee does not approve pursuant to the procedures established in Section 5.5 will result in the right of the Association to remove the non-approved Improvement at the expense of the Owner of the Improvement. Prior to removal of the non-approved Improvement the Board shall request, in writing, removal of the Improvement by the Owner and shall allow at least seventy-two hours for the Owner to complete the removal.

5.7 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by written resolution unanimously adopted, designate one of its members to take any action or perform any duties for and on behalf of the Committee, except the approval of Plans and specifications and the granting of variances. In the absence of such designation, the vote of the majority of all of the members of the Committee, or the written consent of a majority of all of the members of the Committee taken without a meeting, shall constitute an act of the Committee.

5.8 No Waiver of Future Approvals. The approval or consent of the Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Committee, shall not constitute a waiver of any right to withhold approval or consent as to any Plans or Specifications or other matter whatever subsequently or additionally submitted for approval or consent by the same or a different Person.

5.9 Compensation of Members of the Committee. The Board may establish and provide for reasonable compensation from the Association for services rendered by members of the Committee, and may provide for reimbursement for expenses incurred by such members in performance of their duties hereunder. During the Period of Declarant Control, Declarant shall determine such compensation, and thereafter by the Board.

5.10 Inspection of Work. The Committee shall provide for inspection of completed work and work in progress, as well as correction of defects in such work, in accordance with rules concerning such matters established by the Committee, from time to time.

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5.11 Non-Liability of Committee Members. Neither the Committee nor any member thereof nor the Board nor any Director shall be liable to the Association or to any Owner or to any other Person for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's or the Board's respective duties under this Article 5 unless due to the willful misconduct or bad faith of the Committee or such member or the Board or such Director. The Committee shall not be responsible for reviewing, nor shall its approval of any Plans or Specifications be deemed approval of structural safety, engineering soundness, or conformance with building, zoning or other codes.

5.12 Variances. Subject to federal, state and local laws, ordinances, rules and regulations, the Committee, in its sole and absolute discretion, may authorize variances from compliance with any of the architectural provisions of this Declaration or any Design Guidelines (including restrictions upon height, bulk, size, shape, floor area, land area, placement of structures, set-backs, building envelopes, colors, materials, or similar restrictions) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental consideration may warrant and which do not violate the provisions of the Development Guide. Such variances must be in writing and signed by at least a majority of all of the members of the Committee. If the Committee grants a variance, no violation of the covenants, conditions or restrictions contained in this Declaration shall occur with respect to the matter for which the Committee granted the variance. Nevertheless, the granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the specific Lot or property and particular provision and in the particular instance covered by the variance. Any variance of the type described in this Section 5.12 relates only to the architectural provisions of this Declaration or the Design Guidelines, as applicable, and does not relate to any federal, state or local laws, ordinances, rules or regulations concerning any of the matters described above.

ARTICLE 6  
EASEMENTS

6.1 Easement for Encroachments. If any portion of a Lot or the Improvements located on a Lot or the Common Area encroaches upon another Lot or the Common Area, including any encroachments arising or resulting from the repair or reconstruction of such Lot or Improvement, a valid easement on the surface and for subsurface support below such surface for such encroachments, and for maintenance of same, shall and does exist, provided such easements do not exceed ten (10) feet within the boundary of such Lot or Common Area; such encroachments do not interfere with the use and enjoyment of the Lot or the Common Area affected thereby. Such easement and encroachment shall not be considered or determined to be an encumbrance either on the Common Area or the Lot(s) affected thereby. Such easement shall be deemed to run with the land affected thereby. The easement does not relieve an Owner of liability in case of willful misconduct nor relieve Declarant or any other Person of liability for failure to adhere to the Plat.

6.2 Owner's Easement of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title

to every Lot, subject to the following provisions: (1) the right of the Association to charge reasonable fees for the use of any recreational area on the Common Area; (2) the right of the Association to suspend voting rights and suspend the right to use any part or all of the Common Area for violation of any provision of the Restrictions or Governing Documents; and (3) the right of the Association to dedicate or transfer any part or all of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by sixty-seven percent of the Owners in a written, Recorded instrument. Any Owner may delegate his right to enjoyment to the Common Area to the members of his or her family or his or her tenants who reside on the Lot.

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6.3 Maintenance Easement. A non-exclusive blanket easement is hereby granted to the Association, its officers, agents, employees, and assigns upon, across, over, in, and under each Lot for performing maintenance, including such maintenance of the Under drain system as may be required under paragraph 4.9.1.2 of the Declaration, removal of non-approved Improvements as provided in Section 5.6, and performing the duties and functions which the Association is obligated or is permitted to perform pursuant to this Declaration. Such entry shall be made during regular business hours on business days after twenty-four hours notice to the occupants of any affected Lot, except where the occupants have expressed, in writing, no objections to earlier entry for maintenance removal or repairs. In emergency situations, earlier entry is authorized, however, the occupants of any affected Lot shall be warned of impending emergency entry as early as possible.

6.4 Utilities. The Association may hereby grant easements upon, across, over, and under the Common Area for utilities and the installation, replacement, repair, and maintenance of utilities including, but not limited to, water, sewer, gas, telephone, electricity and telecommunications systems (including, but not limited to, television systems), if any. The easement provided for in this Section 6.4 shall in no way affect, avoid, extinguish, or modify any other Recorded easement(s) on the Property.

6.5 Rights of Declarant Incident to Construction. A non-exclusive easement is hereby retained by and granted to Declarant, its successors and assigns, and Developer, for access, ingress, and egress over, in, upon, under, and across the Common Area as may be reasonably necessary or incidental to Declarant's or Developer's construction or exercise of Special Declarant Rights on the Property.

6.6 Easements Deemed Created. All conveyances of portions of the Property (including Lots) hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 6, even though no specific reference to such easements or to this Article 6 appears in the instrument of such conveyance.

## ARTICLE 7

### AMENDMENT

7.1 Amendment. Subject to Section 7.2 and C.R.S. § 38-33.3-217, this Declaration may be amended by the affirmative vote or written consent of at least sixty-seven percent (67%) of the Owners and, during the Period of Declarant Control, the written approval of Declarant.

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Notwithstanding the foregoing provision and subject to Section 7.2, any amendment to this Declaration that would terminate this Declaration or this Planned Community shall require the affirmative vote or written consent of at least ninety percent (90%) of the Owners at a duly called meeting of the Association and, during the Period of Declarant Control, the written approval of Declarant. Further, any termination of this Declaration and this Planned Community, must be in accordance with C.R.S. § 38-33.3-218.

7.1.1 An amendment to this Declaration shall be effective only upon the occurrence of all of the following events:

7.1.1.1 The amendment shall be in writing and shall have been approved (by an affirmative vote or written consent) by the applicable required percentage' of Owners and, if applicable pursuant to Section 7.2, Declarant and all First Mortgagees; and

7.1.1.2 A written certificate, executed and acknowledged by the president of the Association, shall be attached to the written amendment which shall state that such amendment was approved by the applicable required percentage of Owners and, if applicable pursuant to Section 7.2, Declarant and all First Mortgagees; and

7.1.1.3 The approved written amendment described in Section 7.1.1.1, and the certificate described in Section 7.1.1.2 together shall be Recorded.

7.1.2 Subsequent to the recording of an amendment to this Declaration pursuant to Section 7.1.1.3 it will be a presumption that all votes and consents required to pass an amendment were duly obtained. Such presumption may be rebutted by an action commenced within one year from the date the amendment is Recorded; absent any such action, the presumption shall thereafter become conclusive.

7.1.3 Except to the extent expressly permitted or required by the Act, no amendment to this Declaration may create additional or increase existing Special Declarant Rights, increase the maximum number of Lots, or change the boundaries of any Lot or the allocated interests of a Lot, or the uses to which any Lot is restricted, in the absence of unanimous consent of the Owners.

7.2 First Mortgagee Approval. Except to the extent otherwise provided herein, the Board must obtain the prior written consent of at least fifty one percent (51%) of the votes of the First Mortgagees (based upon one vote for each Lot encumbered by a First Mortgage) to amend any provisions of this Declaration, the Articles, or Bylaws of the Association, which establish, provide for, govern, or regulate any of the following: (i) voting; (ii) Assessments or Assessment liens; (iii) the provisions set forth under Article 8; or (iv) any action to terminate this Declaration.

7.2.1 Limitation of 7.2 on Owner or Board Power. Nothing contained in this Section 7.2 may operate to (i) deny or delegate control over the general administrative affairs of the Association by the Owners or the Board; or (ii) prevent the Association or the Board commencing, intervening in, or settling any solicitation or proceeding; or (iii) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds pursuant to C.R.S. § 38-33.3-313.

7.3 Expenses. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of the Association; provided, however, that an exercise by Declarant of its Special Declarant Rights requires a particular amendment, then Declarant shall solely bear all such expenses.

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## ARTICLE 8

### MORTGAGEE PROVISIONS

The following provisions are for the benefit of First Mortgagees on Lots. The provisions of this Article 8 apply to both this Declaration and to the Bylaws.

8.1 Notices of Action. A First Mortgagee who provides to the Association written request stating the name and address of such First Mortgagee and the street address of the Lot to which its Mortgage relates, is entitled to timely written notice of:

8.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a First Mortgage held, insured, or guaranteed by such First Mortgagee;

8.1.2 Any delinquency in the payment of Assessments or charges owed by a Lot subject to the First Mortgage of such First Mortgagee, where such delinquency has continued for a period of at least sixty (60) days, or any other violation of the Restrictions relating to such Lot or the Owner or Occupant which is not cured within sixty (60) days;

8.1.3 Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

8.1.4 Any proposed action which would require the consent of a specified percentage of First Mortgagees.

8.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds, or condemnation awards for losses to or a taking of the Common Area.

8.3 Notice to Association. Each Owner shall furnish to the Association the name and address of the holder of any First Mortgage encumbering such Owner's Lot.

8.4 Failure of Mortgagee to Respond. Any First Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from such First Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to such First Mortgagee by certified or registered mail, return receipt requested.



**ARTICLE 9**  
**SPECIAL DECLARANT RIGHTS**

9.1 Special Declarant Rights. Declarant reserves the following Special Declarant Rights during the Development Period, which may be exercised, where applicable, anywhere within the Properties: 33

9.1.1 To complete any improvements indicated on Plats filed with the Declaration;

9.1.2 To exercise a Development Right reserved in this Declaration;

9.1.3 To maintain sales offices, management offices, signs advertising on the property owned by Declarant described on Exhibits A, as set forth in Section 9.3;

9.1.4 To use easements through the Common Area for the purpose of making improvements within the Property or Additional Lands;

9.1.5 To merge or consolidate the Association with another common interest community of the same form of ownership; and

9.1.6 To appoint and remove any Director or officer of the Association as provided in the Bylaws.

9.2 Assignment and Transfer of Special Declarant Rights.

9.2.1 Assignment. Declarant may assign any Special Declarant Rights, Development Rights, or other special rights and obligations of Declarant set forth in this Declaration or the Bylaws to any affiliate of Declarant or Developer. Declarant may allow any affiliate of Declarant or Developer to exercise such rights on behalf of Declarant. The method of exercising such rights shall be subject to the agreement of the parties thereto, which shall not require recordation in the Records.

9.2.2 Transfer. Declarant may transfer in whole or in part any or all of the Special Declarant Rights identified in Section 9.1, Development Rights, or any of the other special rights and obligations of Declarant set forth in this Declaration or the Bylaws to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by Declarant and is duly recorded in the Public Records.

9.2.3 Authority. Any such delegation, transfer or assignment must be made in accordance with C.R.S. § 38-33.3-304.

9.3 Models, Sales Offices, and Management Offices. During the Development Period, Declarant and Developers authorized by Declarant may maintain and carry on upon any Lot owned by Declarant or Developer or any portion of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of

Lots, including, but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Developers shall have easements for access to and use of such facilities.

9.4 Construction of Improvements. Declarant and Developers and their employees, agents and designees shall also have a right and easement during the Development Period over and upon all of the Common Area for the purpose of making, constructing and installing Improvements to Lots or to the Common Area as Declarant deems appropriate in its sole discretion. 37

9.5 Other Covenants Prohibited. During the Development Period, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting the Property without Declarant's written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by Declarant and Recorded.

## ARTICLE 10

### DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

10.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Declarant, Association, Owners, Members, all other Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property, in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Restrictions (collectively "Claim"), except for those Claims authorized in Section 10.2, shall be resolved using the procedures set forth in Section 10.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

10.2 Exempt Claims. The following Claims ("Exempt Claims") are exempt from the provisions of this Section:

10.2.1 Any suit by the Association against any Bound Party to enforce the collection of any Assessments, charges, fines, Compliance Expenditures or other amount owing to the Association, including foreclosure proceedings;

10.2.2 Any suit by the Association to obtain injunctive and such other relief as the court may deem necessary in order to preserve the Association's ability to enforce the provisions of the Restrictions;

10.2.3 Any suit between Owners seeking redress on the basis of a claim which would constitute a cause of action under federal or state law in the absence of a claim based on the Restrictions, if the amount in controversy exceeds \$25,000.00;

10.2.4 Any suit arising out of any written contract between Owners, or between Declarant and any Developer, which would constitute a cause of action under state laws in the absence of the Declaration, Articles and Bylaws; and

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10.2.5 Any suit in which all parties necessary to the litigation under applicable law are not Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 10.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 10.3 shall require the majority approval of the Board.

10.3 Mandatory Procedures for All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

10.3.1 Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall provide written notice of the Claim (the "Notice") to each Respondent, stating plainly and concisely:

10.3.1.1 the nature of the Claim, including date, time, location, Persons involved, and Respondent's role in the Claim; and

10.3.1.2 the basis of the Claim (e.g., the provisions of the Restrictions or other authority out of which the Claim arises); and

10.3.1.3 what action or inaction Claimant seeks from Respondent in order to resolve the Claim; and

10.3.1.4 that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet personally with Respondent at a mutually agreeable time and place to discuss, in good faith, ways to resolve the Claim.

10.3.2 Negotiation. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

10.3.2.1 Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

10.3.3 Mediation. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have fifteen (15) additional days within which to

10.4.2 Each Party shall bear its own costs, including the fees of its attorney or other representative, incurred after the Termination of Mediation under Section 10.3.3 and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 10.4.3. 37

10.4.3 Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

10.5 Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 10.3 and any Party thereafter falls to abide by the terms of such agreement, or any Party falls to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 10.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the noncomplying Party (or if more than one noncomplying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorney fees, costs and court costs.

10.6 Consent for Litigation or Arbitration. In order to protect the Owners and the Association from indiscriminate arbitration or litigation, and the accompanying expense, distraction and commitment of financial and other resources, the Association shall not initiate or participate in any arbitration or litigation (other than the collection of dues payable to the Association or enforcement of the Declarations against Owners), in its own name or on behalf of the Owners, without complying with the provisions of this Section 10.6. Prior to the initiation or participation by the Association in any arbitration or litigation, the Board must first give due consideration to (a) the expense, distraction and commitment of financial and other resources that will be incurred or suffered by the Association and its Owners, and (b) whether mediation is a valid and reasonable alternative to such arbitration or litigation. If the Board reasonably determines that arbitration or litigation is appropriate after such due consideration, the Board shall (i) call a special meeting of the Owners (pursuant to terms of the Bylaws of the Association); (ii) report to the Owners at the special meeting all of the Board's concerns, deliberations and conclusions both as reported in official meetings and in summary of all of the alternative considerations; (iii) establish a budget for such arbitration or litigation (which budget shall not be funded by current Association funds, but instead shall be funded by a Special Assessment) and describe that budget in reasonable detail to the Owners; (iv) recommend to the Owners that the Association initiate or participate (as the case may be) in arbitration or litigation; and (v) recommend adoption of the budget for such action. Notwithstanding any other provision of this Declaration or the Articles or the Bylaws, and regardless of the number of Owners actually attending such Special Meeting, the Association shall not initiate or participate in any arbitration or litigation without the prior written consent of sixty-seven percent (67%) of all Owners of the Association to that course of action, subject to the budget for such action (and Special Assessment to fund such budget) which must be separately approved by the same percentage of Owners. The above procedure shall not be required whenever the Association is named as a defendant in an arbitration or litigation; however the Board shall attempt to mediate or seek alternative dispute resolution in any such dispute.

remaining Lots in proportion to the respective allocated interests of those Lots before the taking. Any remnant of a Lot remaining after part of a Lot is taken under this Section 11.1.4 is thereafter part of the Common Area. 39

11.1.5 Except as provided in Section 11.1.4, if part of a Lot is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Lot and its interest in the Common Area whether or not any Common Area is acquired. Upon acquisition, unless the decree otherwise provides that Lot's allocated interests shall not be modified.

11.1.6 The court decree shall be recorded in every county in which any portion of the Property is located.

11.1.7 Any reallocation of allocated interests pursuant to this Section 11.1 shall be confirmed by an amendment to the Declaration prepared, executed, and Recorded by the Association.

11.2 Term. This Declaration, including all of the covenants, conditions and restrictions contained herein, shall run with and bind the Property up to and including the 20th anniversary of the date of Recording of this Declaration, unless amended as herein provided. After such 20th anniversary, this Declaration, including all covenants, conditions and restrictions contained herein shall be automatically extended for successive periods of ten (10) years each, unless amended and extinguished by a written instrument approved by at least ninety percent (90%) of the Owners and Recorded in the Records.

11.3 Notices. Any notice permitted or required to be given by the Declaration shall be in writing and may be delivered personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or a legal holiday) after a copy of such notice has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given by such Person to the Association for the purposes of service of notices. If no address has been given to the Association, the Association may deliver or post a copy of such notice to the Lot. Such address may be changed from time to time by notice given by such Person to the Association.

11.4 Severability. In the event that any portion of this Declaration shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

11.5 Governing Law. This Declaration shall be governed by, and construed under, the laws of the State of Colorado. All references to "State" mean the state of Colorado.

11.6 Exhibits. All exhibits are incorporated in this Declaration by this reference.

11.7 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Association, and each Owner and the heirs, personal representatives, successors and assigns of each.

STATE OF Colorado )  
 )ss.  
COUNTY OF Arapahoe )

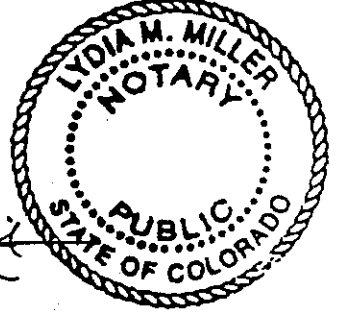
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The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of December, 1999, by Robert Gerlofs., as manager of BGD II, LLC, manager of Hillside at Stony Creek II, LLC, manager of Hillside Stony Creek V, LLC.

Witness my hand and official seal.

My commission expires: 1-7-2003

Lydia M. Miller  
Notary Public



My Commission Expires 01/07/2003

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Paul S. Barru  
2660 West Long Circle  
Littleton, CO 80120

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**EXHIBIT "A"**

**LEGAL DESCRIPTION OF HILLSIDE AT STONY CREEK**

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The property consists of:

Lots 1 through 121, and

Tracts A, B, C, D, E, F, G, and H

Hillside at Stony Creek, County of Jefferson, State of Colorado

11.8 Captions. The captions and headings on this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration. 40

11.9 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision in this Declaration.

11.10 Development Rights and Special Declarant Rights. Declarant expressly reserves the Development Rights and the other Special Declarant Rights for the maximum time limit allowed by the longer of this Declaration or Colorado law. Unless sooner terminated by a Recorded instrument signed by Declarant, any Development Right or Special Declarant Right may be exercised by Declarant for the period of time specified in the Act. Declarant shall exercise such Development Rights and Special Declarant Rights in accordance with the provisions of the Act including, without limitation, C.R.S. § 38-33.3-210.

## APPENDIX


### DISCLOSURE CONCERNING SOILS

Hillside at Stony Creek is located in an area identified by Jefferson County as "a dipping bedrock overlay district". Dipping bedrock is a geologic formation that has potential to create structural problems for residential improvements. In addition, a portion of Hillside at Stony Creek is located in an area identified by Jefferson County as a "geohazard pverlay district". This district was created by Jefferson County to identify areas that may have the possibility of ground sybsidence due to the existence of abandoned underground coal mines. All Owners and potential Owners of Lots within Hillside at Stony Creek are advised to review and inspect all documentation concerning these matters located at the Jefferson County Planning Department and the State of Colorado Division of Minerals and Geology, and to consider the implications of owning land and improvements that may be susceptible to damage as a result of being located within these districts. Owners and potential Owners of Lots within Hillside at Stony Creek are also advised to retain competent consultants for help in evaluating the soils conditions and the potential adverse affect on residential structures at Hillside at Stony Creek.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

DECLARANT:

Hillside at Stony Creek V, LLC  
by Hillside at Stony Creek II, LLC, Its Manager  
by BGD II, LLC, Its Manager

by  Manager  
Robert Gerlofs

and the Association shall not expand the scope of such dispute by prosecuting counterclaims without the Owners' consent as required by this Section 10.6.

## ARTICLE 11

### MISCELLANEOUS

#### 11.1 Condemnation.

11.1.1 If any government or agency thereof initiates proceedings, seeking to take by eminent domain the Common Area or, any part thereof or any interest therein, with a value (including loss of value to the balance of the Common Area and Improvements thereof), as reasonably determined by the Association in excess of ten thousand dollars (\$10,000), the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Area or Improvement thereon sought to be so condemned, to all First Mortgagees, all Members, and to Declarant. The Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements, and agreements with a condemning authority for acquisition of the Common Area or parts thereof, but the Association shall not enter into any such proceedings, settlement, or agreements, pursuant to which the Common Area or any parts thereof or any interests therein, or any improvements thereon or any parts thereof or interests therein, is relinquished, without giving all First Mortgagees, all Members and Declarant at least fifteen (15) days' prior written notice thereof.

11.1.2 If part of the Common Area is acquired by eminent domain, that portion of any award attributable to the Common Area taken must be paid to the Association. For the purposes of acquisition of a part of the Common Area, service of process on the Association shall constitute sufficient notice to all Owners, and service of process on each individual Owner shall not be necessary.

11.1.3 If following condemnation proceedings, there is a taking in condemnation or by eminent domain of a part or all of the Common Area, the award made for such taking, if such award is sufficient to repair and restore the Common Area, shall be applied by the Association to such repair and restoration. If such award is insufficient to repair and restore the Common Area, or if the full amount of such award is not expended to repair or restore the Common Area, the Association shall disburse the net proceeds of such award to the Owners, the Owner of each Lot receiving one (1) equal share, provided that the Association shall first pay out of the share of each Owner the amount of any unpaid liens or encumbrances on his or her Lot in the order of the priority of such liens or encumbrances.

11.1.4 If a Lot is acquired by eminent domain or part of a Lot is acquired by eminent domain leaving the Lot Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Owner for that Lot and its allocated interests whether or not any Common Area is acquired. Upon acquisition, unless the decree otherwise provides, that Lot's allocated interest are automatically reallocated to the

submit the Claim to mediation under the auspices of any public dispute resolution center or other such independent agency providing similar services in the metropolitan Denver, Colorado area.

10.3.3.1 If Claimant does not submit the Claim to mediation within fifteen (15) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

10.3.3.2 If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

10.3.3.3 Each Party shall, within five (5) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

10.3.4 Final and Binding Arbitration. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to the American Arbitration Association for arbitration in accordance with the American Arbitration Association Commercial Arbitration Rules as in effect from time to time or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

10.3.4.1 This subsection is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the state of Colorado. The Arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

#### 10.4 Allocation of Costs of Resolving Claims.

10.4.1 Each Party shall bear its own costs incurred prior to and during the proceedings described in Sections 10.3.1, 10.3.2 and 10.3.3, including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 10.3.3.