

**AMENDMENT IN ITS ENTIRETY AND RESTATEMENT OF DECLARATION OF  
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BROOKWOOD SUBDIVISION FILING NO. 1  
(TIMBER RIDGE)**

This Amendment In Its Entirety and Restatement of Declaration of Protective Covenants, Conditions and Restrictions For Brookwood Subdivision Filing No. 1 (Timber Ridge) ("**Restated Declaration**," as hereinafter more fully defined), is made the day and year hereinafter set forth by the undersigned president of the Brookwood Subdivision Filing No. 1 Homeowners Association, Inc.

**RECITALS**

A. A certain Declaration of Protective Covenants, Conditions and Restrictions For Brookwood Subdivision Filing No. 1, was recorded on April 5, 2007, at Reception No. 2007027189, in the office of the Clerk and Recorder of Douglas County, Colorado, as amended and supplemented ("**Original Declaration**").

B. Section 15.4 of the Original Declaration allows amendment of the Original Declaration upon approval of the Executive Board (as defined in the Original Declaration) and by the notarized written consent of at least sixty-seven percent (67%) of the votes in the Association as calculated pursuant to Article 16 of the Original Declaration.

C. Section 4.1 of the Original Declaration contains the following sentence: "Notwithstanding any provision herein to the contrary and the fact that a Participating Builder is an Owner and Member of the Association, the Participating Builder shall have no right to vote on any matter and the Participating Builder's right to vote is hereby expressly reserved to the Declarant." However, such is contrary to CRS 38-33.3-207 of CCIOA (as hereinafter defined), which requires that, in a planned community, a declaration must allocate to each unit "a portion of the votes in the association," and states that such allocations "may not discriminate in favor of units owned by the declarant." CCIOA controls over Section 4.1 of the Original Declaration, so each of the Units (as defined in the Original Declaration) has a vote in the Association. Further, CCIOA prohibits discrimination in such matters in favor of a declarant. As stated below, the Declarant (as defined in the Original Declaration) is not an Owner (as defined in the Original Declaration) of a Unit, or otherwise a factor with regard to the Original Declaration or this Restated Declaration, so the Association vote that is allocated to each Unit by the Original Declaration may be cast by the Owner of such Unit, even if such Owner is a Participating Builder.

D. This Restated Declaration has been approved by the Executive Board (as defined in the Original Declaration).

E. This Restated Declaration has been approved by at least sixty-seven percent (67%) of the votes in the Association as calculated pursuant to Article 16 of the Original Declaration.

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D. This Restated Declaration has been approved by the Executive Board (as defined in the Original Declaration).

E. This Restated Declaration has been approved by at least sixty-seven percent (67%) of the votes in the Association as calculated pursuant to Article 16 of the Original Declaration.

F. Section 15.7 of the Original Declaration is not applicable, since this Restated Declaration does not create or increase Special Declarant Rights (as defined in the Original Declaration). That is, the Declarant (as defined in the Original Declaration) is not: the Owner of a Unit (as defined in the Original Declaration); the Owner of any other portion of the Property (as defined in the Original Declaration); or otherwise a factor with regard to the Original Declaration or this Restated Declaration.

G. Section 15.8 of the Original Declaration permits the president of the Association to certify the approvals that are provided for in Section 15.4 of the Original Declaration.

H. Section 15.6 of the Original Declaration states that the aforesaid certification must also certify that originals of such notarized written consent by Owners (as defined in the Original Declaration) along with the recorded amendment are in the corporate records of the Association and available for inspection.

I. Terms which are defined in this Restated Declaration shall have the same meanings herein unless otherwise specified or defined in this Restated Declaration.

## AFFIRMATION

NOW, THEREFORE, the undersigned president of the Association, hereby states and declares that the Original Declaration is amended and restated in its entirety, such that the Original Declaration is entirely superseded and replaced by this Restated Declaration, as follows:

### ARTICLE 1. DEFINITIONS

#### Section 1.1. *Agencies.*

"**Agencies**" means the Government National Mortgage Association (**GNMA**), the Federal National Mortgage Association (**FNMA**), the Federal Home Loan Mortgage Corporation (**FHLMC**), the Department of Housing and Urban Development, including the Federal Housing Administration (**HUD**), the Veterans Administration (**VA**) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to any of those currently performed by any of such entities.

#### Section 1.2. *Allocated Interests.*

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

**Section 1.3. Association.**

"**Association**" means Brookwood Subdivision Filing No. 1 Homeowners Association, Inc., its successors and assigns, which is a community association as provided in CCIOA. The Association is a Colorado non-profit corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Restated Declaration and in the Amended and Restated Articles of Incorporation and Amended and Restated Bylaws of the Association.

**Section 1.4. Board of Directors or Board.**

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

**Section 1.5. CCIOA.**

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

**Section 1.6. Common Elements.**

"**Common Elements**" means any property now or hereafter owned or leased by the Association, other than a "**Lot**" as defined in Section 1.12 of this Restated Declaration. The Common Elements at the time when this Restated Declaration is Recorded, are described on **Exhibit B** attached hereto and incorporated herein by this reference.

**Section 1.7. Community.**

"**Community**" means the real estate and Improvements described on **Exhibit A** attached hereto and incorporated herein by this reference, and on the attached **Exhibit B**, both as supplemented and amended. The Community is a planned community under CCIOA. The name of the Community is Timber Ridge.

**Section 1.8. Design Guidelines.**

"**Design Guidelines**" means, collectively, all written design and development guidelines, standards, policies and procedures, application and review procedures, fee schedules, and all architectural matters, regarding the placement, installation, erection, construction, and all other matters, concerning Improvements, including all matters provided for in Section 4.7 of this Restated Declaration and including interpretation and implementation of the provisions of this

Restated Declaration. The Design Guidelines shall be adopted, amended, repealed and/or enforced by the Design Review Committee, all as more fully provided in Section 4.7 of this Restated Declaration. The Design Guidelines shall be in accordance with this Restated Declaration.

**Section 1.9.        *Design Review Committee or DRC.***

"**Design Review Committee**" or "**DRC**" means the committee appointed by the Current Participating Builders (as defined in subsection 4.1.2 below), until expiration of the Participating Builders Rights and Exemptions as provided in Section 1.16 hereof, and then appointed by the Board of Directors, all as more fully provided in Section 4.1 of this Restated Declaration. The DRC shall review and approve or disapprove plans for Improvements, as more fully provided in this Restated Declaration.

**Section 1.10.        *Governing Documents.***

"**Governing Documents**" means this Restated Declaration, the Association Amended and Restated Articles of Incorporation and Amended and Restated Bylaws, and any Rules and Regulations (as hereinafter defined), Design Guidelines, and other documents, of the Association and/or the Board of Directors, as well as all supplements, amendments and clarifications.

**Section 1.11.        *Improvements.***

"**Improvements**" means all structures now or hereafter located on a Lot or the Common Elements, exterior improvements to any such structures, and any other exterior improvements made to a Lot or the Common Elements, and any exterior appurtenances thereto or exterior components thereof, of every type and kind, including all landscaping features.

**Section 1.12.        *Lot.***

"**Lot**" means each platted lot that is listed on the attached Exhibit A, with the exception of any Common Elements, and with the exception of any publicly dedicated property. Each Lot shall constitute a "**unit**" under CCIOA, and it shall not be necessary to use the term "**unit**" as part of a legally sufficient description of a Lot. On the date of recording of this Restated Declaration, the actual number of Lots is Seventy-Two (72). Such number shall also be the maximum number of Lots.

**Section 1.13.        *Member.***

"**Member**" means all Owners of a Lot collectively or, following termination of the Community, all former Owners entitled to distributions of proceeds under CCIOA, their heirs, personal representatives, successors and assigns. The Association shall have one (1) class of

membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot shall have one (1) membership and there is only one (1) Member per Lot, even if multiple Owners own the Lot.

**Section 1.14. Owner.**

"Owner" means each fee simple title holder of a Lot, including each Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. There may be more than one (1) Owner of a Lot.

**Section 1.15. Participating Builder.**

"Participating Builder" means (i) any Person who acquires one or more Lots for the purpose of constructing a dwelling unit on each such Lot for sale, and/or rental, to the public, and (ii) any Person who acquires one or more Lots for sale to any Person fitting the description in Section 1.15(i) and/or for constructing a dwelling unit on each such Lot for sale, and/or rental, to the public. Without limiting the foregoing, as of the date of Recording of this Restated Declaration, there are at least two (2) Participating Builders: Richmond American Homes of Colorado, Inc.; and Telluride Custom Homes, LLC. All Participating Builders are also Owners, but no Participating Builder is a "Declarant," as such is provided for in the Original Declaration or in CCIOA

**Section 1.16. Participating Builder Rights and Exemptions.**

"Participating Builder Rights and Exemptions" means the various rights, limitations and exemptions of the Participating Builders that are provided for in this Restated Declaration, including those contained in Sections 1.9, 1.21, 2.6, 2.9, 3.13, 4.1, 4.10, 4.11, 5.3, 7.2, 9.3, 9.4, 9.6, 12.4, 12.5, 12.8, 12.9, 12.10, 12.11, 12.12, 12.16 and 12.17. All of the Participating Builder Rights and Exemptions expire ten (10) years after the date of Recording of this Restated Declaration.

**Section 1.17. Permittees.**

"Permittees" shall mean and refer to any family members, tenants, subtenants, licensees, occupants, invitees, guests or visitors, of an Owner.

**Section 1.18. Person.**

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

**Section 1.19. Records.**

"Records" means the official real property records of the County of Douglas, Colorado; "to Record" or "to be Recorded," means to file for recording in the Records; and "of Record" and "Recorded" means having been recorded in the Records.

**Section 1.20.      *Restated Declaration.***

"Restated Declaration" means this Amendment In Its Entirety and Restatement of Declaration of Protective Covenants, Conditions and Restrictions For Brookwood Subdivision Filing No. 1 (Timber Ridge).

**Section 1.21.      *Rules and Regulations.***

"Rules and Regulations" means, collectively, all Association rules and regulations, and policies and procedures, adopted, amended, repealed and/or enforced by the Board of Directors; provided that, prior to expiration of the Participating Builders Rights and Exemptions, as provided in Section 1.16 hereof, each adoption, amendment and repeal of the Rules and Regulations requires the prior, written approval of the Participating Builder that owns the largest number of Lots that are owned by Participating Builders, all as more fully provided in Section 2.6 of this Restated Declaration. The possible scope of the Rules and Regulations includes those matters provided for in the aforesaid Section 2.6. The Rules and Regulations shall be in accordance with this Restated Declaration.

**Section 1.22.      *Security Interest.***

"Security Interest" means an interest in one or more Lots, real estate or personal property, created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 3.10 of this Restated Declaration (Certificate of Status of Assessments) and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 5.2 of this Restated Declaration (General Provisions of Insurance Policies), "Security Interest" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is Recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the County in which such property is located show the Administrator as having the Record title to the Lot.

**Section 1.23.      *Security Interest Holder.***

"**Security Interest Holder**" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Section 3.10 of this Restated Declaration (Certificate of Status of Assessments) and, for purposes of Section 5.2 of this Restated Declaration (General Provisions of Insurance Policies), the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is Recorded or not in the land records of the County in which such property is located, or as to which such land records otherwise show the said Administrator as having the Record title to the Lot), or any successor to the interest of any such Person under such Security Interest.

## **ARTICLE 2. ASSOCIATION**

### **Section 2.1. Authority of the Board of Directors.**

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

### **Section 2.2. Voting Rights.**

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

### **Section 2.3. Budget and Review or Audit.**

2.3.1. Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board of Directors shall give notice to the Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Board of Directors does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by sixty-seven percent (67%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board of Directors and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the



Owners.

2.3.2. At the election of the Board of Directors or as required pursuant to subsections 2.3.2.1 or 2.3.2.2 below, the Association's books and records shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified Person selected by the Board of Directors. Such Person need not be a certified public accountant except in the case of an audit. A Person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

2.3.2.1. An audit shall be required only when both of the following conditions are met:

(a) The Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000); and

(b) An audit is requested by the Owners of at least one-third (1/3) of the Lots represented by the Association.

2.3.2.2. A review shall be required only when requested by the Owners of at least one-third (1/3) of the Lots represented by the Association.

2.3.2.3. Copies of an audit or review under this subsection 2.3.2 shall be made available upon request to an Owner beginning not later than thirty (30) days after its completion.

2.3.3. In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under Section 2.3 of this Restated Declaration, Section 2.3 shall be deemed amended to require that which is required pursuant to CCIOA, as amended.

#### **Section 2.4. Association Books and Records.**

2.4.1. The Association's books and records shall be subject to an audit or a review as further provided in this Restated Declaration. Except as otherwise provided in subsections 2.4.2 and 2.4.3 below, the Association shall make reasonably available for inspection and copying by Owners, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of all of the Community's governing documents and financial documents as listed in the most recent available version of the contract to buy and sell real estate promulgated by the Colorado Real Estate Commission. The Person(s) accessing and/or copying such documents shall pay all costs associated therewith.

"Reasonably available" shall mean available during normal business hours, upon prior notice of at least five (5) business days, or at the next regularly scheduled meeting if such meeting occurs within thirty (30) days after the request.

2.4.2. Notwithstanding subsection 2.4.1 above, a membership list or any part thereof may not be obtained or used by any Person for any purpose unrelated to an Owner's interest as an Owner without the consent of the Board of Directors. Without limiting the generality of the foregoing, without the consent of the Board of Directors, a membership list or any part thereof may not be:

2.4.2.1. Used to solicit money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association;

2.4.2.2. Used for any commercial purpose; or

2.4.2.3. Sold to or purchased by any Person.

2.4.3. Notwithstanding subsection 2.4.1 above, the Board of Directors may, prior or subsequent to a request for inspection and/or copying, determine that items are confidential and will not be made available.

2.4.4. In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under this Section 2.4, this Section 2.4 shall be deemed amended to require that which is required pursuant to CCIOA, as amended.

**Section 2.5. Association Cooperation and/or Delegation.**

The Association shall have the right and authority to cooperate with, and/or delegate any matters to, any community, condominium, master or homeowners association(s), any metropolitan or other district(s), and/or any other Person(s), in order to increase consistency or coordination, reduce costs, or as may otherwise be determined by the Board of Directors.

**Section 2.6. Rules and Regulations.**

Rules and Regulations concerning and governing the Lots, Common Elements, and/or this Community, may be adopted, amended, repealed and/or enforced by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including the levying and collecting of fines for the violation of any of such Rules and Regulations; provided that, prior to expiration of the Participating Builders Rights and Exemptions, as provided in Section 1.16 hereof, each adoption, amendment and repeal of the Rules and Regulations requires the prior, written approval of the Current Participating Builder that owns the largest number of Lots that are

owned by Current Participating Builders. The Rules and Regulations may include: procedural requirements; interpretations and applications of this Restated Declaration and law, including blanket requirements, blanket interpretations, and blanket applications; covenants, conditions, restrictions, requirements, and/or other provisions, pertaining to any matters, including vehicles and animals; and may be different for different types or prices of Lots, construction or homes. Any Rules and Regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Restated Declaration and all provisions hereof.

**Section 2.7.        *Management Agreements.***

Any agreement for professional management of the Association's business shall have a maximum term of three (3) years and shall provide for termination by either party thereof, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice.

**Section 2.8.        *Authenticated Electronic Representation.***

Notwithstanding anything to the contrary contained in any of the Governing Documents, to the extent not prohibited by applicable law, the Association may use technology or electronic representation in completing its duties and responsibilities. In this regard, any reference in any of such documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent not prohibited by applicable law, the provisions of all of such documents shall be deemed to include provisions which permit such authenticated electronic activity.

**Section 2.9.        *Notice of Meetings and Other Matters of the Association.***

Notices of any meetings, news letters and other correspondence or documents concerning the Association shall be sent to each Participating Builder at the same time that such notices, news letters, and other correspondence or documents, are sent to the Members. However, as to each Participating Builder, the foregoing shall expire upon such Participating Builder, in writing, requesting the Association to not send such notices to such Participating Builder, or ten (10) years after this Restated Declaration was Recorded, whichever occurs first.

**ARTICLE 3.        ASSESSMENTS**

**Section 3.1.        *Personal Obligation for Assessments.***

Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association any and all assessments, as provided in this Restated Declaration; with such

assessments to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due and payable in full when due without notice or demand (except as otherwise expressly provided in this Restated Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments attributable to their Lot. Each assessment shall be the personal obligation of the Person(s) who was the Owner of such Lot at the time when the amount became due. The personal obligation for delinquent amounts shall not pass to such Owner's successors in title unless expressly assumed by them.

**Section 3.2.        *Purpose of Assessments.***

The annual assessments levied by the Association may be used to promote the recreation, health, safety and welfare of the residents of the Lots, and for all of those purposes and activities which may be required of the Association, or the Board of Directors, or which the Association, or the Board of Directors, may be empowered to pursue pursuant to this Restated Declaration or the Amended and Restated Articles of Incorporation or the Amended and Restated Bylaws of the Association, or by law.

**Section 3.3.        *Rate of Assessments.***

3.3.1.        Annual and special assessments shall be sufficient to meet the expected needs of the Association and, except as provided in the next sentence or elsewhere in this Restated Declaration, shall be apportioned among the Lots in accordance with their Allocated Interests.

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

**Section 3.4.        *Date of Commencement of Annual Assessments.***

The annual assessments shall commence at such time as the Board of Directors may determine. Annual assessments shall be based on an annual budget proposed by the Board of Directors and not vetoed by the Owners, as provided in this Restated Declaration. The annual assessments shall be due and payable in monthly installments, in advance, on the first day of each month, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines, provided that the first annual assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the then-current Association annual assessment.

**Section 3.5.        *Special Assessments.***

In addition to the annual assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of the votes of sixty-seven percent (67%) of a quorum of the Association's votes cast by Members voting in person or by proxy at a meeting duly called for this purpose, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement upon any portion of real property for which the Association has repair and/or replacement obligations, including fixtures and personal property related thereto, or for repair or replacement of any damaged or destroyed Improvements, or for the funding of any expense or deficit of the Association. Any such special assessment shall be set against each Lot in accordance with the Allocated Interests as set forth in this Restated Declaration. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with Section 3.6 hereof.

**Section 3.6.        *Notice and Quorum for Any Special Assessments.***

Written notice of any meeting called for the purpose of taking any action authorized under Section 3.5 hereof shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 3.7.        *Assessments/Charges for Services to Less Than All Lots.***

The Association may provide services to less than all of the Lots. If such services are not funded by the Association's annual or special assessments, then the Owner(s) of the applicable Lot(s) shall promptly, after demand, pay to the Association the anticipated or actual costs, fees and expenses for such services and/or reimburse the Association for the incurred costs, fees and expenses.

**Section 3.8.        *Association Lien.***

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

installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

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

**Section 3.9. *Priority of Association Lien.***

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

3.9.1.1. Liens and encumbrances Recorded before the Original Declaration was Recorded;

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

3.9.1.3. Liens for real estate taxes and other governmental assessments or charges against the Lot.

3.9.2. A lien under this Section is also prior to the Security Interests described in the preceding subsection 3.9.1.2 to the extent, if any, provided in CCIOA.

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

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

**Section 3.10.      *Certificate of Status of Assessments.***

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

**Section 3.11. *Application of Payments; Effect of Non-Payment; Association Remedies.***

3.11.1.      Payments received by the Association from or for Owners, shall be applied as determined by the Board of Directors.

3.11.2.      Any assessment or other amounts not paid within ten (10) days after the due date thereof may bear interest from the due date at the rate of twelve percent (12%) per annum, or at any higher rate (not to exceed 21% per annum) set by the Board of Directors, and the Board of Directors may charge a periodic late charge in such amount(s), and for such period(s), as may be set by the Board of Directors. The Association may bring an action at law against the Owner(s) personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained, including in a foreclosure action, such judgment or decree shall include reasonable attorney's fees, together with the costs of the action, and may include interest and late charges, as above provided. No Owner shall be exempt from liability for payment of assessments by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of the Lot against which the assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Restated Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

**Section 3.12.      *Surplus Funds.***

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

**Section 3.13.      *Working Capital Fund.***

The Association shall require the first Owner (other than the Participating Builders) of any Lot, who purchases that Lot from a Participating Builder, to make a non-refundable contribution to the Association in an amount equal to two (2) times the then current monthly installment of the annual assessment applicable to such Lot, regardless of whether or not annual assessments have commenced as provided in Section 3.4 hereof. Said contribution shall be collected and transferred to the Association at the time of closing of the sale by a Participating Builder of each Lot and shall be for the use and benefit of the Association, including to meet expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of assessments as the same become due. The Association is not required to keep any records with regard to working capital contributions, including amounts or use.

**Section 3.14.      *Other Charges.***

The Association may levy and assess charges, costs and fees in such amounts(s) as the Board of Directors may determine, including reimbursement of charges that are made to the Association by its managing agent or other Person, and including the following: copying of Association or other documents; returned checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; notices and demand letters; and charges incurred by the Association. All such charges, costs and fees, shall be in addition to the assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments.

**Section 3.15.      *Charges for Misconduct.***

If any Association expense is caused by the misconduct of any Owner, or his Permittees, the Association may assess that Association expense exclusively against such Owner and his Lot.

**ARTICLE 4.      DESIGN REVIEW**

**Section 4.1.      *Composition of DRC; Authority of Representative.***

4.1.1.      The Design Review Committee shall consist of three (3) or more natural persons. Until expiration of the Participating Builders Rights and Exemptions, as provided in Section 1.16 hereof, the members of the Design Review Committee shall be those persons who receive the most votes cast by the Current Participating Builders, as more fully provided in subsection 4.1.2 below. Subsequent to expiration of the Participating Builders Rights and Exemptions, as provided in Section 1.16 hereof, the Design Review Committee shall be appointed by the Board of Directors. The power to "**elect**" or "**appoint**" the Design Review Committee, as provided herein, shall include the power to: constitute the membership of the Design Review Committee; designate member(s) to the Design Review



Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Design Review Committee, with or without cause, and designate the successor thereof. Each such election and appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set by the electors or appointor. The designation of all then-current members of the DRC who were elected by the Participating Builders shall automatically expire upon expiration of the Participating Builders Rights and Exemptions, as provided in Section 1.16 hereof. The members of the Design Review Committee shall not be "officers" of the Association as a result of their membership on the DRC and thus, as a result of such membership on the DRC, shall not have any of the rights or duties attributable to officers of the Association.

4.1.2. For purposes of this Restated Declaration, the terms "**Current Participating Builder**" and "**Current Participating Builders**" mean those Participating Builders who, at the referenced time, are the fee simple title holders of at least one (1) Lot. A meeting of the Current Participating Builders may be called by any Current Participating Builder by giving, to all Current Participating Builders, at least two (2) days written notice of such meeting, which notice shall state the reason(s) therefore. At each meeting of the Current Participating Builders, each Current Participating Builder shall have one (1) vote for each Lot then owned in fee simple by such Current Participating Builder. The quorum required for each meeting of the Current Participating Builders shall be fifty-one percent (51%) of the votes then held by the Current Participating Builders.

4.1.3. The DRC may appoint a representative to act on its behalf. If the DRC does so, then the actions of such representative shall be the actions of the DRC, subject to the right of appeal as provided below. However, if such a representative is appointed by the DRC, then the DRC shall have full power over such representative, including the power to withdraw from such representative any of such representative's authority to act on behalf of the DRC and the DRC shall also have the power to remove or replace such representative.

**Section 4.2.            *Required Review and Approval; Reimbursement for Expenses.***

4.2.1. Except as provided in Sections 4.8 (Variance) and 4.11 of this Restated Declaration (Exemption of Participating Builders), no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Design Review Committee), shall have been first submitted to and approved by the Design Review Committee.

4.2.2. The Design Review Committee shall endeavor to exercise its judgment so that all Improvements generally conform to and harmonize with the existing surroundings, residences, landscaping and structures.

4.2.3. As part of the DRC's review and consideration of an application, the DRC may require the applicant to pay a one-time fee of \$250.00, or such other amount as may be set by the DRC. One of the purposes of such fee, if the same is levied, is to have the applicant pay, or reimburse the Association and/or the DRC, for the actual expenses incurred, or reasonably anticipated to be incurred, by the Association and/or the DRC incidental to such application. Such fee, if any, shall be levied in addition to the assessments against the Lot for which the request for Design Review Committee approval was made, but shall be subject to the Association's lien and subject to all other rights of the Association for the collection of assessments.

4.2.4. In addition to the required approvals by the Design Review Committee as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the Town of Castle Rock, if required, shall be a precondition to commencement of construction of, alteration of, addition to or change in any Improvement.

#### **Section 4.3.        *Procedures.***

The Design Review Committee shall decide each request for approval within forty-five (45) days after the complete submission of the application or request and all plans, specifications and other materials and information which the DRC may require in conjunction with such application or request. If the Design Review Committee fails to decide any application or request within forty-five (45) days after the complete submission of the plans, specifications, materials and other information with respect thereto, then such application or request for approval shall be deemed to have been denied by the DRC.

#### **Section 4.4.        *Vote and Appeal.***

A majority vote of the Design Review Committee is required to approve a request for approval pursuant to this Article, unless the DRC has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Design Review Committee denies a request for approval, then any Owner shall have the right to an appeal of such decision to the full DRC, upon a written request therefor submitted to

the DRC within ten (10) days after such decision by the DRC's representative. The decision of the DRC shall be final. No additional or further appeals are permitted, nor will any be recognized.

**Section 4.5.        *Prosecution of Work After Approval.***

After approval of any proposed Improvement by the Design Review Committee, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the terms and conditions of the approval. Failure to complete the proposed Improvement within one (1) year after the first physical work on the proposed Improvement is done at the Lot on which such Improvement is to be located, or such lesser time as may be provided on the application for approval, or failure to complete the Improvement in complete conformance with terms and conditions of the approval, shall constitute noncompliance with the requirements for approval issued by the Design Review Committee and a violation of this Article; provided, however, that the Design Review Committee may grant extension(s) of time for completion of any Improvement(s).

**Section 4.6.        *Inspection of Work.***

The Design Review Committee or its duly authorized representative, shall have the right to inspect any Improvement prior to, during or after completion. However, unless the DRC expressly states, in a written document, that an Improvement is being, or has been, completed in conformance with the DRC's approval therefor, no such conformance shall be implied from any inspection of the Improvement.

**Section 4.7.        *Design Guidelines.***

The Design Review Committee has the authority to adopt, amend, repeal, and enforce Design Guidelines. The Design Guidelines may clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the DRC, may state procedural requirements, may specify acceptable Improvement(s) that may be installed without the prior approval of the DRC, may include architectural standards, design guidelines, covenants, conditions, restrictions, requirements, and/or other provisions, and may include provisions that are different for different types, sizes or prices of Lots, construction or dwelling units. In addition, the Design Guidelines may provide for blanket approvals, interpretations or restrictions. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval.

**Section 4.8.        *Variance.***

The Design Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 9 of this Restated Declaration

(Restrictions), in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or Improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

**Section 4.9.        *Waivers; No Precedent.***

The approval or consent of the Design Review Committee or any representative thereof, to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the DRC, or any representative thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter.

**Section 4.10.      *Liability.***

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

**Section 4.11.      *Exemption of Participating Builders.***

Notwithstanding anything to the contrary, each of the Participating Builders shall be exempt from all provisions of this Article, except the requirements to obtain approval of the governmental entities with jurisdiction thereover as provided in Section 4.2.4 of this Restated Declaration.

**ARTICLE 5.      INSURANCE**

**Section 5.1.        *Insurance.***

The Association shall maintain insurance in connection with the Common Elements. The Association shall maintain insurance as required by applicable law or applicable regulation, including CCIOA, which insurance shall include property insurance, commercial general liability insurance and fidelity coverage. In addition, the Association may maintain insurance against such

other risks as the Board of Directors may determine, including personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors or officers on behalf of the Association and workers' compensation insurance, and may maintain insurance on such other property and/or against such other risks, as the Board of Directors may determine.

**Section 5.2.            *General Provisions of Insurance Policies.***

All policies of insurance carried by the Association shall comply with this Section. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. Additionally, each Owner and each Security Interest Holder shall be beneficiaries of the policy in a percentage equal to the Owner's Allocated Interest. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest on the Lot insured by such insurance policy. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any Owner or member of such Owner's household. Further, all policies of insurance carried by the Association shall also contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

**Section 5.3.            *Deductibles.***

The Association may adopt and establish written non-discriminatory rules and regulations or policies and procedures relating to the responsibility for deductibles. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association, may be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, may be apportioned among the Persons sharing in a joint duty of repair and maintenance, and/or may be partly or wholly borne by the Association, and/or may be shared by any such Person(s) and the Association, all at the election of the Board of Directors; provided that, until expiration of the Participating Builders Rights and Exemptions, as provided in Section 1.16 hereof, a deductible, or any portion thereof, may not be levied against or apportioned to a Participating Builder without the prior, written approval of such Participating Builder. Subject to the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a

