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**AMENDED AND RESTATED DECLARATION
FOR
CHEROKEE RIDGE ESTATES**

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AMENDED AND RESTATED DECLARATION FOR CHEROKEE RIDGE ESTATES

THIS AMENDED AND RESTATED DECLARATION for Cherokee Ridge Estates is made effective upon recording.

RECITALS

I. Cherokee Ridge Estates, LLC, a Colorado limited liability company ("Declarant"), recorded a Declaration for Cherokee Ridge Estates on July 10, 2002 at Reception No. 02067874, Douglas County Clerk and Recorder (hereinafter referred to as the "Original Declaration").

II. The Original Declaration has been amended by the First Amendment to the Declaration for Cherokee Ridge Estates recorded on December 9, 2002 at Reception No. 2002133731, Douglas County Clerk and Recorder, and by the First Supplemental Declaration for Cherokee Ridge Estates recorded on March 10, 2003 at Reception No. 2003032002, and the Second Supplemental Declaration for Cherokee Ridge Estates recorded on August 21, 2003 at Reception No. 2003126357 of the aforesaid records.

III. All that property defined as "Common Elements" in the Original Declaration was transferred to Cherokee Ridge Estates Metropolitan District by Warranty deed dated November 19, 2003 and recorded on November 26, 2003 at Reception No. 2003169525.

IV. Declarant assigned its rights to Camerata Homes, LLC, a Colorado limited liability company ("Successor Declarant") by that Assignment of Declarant Rights recorded on December 27, 2006 at Reception No. 2006110167, Douglas County Clerk and Recorder.

V. A Lot Line Adjustment and Building Envelope Vacation was recorded on February 27, 2014 at Reception No. 2014009636, Douglas County Clerk and Recorder.

VI. Article 15, Section 15.4 of the Original Declaration provides that it may be amended upon approval of the Board of Directors and at least 51% of the votes in the Association.

VII. The purposes of this Amended and Restated Declaration include, but are not limited to the following: to update the Original Declaration to comply with current state law; to delete Declarant rights and responsibilities that are no longer applicable; to clarify relationships between the Metropolitan District and the Association, to remove unreasonable restrictions on the Community, to update provisions so as to allow the Board of Directors to efficiently operate the Community and deal with Community concerns; to add provisions that provide tools for the Association to effectively solve problems and enforce the Declaration, Bylaws and Rules and Regulations.

VIII. The Executive Board and Members holding at least 51% of the votes in the Association desire to amend and restate the Original Declaration and have approved this Amended and Restated Declaration (hereinafter referred to as the "Declaration") in writing and the Members have determined this Declaration to be reasonable and not burdensome

NOW, THEREFORE, the Original Declaration is replaced by the covenants, servitudes, easements and restrictions set forth below:

ARTICLE 1. SUBMISSION OF REAL ESTATE: DEFINED TERMS

Section 1.1 **Submission of Real Estate**. The real estate described on Exhibit A together with all easements, rights, and appurtenances thereto and the Improvements to be made

thereto (as defined below), together with such additional real property as may be added pursuant to this Declaration (collectively, the "Real Estate") to the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq., as it may be amended from time to time (the "Act"). All of the Real Estate shall be held or sold, and conveyed subject to the following easements, restrictions, covenants and conditions. This Declaration is made for the purpose of protecting the value and desirability of the Real Estate, that this Declaration shall run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of the Association and each unit owner. For purposes of the Act, the Common Interest Community shall be a Planned Community.

Section 1.2 **Defined Terms.** Each capitalized term not otherwise defined in this Declaration or in the recorded plats or Condominium Maps for this Planned Community shall have the meaning specified or used in the Act.

1.2.1 **Allocated Interests.** The Common Expense Liability and votes in the Association allocated to each unit pursuant to the terms of this Declaration.

1.2.2 **Article of Incorporation.** The Articles of Incorporation for Chrokcc Ridge Estates Homeowners Association, Inc., a Colorado nonprofit corporation, as the same may be amended from time to time.

1.2.3 **Association.** CHEROKEE RIDGE ESTATES HOMEOWNERS ASSOCIATION, INC., a Colorado non-profit corporation, its successors and assigns.

1.2.4 **Board or Board of Directors.** Board or Board of Directors means the body responsible for management and operation of the Association (referred to in the Act as the "Executive Board").

1.2.5 **Bylaws.** The Bylaws of the Association as amended from time to time.

1.2.6 **Common Elements.** All real and personal property which the Association owns, leases or otherwise holds possessory or use rights, or easements over across and upon as provided in this Declaration or the Plat, in and for the common use and enjoyment of the Owners with the Real Estate or outside the Real Estate, and all improvements thereon. As of the date of this Declaration, there are no Common Elements.

1.2.7 **Common Expense Assessment(s): Assessment(s).** In addition to the definition included in the Act, these terms shall include the following items levied against a particular Owner or Unit; (a) the Owner's Allocated Interest in the Common Expenses (b) late charges, attorney fees, fines and interest charged by the Association at the rate as determined by the Board of Directors; (c) charges against a particular Owner and the Unit for the propose of reimbursing the Association for expenditures and other costs of the Association incurring any violation of the Governing Documents by the Owner or Related Users; (d) charges levied against an Owner due to Owner's negligence or misconduct ("Default Assessment"); and (e) any sums permitted by the Governing Documents or the Act to be assessed against a particular Owner or Unit.

1.2.8 **Common Expenses.** As used in this Declaration, this term includes all charges levied by and for the benefit of the Association pursuant to the Governing Documents, including, but not limited to: (a) annuals costs and expenses of the Association resulting from owning, leasing, using, maintaining or otherwise controlling any real or personal property; (b) expenses incurred by the Association pursuant to this Declaration; (c) Special Assessments as defined in Article 7; and (d) amounts necessary to fund reserves.

1.2.9 Community: Common Interest Community. The planned community of "Cherokee Ridge Estates", including all real and personal property therein, created by this Declaration.

1.2.10 Covenants. Collective term for all promises, restrictions, reservations, conditions, terms, easements, and rights-of-way specifically set forth in this Declaration, or referenced in this Declaration and set forth in the Governing Documents, as the same may be adopted and amended from time to time.

1.2.11 Design Guidelines. Collective reference to all written design and development guidelines, policies and procedures, application and review procedures and fee schedules, and all architectural controls which shall apply to the placement, installation, erection and construction of all Improvements made within the Real Estate, and which are enacted by the Board of Directors pursuant to its rule-making authority.

1.2.12 Design Review Committee. The Committee appointed by the Board of Directors for the purpose of establishing architectural control over the Common Interest Community to insure the proper and appropriate and harmonious development and enhancement of the Common Interest Community, including enforcing Design Guidelines, Owner's maintenance responsibilities and other provisions of the Governing Documents.

1.2.13 First Mortgage. A mortgage, deed of trust, deed to secure a debt, or any other form of security instrument affecting title to a Unit (collectively, "Mortgage"), which is subject only to governmental liens, the lien for real property taxes, a portion of the Common Expense Assessment, and other liens made superior by Colorado law.

1.2.14 Governing Documents. Collective reference to those documents which govern the operation of the Association and the Community, including: (a) the Articles of Incorporation; (b) the Bylaws; (c) the Rules and Regulations (including the Design Guidelines); (d) all recorded plats affecting the Community; (e) this Declaration; and all policies set by the Board of Directors, as one or more of the same may be amended from time to time.

Each and every provision of the Governing Documents shall be given the force and effect as if set forth in this Declaration.

1.2.15 Improvements. "Improvement" shall mean without limitation, buildings, outbuildings (including storage sheds), painting or other finish materials on any visible structure, additions and/or expansions, garages, carports, driveways, swimming pools, stairs, walkways, patios/decks and patio/deck covers, awnings, hot tubs, Jacuzzis and/or saunas, exterior light fixtures, poles, basketball backboards and hoops, whether fixed or movable, play yards (including swing sets and jungle gyms), exterior tanks, solar collectors, fences (including dog runs), screening walls, retaining walls, sprinkler systems, foundations, ponds, hedges, windbreaks, gardens, trees, shrubs, flowers, vegetables, sod and other plantings, rock gravel, bark, mulch and any other landscaping components, signs, exterior decorations, and mailboxes and any other improvements to a Unit.

1.2.16 Owner. One or more individuals or entities who hold the record title to any Unit, excluding those having such interest merely as security for the performance of an obligation.

1.2.17 Metropolitan District or Metro District. Metropolitan District or Metro District refers to the Cherokee Ridge Estates Metropolitan District established pursuant to a Service Plan to service the Common Interest Community.

1.2.18 Plat. The Final Plat for CHEROKEE RIDGE ESTATES, recorded on July 11, 2002 at Reception No. 02067847, County of Douglas, State of Colorado and any amendments or re-plats thereof of all or a portion of land within the Community. The "Notes" on the various sheets comprising the Plat are hereby incorporated herein by this reference and shall be fully enforceable as though set forth herein.

1.2.19 Related User. Any person who: (a) resides with an Owner within the Unit; (b) is a guest or invitee of an Owner; (c) is an occupant or tenant of a Unit; and (d) any family member, guest, invitee or cohabitant of the foregoing.

1.2.20 Rules and Regulations. Collective term for all rules, regulations, policies, procedures and guidelines of the Association, in general, and the Design Guidelines, specifically, as the same may be adopted and amended from time to time by the Executive Board pursuant to the Act, this Declaration and the Bylaws.

1.2.21 Unit. A portion of the Real Estate designated for separate ownership, together with any Improvements thereon, as described by reference to the numbered lots of land shown upon the Plat. Without regard to the term used in this Declaration or the Plat, each "lot" shall be considered a "unit" as that term is defined by the Act.

ARTICLE 2. GENERAL STATEMENT OF COVENANTS

Section 2.1 Covenants Bind the Real Estate. The Real Estate shall be held, sold and conveyed subject to the Covenants for the purpose of protecting the value and desirability of the Real Estate and any other purposes incidental thereto, and all Covenants shall continue to run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof and the Association.

ARTICLE 3. UNITS

Section 3.1 Number of Units. There are 43 Units included in the Common Interest Community.

Section 3.2 Identification of the Units/Unit Descriptions. Every contract for sale, deed, lease, or security interest with another legal instrument shall legally describe a Unit by its identifying lot number as shown on the Plat.

ARTICLE 4. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 4.1 Membership and Voting. Every Owner of any Unit shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and ownership of a Unit shall be the sole qualification for such membership. Where more than one person holds an interest in any Unit, all such persons shall be members, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. One vote in the affairs of the Association and the Community is allocated to each Unit. In no event shall more than one vote be cast with respect to any Unit, or no less than one vote be cast with respect to any Unit, and the vote cannot be split in any manner, and all votes shall be cast in accordance with the Bylaws.

Section 4.2 Rights Subject to Governing Documents. Membership and voting rights are subject to the Governing Documents.

ARTICLE 5. THE ASSOCIATION

Section 5.1 General Purposes and Powers. The Association, acting in all instances through its Board of Directors unless otherwise required by the Act or this Declaration, shall perform such functions and manage and operate the Common Interest Community and the Real Estate as provided in this Declaration so as to further the interests of the Owners. The Association shall have all power necessary or desirable to effectuate such purposes and shall act pursuant to the Governing Documents. All Owners shall be deemed to have assented to, ratified and approved such designation of rights, duties and authority.

Section 5.2 Powers: Duties. The Association, acting in all instances by and through the Board of Directors unless specifically reserved to its members, shall have the following specific powers and duties:

5.2.1 The Association shall have all the powers, authority and duties permitted pursuant to the Act and the Colorado Revised Nonprofit Corporation Act, C.R.S. § 7-121-101 et seq.

5.2.2 The Association shall have all of the powers, authority and duties necessary and proper to manage the business affairs of the Common Interest Community.

5.2.3 The Association shall have the irrevocable right to have access to each Unit from time to time during reasonable hours to the extent deemed necessary to carry out any rights or obligations set forth in this Declaration, or at any time and by force, if necessary, to prevent damage to any real or personal property within the Common Interest Community.

5.2.4 The Association may undertake any activity, function or service for the benefit or to further the interests of the Owners.

5.2.5 The Association shall have the absolute right to engage a community association manager as more particularly provided in the Bylaws.

5.2.6 The Association may assign its future income, including its rights to receive Common Expense Assessments, upon the affirmative vote of the Owners to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose, in accordance with the Bylaws.

5.2.7 The Association shall have complete authority and control to issue and amend restrictions on use and occupancy of the Units in addition to those contained in this Declaration.

5.2.8 The Association shall establish and enforce Design Guidelines and other Rules and Regulations as it deems necessary to ensure the proper use, development, enhancement, repair, maintenance and replacement of real and personal property within the Common Interest Community, and, subject to the provisions of Article 8 below, to appoint persons to serve on the Design Review Committee.

5.2.9 As allowed by the County, the Association shall have the authority to assign its maintenance and other obligations to a Metropolitan District that services the Real Estate and to make any reduction in Assessments as such an assignment allows.

Section 5.3 Promulgation of Rules and Regulations. The Board of Directors may adopt, amend, repeal and enforce Rules and Regulations, and to impose fines for violations thereof, as it deems desirable with respect to the interpretation and implementation of this

Declaration and the operation of the Association, including Units, in accordance with the following:

5.3.1 The Rules and Regulations shall be reasonable and uniformly applied;

5.3.2 The Rules and Regulations shall be in effect 15 days after delivery of Notice of adoption, amendment or repeal of any Rule or Regulation, in writing to each Owner. Copies of currently effective Rules and Regulations shall be made available to each Owner upon request;

5.3.3 Each Owner shall comply with the Rules and Regulations and shall see that Related Users shall comply with the Rules and Regulations; and

5.3.4 The Rules and Regulations shall have the same force and effect as if they were part of this Declaration. In the event of conflict between the Rules and Regulations and this Declaration, this Declaration shall prevail, but only to the extent that such Rule or Regulation invalidates a specific provision in this Declaration.

Section 5.4 Enforcement. The Association shall have the power to enforce provisions in its Governing Documents and shall take such action as the Board of Directors deems desirable to cause such compliance by each Owner and each Related User, by any of the following means:

5.4.1 By entry upon any Unit after notice and an opportunity to be heard (unless a bona fide emergency exists), without liability to the Owner thereof, for the purpose of enforcement or causing compliance including by curing said violation;

5.4.2 By commencing and maintaining actions and suits: (i) to recover damages; or (ii) to restrain and enjoin any violation or threatened violation of, or compel compliance with, provisions of the Governing Documents by mandatory injunction or otherwise;

5.4.3 By suspension of the voting rights of an Owner for up to 30 days following any violation, or so long as the violation continues, whichever is longer;

5.4.4 By levying and collecting, after notice and an opportunity to be heard, fines against any Owner for violation by such Owner or a Related User, as a Common Expense Assessment to be secured by a continuing lien, from the date it is levied, and by foreclosure of such lien.

Section 5.5 Indemnification. To the full extent permitted by law, each officer, committee member and member of the Board of Directors of the Association shall be and are hereby indemnified by the Association against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon them in any proceedings to which they may be a party, or in which they may become involved, by reason of being or having been an officer, committee member, or member of the Board of Directors of the Association, or any settlements thereof, whether or not they are an officer, committee member, or member of the Board of Directors of the Association at the time such expenses are incurred; except in such cases wherein such officer or Board member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Association.

Section 5.6 Governmental Interests. To the extent that portions of the Real Estate have been designated for fire, police, water, drainage, utility facilities, parks, and other

public facilities, the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site.

Section 5.7 **Right to Notice and Comment.** Pursuant to C.R.S. § 38-33.3-205(1)(o), before the Board of Directors amends the Bylaws or adopts or amends Rules and Regulations, or whenever the Governing Documents require an action be taken after "Notice and Comment," and at any other time the Board of Directors determines, the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Further, any Owner may give "Notice and Comment" to the Owners of any matter affecting the Common Interest Community, and Owners shall then have the right to comment, orally or in writing, on the matter. Notice shall be given to each Owner in writing, delivered personally or by regular mail or by electronic mail to all Owners at such address as appears in the records of the Association, or notice shall be posted on the Association's website or published in a newsletter or similar publication which is routinely circulated to all Owners. The Notice shall be given not less than three days before the proposed action is to be taken. The notice shall invite comment to the Board of Directors or an Owner, orally or in writing, before the scheduled time of any meeting.

Section 5.8 **Disclaimer Regarding Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Real Estate designed to make the Real Estate safer than it otherwise might be. The Association and any representative or agent of the Association, shall in no way be considered insurers or guarantors of security within the Real Estate, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that providing gated entries, if such is provided, constitutes any form of security, and no representation or warranty is made that any fire protection system, burglar alarm system or other security system which may be provided cannot be compromised or circumvented, and that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform all Related Users of the terms of this section 5.8 and that such Related User and anyone with the Real Estate assumes all risks for loss or damage to persons and to property resulting from acts or failure to act of third parties.

ARTICLE 6. MAINTENANCE OF THE REAL ESTATE

Section 6.1 **Association Responsibilities - General.** Except as otherwise specifically provided in this Declaration, the Board of Directors shall determine the specifications, scope, extent, nature and parameters of the Associations' maintenance responsibilities. Tracts A, B, C, and D and private roads have been conveyed to the Cherokee Ridge Estates Metropolitan District. The Metro District's obligations to operate, insure, maintain, and repair such property within the Common Interest Community are set forth in the Metro District's Service Plan, as may be amended. The Association will provide a common waste management service for all Units and may make available recycling services.

Section 6.2 **Owners' Responsibility.** Each Owner shall be responsible for maintaining his or her Unit and all Improvements within the Unit, and all landscaping and other flora located within any public right of way over or upon the Unit except to the extent that such maintenance responsibility is assigned to or otherwise assumed by the Association or the Metro District as provided in section 6.1. Each Owner shall be responsible for irrigating and sodding of lawn areas with the Owner's Unit, as needed; replacing landscaping materials; replacing flower beds; and maintenance, in winterizing, repairing and replacing, as necessary, the irrigation and sprinkler system serving the Unit and any damage to landscaping resulting from such repairs or replacements in strict compliance with the Design Guidelines.

In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibilities, the Association may perform such maintenance responsibilities

and assess all costs incurred by the Association against the Unit and the Owner as a Common Expense Assessment. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

Section 6.3 **Standard of Performance.** Except as otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility of maintenance shall include responsibility for repair and replacement, as necessary. Neither the Association nor an Owner shall be liable for any damage or injury occurring on, or arising out of the condition of property which it does not own, except to the extent that it has been negligent in the performance of its maintenance responsibilities.

ARTICLE 7. COVENANT FOR COMMON EXPENSE ASSESSMENT

Section 7.1 **Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments.** Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association Assessments pursuant to the Governing Documents. Such Assessments shall be the personal obligation of the Owner of such Unit at the time when the Assessment or other charges became due. The Assessments shall be a charge on each Unit, and the Association shall have a continuing lien upon the Unit against which each such Assessment is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums shall not pass to a successor in title unless expressly assumed by them. No owner may become exempt from liability for payment of the Assessments by abandonment of the Unit against which the Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

The Assessment shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. The budget shall include: a yearly amount sufficient to cover operating expenses. Assessments may be collected in monthly, quarterly, semi-annual or annual installments, or in any other manner as determined by the Board of Directors. All reserve accounts shall be maintained separately from operation accounts of the Association. Assessments shall be used exclusively to promote the welfare of the Unit Owners and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or other Governing Documents, or by law.

Section 7.2 **Purpose of Assessments.** In addition to such other purposes as set forth in the Act, Assessments shall be used for the purposes of promoting the health, safety, and welfare of Owners and Related Users, and in particular:

7.2.1 To enforce all provisions of the Governing Documents;

7.2.2 To exercise all rights and powers and to discharge all duties and obligations pursuant to the Act and the Governing Documents;

7.2.3 To discharge all expenses incurred by the Association in the alteration, maintenance, repair and replacement of any property the Association may elect to so alter, maintain, repair or replace pursuant to the Governing Documents;

7.2.4 To fund any operating deficit or reserves the Association deems necessary to meet its financial obligations; and

7.2.5 To comply with any requirements of Douglas County as set forth in Section 6.1 above.

Section 7.3 Apportionment of Common Expenses. Except as provided below and elsewhere in this Declaration, all Common Expense Assessments shall be assessed against all Units in accordance with the formula for liability for the Common Expenses as set forth in this Declaration.

7.3.1 Any Common Expense for services provided by the Association to an individual Unit pursuant to the Governing Documents or at the request of the Owner may be assessed against that Unit.

7.3.2 If a Common Expense is caused by the misconduct of an Owner, the Association may assess that expense exclusively against that Owner and that Unit, in addition to sums charged to the Owner pursuant to Section 7.4 below.

7.3.3 Fees, charges, taxes, impositions, late charges, fines, attorney fees, collection costs and interest charged against an Owner are enforceable as Common Expense Assessments.

7.3.4 Common Expenses attributable to fewer than all Units may be assessed exclusively against the Units benefited, may be levied at any time, shall be due and payable as established by the Board, and are exempt from any Special Assessment membership voting requirements called for under the Declaration.

Section 7.4 Default Assessments. In the event that the Association incurs any Common Expenses as a result of the negligent or willful act or failure to act, or the misconduct of an Owner or an Owner's Related User, then the expense's, costs, and fees incurred by the Association shall be a personal obligation of such Owner, and such obligation shall be considered a Default Assessment, collectible as a Common Expense Assessment.

Section 7.5 Annual Assessment of Common Expense Assessments. The Association Assessments shall be made against all Units based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. The Association will cause a summary of the budget to be delivered to each Owner within 90 days after adopting the budget and set a date for a meeting of the Owners to consider the budget, which meeting will occur within a reasonable time after delivery of the budget summary. The budget and the assessment will become effective unless disapproved at a duly called Association meeting by a majority of the total Association vote; provided, however, if a quorum is not obtained at the annual or other meeting called to ratify the budget, the budget will become effective even though a vote to disapprove the budget could not be called at this meeting.

If the membership disapproves the proposed budget or the Association fails for any reason to determine the budget for the succeeding year, then and until a new budget is determined, the budget in effect for the current year will continue for the succeeding year. In such case, the Association may propose a new budget at any time during the year. The approval procedure set forth in this section for budgets will also apply to a new budget proposed by the Association.

Section 7.6 Special Assessments. The Association may at any time, from time to time, determine, levy and assess a Special Assessment applicable to that particular

assessment year for the purpose of defraying, in whole or in part, payments for any operating deficit and/or budgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of an Improvement that is a capital asset and any fixtures or personal property related thereto, and any acquisition of real property. A special assessment shall be ratified in the same manner as set forth in Section 7.5 above for ratification of the budget.

Section 7.7 **Lien Priority.** The Assessment of the Association is prior to all other liens and encumbrances on a Unit except: (a) liens and encumbrances recorded before the recordation of this Declaration; (b) liens for real estate taxes; (c) liens for charges or assessments by Douglas County as a result of the Associations' failure to perform its obligations set forth in this Declaration above, and any other governmental assessments or charges against the Unit; and (d) a First Mortgage on the Unit (except as allowed by the Act with regard to the Associations' limited lien priority). This section does not affect the priority of mechanics or materialmen's liens. The lien of the Association under this article is not subject to the provisions of any homestead exemption as allowed by state or federal law. Sale or transfer of any Unit shall not affect the lien for said Assessments except that the sale or transfer of any Unit pursuant to foreclosure of any First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment as provided by applicable law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Owner from continuing liability for any Assessment charges thereafter becoming due nor from the lien thereof.

Section 7.8 **Reserves/Surplus.** The Association shall establish an adequate reserve fund for the maintenance, repair and replacement of those portions of the Real Estate the Association is authorized under the terms of this Declaration maintain. Such Reserve fund shall be funded through the monthly payments of the annual Common Expense Assessments. Any surplus funds derived from the Assessments shall be transferred to the reserve fund or used for Association operations, in the Board of Directors' sole discretion and by acceptance of a deed to his or her Unit, each Owner hereby directs the Board to make this determination each year.

Section 7.9 **Effect of Non Payment of Assessments.** Any Assessment provided for in this Declaration, or any installment thereof, which is not fully paid within 10 days after the due date thereof, shall bear interest at the rate of 21% per annum or at such lesser rate from the due date as may be set by the Board from time to time in the Association's collection policy, and the Association may assess a monthly late charge thereon. Failure to make payment within the 60 days of the due date thereof shall cause the total amount of such Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, or any monthly or other installment thereof, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefore. The Association's costs of suit, expenses and reasonable attorney fees incurred simply by virtue of the failure of the Owner to timely pay Assessments when due, including attorney fees and costs for preparing and recording any lien notice, and the Associations' costs of suit, expenses and reasonable attorney's fees incurred for any such action and/or foreclosure proceedings, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Unit. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessments, or monthly or other installments thereof, that are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, and cast the votes appurtenant to such Unit,

and to convey or otherwise deal with the same. The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the Unit which accrued prior to the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

Section 7.10 **County Reimbursement.** Douglas County and the Board shall have the authority to assess Common Expenses against all Units for the purpose of reimbursing Douglas County for costs incurred as set forth in this Declaration. Such Assessments shall be due and payable within 30 days after demand and are exempt from any special assessment membership voting requirements called for under the Declaration.

Section 7.11 **No Waiver or Abandonment.** No Owner may be exempt from liability for payment of the Common Expenses by abandonment of the Unit against which the Assessments are made. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owner's from their obligation to pay.

Section 7.12 **Declaration is Notice.** Recording of the Declaration constitutes record notice and perfection of the lien for Assessments. No further recordation is required. However, the Association may prepare and record in the real property records of Douglas County, Colorado, a written notice setting forth the amount of any unpaid indebtedness, the name of the Owner, and a description of the Unit.

ARTICLE 8. DESIGN REVIEW

Section 8.1 **General.** No Improvements shall be placed, erected, or installed upon any Unit, and no Improvements (including staking, clearing, excavation, grading and other site work), exterior alteration of existing Improvements, or planting or removal of landscaping materials, shall take place except in compliance with the architectural review procedures and restrictions set forth in this Declaration and the Design Guidelines. The Association has the authority to select and employ professional consultants to assist it in discharging its duties. The cost of any consultants are to be paid by the Owner for which plans and specifications have been submitted whether or not submitted plans and specifications are approved. Prior to incurring consultant costs, the Association will notify the Owner of its belief that consultations are necessary. The Owner will then have the right to withdraw the submission. The Association may require payment of costs prior to approval of plans and specifications. The Association also may charge reasonable fees to cover the cost of review or inspections performed hereunder.

Section 8.2 **Design Review Committee.** The Design Review Committee shall consist of not less than three or more than five persons. The Design Review Committee is a Committee of, and subject to review by, the Board of Directors. The Committee shall be comprised of Owners without regard to special qualifications, and the person shall then be appointed by the Board. Notwithstanding the above, appointments shall be for staggered two year terms so as to provide reasonable continuity to the design review process. The Board of Directors may remove any appointee any time upon written notice to such appointee.

Section 8.3 **Guidelines and Procedures-General.** Amendments to the Design Guidelines may be recommended by the Design Review Committee and must be approved by the Board of Directors. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of Improvements previously approved once the approved construction or modification has commenced. The Design Guidelines may contain general provisions applicable to all of the Real Estate, as well as specific provisions which vary from one portion of the Real Estate to another depending upon the location, unique characteristics, and intended use. Design Guidelines shall also include the procedures, materials to be submitted and additional

factors, which will be taken into consideration in connection with the approval of any proposed Improvement. The Design Guidelines as the same shall be amended from time to time, shall not be recorded, but shall be considered incorporated herein by references throughout this Declaration and shall be enforceable as though set forth in full.

Section 8.4 Architectural Review Criteria. The Design Review Committee shall exercise its reasonable judgment so that proposed improvements, construction, alterations or landscaping conform to and harmonize with the existing surroundings, residences, landscaping and structures. The approval or consent on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. The standard for approval shall include, but not be limited to: (a) conformity and harmony of exterior appearances of structures with neighboring structures, including design compatibility and scale; (b) color and materials to be used; (c) effective location and impact on nearby Units; (d) relation to the natural environment; (e) preservation of aesthetic beauty and conformity with the specifications and purposes generally set out in this Declaration and in the Design Guidelines; and (f) any other matter deemed to be relevant or appropriate by the Committee.

Section 8.5 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 8.6 Right to Appeal. An Owner may appeal any decision of the Design Review Committee to the Board of Directors by written appeal submitted to the Board within 30 days of the date that the Design Review Committee decision or notice is mailed to the Owner. The Board of Directors shall review the decision of the Design Committee and all materials submitted to the Committee pursuant to the criteria set forth in Section 8.4 above and the Design Guidelines. Any decision of the Design Review Committee may be overruled and reversed by a majority of the members of the Board of Directors by a written decision setting forth the reasons for the reversal when the Board concludes that the Design Review Committee's decision was inconsistent with the criteria set forth in this article and the Design Guidelines. If the Board fails to make a decision on the appeal within 60 days of the date submitted by the Owner, then the appeal will be deemed denied. The Design Guidelines may establish reasonable fees for an Owner to file for a reconsideration by the Design Review Committee or to appeal a Committee decision to the Board of Directors.

Section 8.7 Enforcement. Any Improvements placed or made in violation of this article shall be deemed to be nonconforming. Upon written request from the Board of Directors or the Design Review Committee, Owners shall, at their own cost and expense, remove such Improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as requested, the Board of Directors or its designees shall have the right to enter the Unit, remove the violation, and restore the Unit to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against such Unit and collected as an Assessment. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this article and the Design Guidelines may be excluded by the Board of Directors from the Real Estate upon notice and an opportunity to be heard. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this article. These remedies are in addition to all other remedies available, including the authority to levy a fine and the Association's authority and standing, to pursue all legal and equitable remedies available to enforce the provisions of this article, and its decisions or those of the Design Review Committee. The Association shall have the right to seek attorney fees incurred in enforcing the provisions of this article.

Section 8.8 **Notice of Noncompliance.** If, as a result of inspections or otherwise, the Design Review Committee finds that any Improvement has been done without obtaining the approval of the Design Review Committee, or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the Design Review Committee, the Design Review Committee shall provide notice of the particulars of the noncompliance and shall require the Owner of the Unit upon which such Improvements have been made to take such action as may be necessary to remedy the noncompliance. At the sole election of the Board of Directors, if such noncompliance is not remedied within 30 days of the date set forth on the notice, the notice may be recorded in the records of the Douglas County Clerk and Recorder.

Section 8.9 **Nonliability of the Design Review Committee and Board of Directors Members.** Neither the Design Review Committee, the Board of Directors, nor any member thereof shall be liable to the Association or to any Owner or person for any loss, damage or injury arising out of or in any way connected with the performance of the Design Review Committee's or Board's respective duties under this Declaration or the Governing Documents, unless due to an act or omission not in good faith or which involves intentional misconduct or a knowing violation of a law (as defined by applicable Colorado law) by the Design Review Committee, Board of Directors, or individual members thereof. The Design Review Committee and Board of Directors shall not be responsible for reviewing, nor shall its approval of any plans and specifications be deemed approval of structural safety, engineering soundness, or conformance with building codes or any other laws or standards.

Section 8.10 **Variances.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions, Guidelines or Rules and Regulations, in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in the Declaration or in the Design Guidelines. Such variances must be evidenced in writing and must be signed by at least a majority of all members of the Design Review Committee and approved by a majority of the Board of Directors. Requests for variances must also be submitted to the Planning Department Board of Adjustment, pursuant to the variance request process specified in section 26 of the Douglas County Zoning Resolution, if required. The Design Review Committee may be designated as a referral agency during the application process. If such a variance is granted, no violation of the Covenants, conditions or restrictions contained in this Declaration or in other Governing Documents shall be deemed to have occurred with respect to the matter for which the variances was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision in the particular instance covered by the variance.

Section 8.11 **Scope of Judicial Review.** The scope of judicial review of any action taken by the Association or the Design Review Committee pursuant to this Article 8, including but not limited to the promulgation and enforcement of Design Guidelines and review, shall be limited to cases of fraud, bad faith, or lack of due process.

ARTICLE 9. INITIAL RESTRICTIVE COVENANTS

Section 9.1 **Plan of Development; Applicability Effect.** A general plan of development for the Real Estate has been established to protect the Owner's collective interests and the aesthetics and environment within the Real Estate. In furtherance of that general plan, this Declaration establishes affirmative and negative covenants, easements, and restrictions on the Real Estate, subject to certain rights vested in the Board of Directors and the Owners to enable them to respond to changes in circumstances, conditions, needs, and desires within the Community.

Section 9.2 **Authority to Promulgate Use Restrictions and Rules.** Initial use restrictions applicable to the Real Estate are set forth in section 9.5 below. Amendment of these use restrictions requires a vote of 51% of all votes in the Association. Provided, however in accordance with the duty to exercise reasonable business judgment, the Board of Directors may adopt Rules and Regulations which insignificantly modify, limit, create exceptions to, or expand the initial restrictions set forth in Section 9.5 below.

Section 9.3 **Owner's Acknowledgement.** All Owners and Related Users of Units are given notice that use of their Units is limited by provisions of the Governing Documents as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that all restrictions upon the use and occupancy of a Unit may change from time to time.

Section 9.4 **Rights of Owners.** The Board of Directors shall not adopt any Rule or Regulations or Use Restriction in violation of the following provisions:

9.4.1 **Equal Treatment.** Similarly situated Owners and occupants shall be treated similarly.

9.4.2 **Speech.** The rights of Owners to display political signs and symbols in or on their Units of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and Related Users.

9.4.3 **Religious and Holiday Displays.** The rights of Owners to display religious and holiday signs, symbols, and decorations inside residences and upon their Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

9.4.4 **Activities Within Dwelling.** No rule shall interfere with the activities carried on within the confines of dwellings on the Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, that block the views from other Units, or that create an unreasonable source of annoyance.

9.4.5 **Abridging Existing Rights.** If any rule would otherwise require Owners or Related Users to dispose of personal property which they owned at the time they acquired their interest in the Unit and such ownership was in compliance with all Rules and Regulations in force at that time, such rule shall not apply to any such Owners without their written consent. However all subsequent Owners and Related Users of that Unit shall comply with such rule.

Section 9.5 **Initial Use Restrictions.** The following activities are prohibited within the Community unless expressly authorized (and in such cases, subject to such conditions as may be imposed) by the Board of Directors:

9.5.1 **Subdivision.** Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit, either of which would also require approval by Douglas County after submittal of a proper land use application and filing plats showing the subdivision in the Douglas County land records.

9.5.2 Conditions to Conduct Business. Any business, profession, trade, or similar activity; except that an Owner may conduct business activities with the Unit so long as:

- (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside of the Unit;
- (b) the activity conforms to all zoning requirements for the Common Interest Community;
- (c) the activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of Owners or Related users; and
- (d) the activity is consistent with the residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners, or Related Users, as may be determined in the reasonable discretion of the Board of Directors.

9.5.3 Leases. The term "lease", as used herein, shall include any agreement for the leasing or rental of a Unit. Owners shall have the right to lease their Units only under the following conditions:

- (a) All leases shall be in writing.
- (b) All leases shall provide that the terms of the lease and the tenant's occupancy of the Unit shall be subject in all respects to the provisions of the Governing Documents and this Declaration, the Articles of Incorporation, the Bylaws, Rules and Regulations and Design Guidelines, as the same may be amended from time to time, and that any failure by such tenant to comply with the provisions of these instruments, in any respect, shall be a default under the lease, said default to be enforceable by the Association, the Owner/landlord, or both.
- (c) No lease shall be a term of less than 180 days.
- (d) Any Owner's right to lease is expressly conditional upon applicable Rules and Regulations
- (e) Any Owner who leases his Unit shall forward a copy of the lease to the Association within ten days after the execution by Owner and the tenant/lessee.

9.5.4 Restrictions on Vehicles.

- (a) Parking or storing of vehicles within the Real Estate, including upon streets owned by the Metro District or other public streets, if any, shall be subject to Rules and Regulations enacted by the Board of Directors and provisions of this Declaration.
- (b) No Unit or the streets shall be used as a parking, storage, display or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, motor home, running gear, boat or accessories thereto, or any type of cargo or commercial van, or any type of vehicle which is used for commercial purposes that bears a commercial logo, and/or printing or lettering; provided, however, such vehicles may be stored, parked or maintained wholly within the garage area of a Unit with the garage door in a closed position.
- (c) Recreational vehicles may be parked temporarily within Units or upon streets for purposes of loading and unloading; provided that no such vehicle may be so

parked for a period exceeding 72 hours in length and not more than two 72 hour periods in any consecutive 30 day period.

(d) No unlicensed, abandoned or inoperable vehicles of any kind shall be stored or parked within any Unit (unless stored completely within an enclosed garage) or street. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, van, recreational vehicle or other device for carrying passengers, goods or equipment which has not been driven under its own propulsion for a period of two weeks or longer, or which does not have installed within it an operable propulsion system.

(e) Unlicensed motor vehicles shall not be operated on the streets. The definition of unlicensed motor vehicles shall include, but is not limited to, go-carts, mini-bikes, motorized scooters, unlicensed motor bikes and all-terrain vehicles.

(f) Parking of permitted vehicles shall be subject to Rules and Regulations.

9.5.5 Nuisances. Any use, activity, or practice which is the source of or unreasonably interferes with the peaceful enjoyment or possession of a Unit or any portion of the Common Interest Community is prohibited. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed and may be enforced by the Association as if the same were contained in the Governing Documents. In no event shall the activities of the Owner which are reasonably necessary to the exercise of the rights granted by this Declaration and the Act, be considered a "nuisance" unless such activities interfere with any other Owner's use and enjoyment of such Owner's Unit. Nuisance shall be further defined by the Rules and Regulations.

9.5.6 Pets, Horses and other Non-Domestic Animals. Owners and Related Users may keep a reasonable number of dogs, cats, fish, or other domestic animals that are generally recognized household pets. No Owner, occupant or Related User may keep any horses or other non-domestic pets (including, but not limited to, livestock, pigs, poultry and bees). No Owners may keep, breed or maintain any pet for any commercial purposes. The Association may adopt reasonable Rules and Regulations designed to minimize damage and disturbance to other Owners, occupants and Related Users, including, but not limited to, Rules and Regulations regarding number of pets, dangerous pets, damage deposits, waste removal, leash controls, and noise controls. The right to keep household pets shall be subject to the guidelines adopted by the Board of Directors as part of the Rules and Regulations

No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Lot without the prior written consent of the Design Review Committee.

Pets may not be kept in any manner as to create a nuisance. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments and shall be subject to the Rules and Regulations.

Nothing in this provision shall prevent the Association from requiring removal of any animal that presents a threat to the health or safety of residents or from requiring abatement, including removal, of any nuisance or unreasonable source of annoyance in the Board of Directors' sole discretion.

Any Owner, occupant or Related User who keeps or maintains any pet in the Community shall be deemed to have agreed to indemnify and hold the Association, its directors, officers, and

agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Community.

9.5.7 Wildlife. Any interference with wildlife within the Real Estate is prohibited, including, but not limited to feeding, limiting, trapping, touching, chasing, catching, or enticing them. Homeowners must acknowledge there is a wildlife corridor running through the Real Estate, which must be respected. Homeowners must acknowledge they may see bears or mountains lions on occasion because their houses lie in bear habitat. Homeowners should expect damage from deer and elk to ornamental plantings.

9.5.8 Feeding Pets. Pets shall not be fed outdoors; nor shall pet's food or dishes be stored or kept outdoors. The potential for bears and mountain lions on the Real Estate mandates that food of any kind must not be left outdoors.

9.5.9 Trash. Trash shall be tightly controlled by all owners. It shall not be stored outside. On trash pickup days, trash containers may be set out in the morning and must be brought in that same evening. Only approved containers may be used; no bags or uncovered containers may be set out for pickup.

9.5.10 Water/Maximum Irrigated Area. All water is owned and managed by the Metro District. The manicured, intensely irrigated lawn area for any Unit shall be limited to a maximum of 12,000 square feet, which must be within the building envelope. All water use is subject to the judgments and decrees entered in Case No. 98 CW 402 and Case No. 99 CW 165 and the rules and regulations of the Metro District.

9.5.11 Fences. Fences outside the building envelopes are prohibited. A full enclosure shall be limited to a maximum of 25,000 square feet. A full enclosure shall be restricted to the side and/or rear segment of the building envelope and shall be constructed of one of the following: (a) two- or three-rail jumbo split rail fences not to exceed four feet in height, or (b) wildlife-friendly architecturally detailed iron fence not to exceed four feet in height. Dog runs, located near the residence, may be allowed by Design Guidelines; however, if they are allowed, shall not exceed six feet in height nor 300 square feet in coverage and shall be constructed of split rail or architecturally detailed iron fences. Design Guidelines shall govern full enclosure fences and dog runs and may provide for limited visibility wire mesh therefor. Design Guidelines may provide for privacy screens to enclose a limited area in proximity of the residence.

ARTICLE 10. OTHER EASEMENT DEDICATIONS AND RESERVATIONS

Section 10.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Metro District property and between adjacent Units due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of no more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of an Owner.

Section 10.2 Easements for Utilities, Etc. There are hereby reserved unto Metro District and the Association, gas, electric, telephone and other utility companies, access and maintenance easements upon, across, over, and under all of the Real Estate to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining any cable television systems, security and similar systems, roads, walkways, bicycle pathways, wetlands, drainage systems, street lights, signage, and all utilities including, but not limited to, water,

sewers, meter boxes, telephone, gas, and electricity, and for the propose of installing any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a dwelling on a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

The local water supplier, electric company, telephone company and natural gas supplier have easements across the Real Estate for ingress, egress, installation, reading, replacing, repairing and maintaining utility lines, meters and boxes, as applicable. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit without the Owner's consent.

Section 10.3 **Perimeter Fence; Structural and Decorative Walls Within the Real Estate.** Subject to Douglas County guidelines and the Cherokee Ridge Metropolitan District Service Plan, as such plan may be amended, the Metro District shall be entitled to construct and maintain a perimeter fence surrounding the Real Estate and has an easement over and upon all Units upon which such perimeter fence may be constructed and maintained. The Owners of all Units on which any portion of such perimeter fence is located shall grant authorized agents of the Metro District reasonable access for purposes of constructing, maintaining, or replacing such Improvement, if such Improvements are constructed. All such perimeter fencing constructed by or transferred to the Metro District shall be deemed to be owned by the Metro District or its successor. Any wildlife-friendly fencing on a Unit, as such is defined and approved in accordance with Douglas County guidelines, which is installed by Declarant, shall be required to be maintained, and replaced as necessary, with wildlife-friendly fencing.

Section 10.4 **Septic and Well Maintenance and/or Monitoring.** The Metro District has an easement upon all Units (including residences upon reasonable prior notice) for the purpose of inspecting or maintaining, if necessary, septic systems and for obtaining meter readings on wells.

Section 10.5 **Water Line Well Easements.** The Metro District has an easement upon lot 23 and lot 44 for the purpose of installing and maintaining water lines running off the wells on those lots to fire cisterns. The Metro District has an access easement for any purposes related to such lines and wells.

Section 10.6 **Right of Entry.** In addition to the rights granted to the Association in this Declaration, the Association shall have the right, but not the obligation, to enter upon any Unit for: emergency, security, and safety reasons; to perform maintenance pursuant to the Governing Documents; to exercise the right of self-help pursuant to the Governing Documents; and to inspect for the purpose of ensuring compliance with this Declaration, the Bylaws, and Rules and Regulations, which right may be exercised by any member of the Board of Directors of the Association and its officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. Any damage caused by entry shall be repaired by the Association. This right of entry allows the Association to cure any condition which may increase the possibility of a fire or other hazard as well as to enforce the Governing Documents in the event an Owners fails or refuses to do so, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

Section 10.7 **Access and Utility Easements.** Declarant dedicated to the Association and all of the Owners a perpetual non-exclusive easement on all roads and streets as shown on the Plat, regardless of how they are named.

Section 10.8 **Plat Notes.** Easements and Restrictions. All easements shown on the Plat and in the Plat Notes, are dedicated to the benefit of the Association and all of the Owners subject to the restrictions and conditions therefore as provided on the Plat and in this Declaration and subject to the rights of any holders of any such easements recorded prior to the Plat. The Board of Directors may establish Rules and Regulations governing the use and maintenance thereof.

ARTICLE 11. INSURANCE/CONDEMNATION

Section 11.1 **Association Insurance Coverage.** The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth in this Article 11, and shall comply with C.R.S. § 38-33.3-313 and all other provisions of the Act regarding insurance, as follows:

11.1.1 Application of insurance proceeds and procedures of adjustment must be made pursuant to the Act.

11.1.2 The Rules and Regulations may include nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess all deductibles paid by the Association to the negligent Owners causing such loss or benefiting from such repair or restoration.

11.1.3 Any portion of the Common Interest Community for which insurance is required under the Act, which is damaged or destroyed, must be repaired or replaced promptly pursuant to, and as required, by, the Act.

11.1.4 The Association and the manager or managing agent, if any, must obtain policies of fidelity insurance in amounts and under the circumstances prescribed by the Act.

11.1.5 All insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

11.1.6 All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be cancelled or modified without at least thirty (30) days prior written notice to all of the Owners and the Association.

11.1.7 All liability insurance shall be carried in blanket form naming the Association, the Board of Directors, the manager or managing agent, if any, the officers of the Association, and Owners as insurees, and shall be in limits with what the Board determines to be commercially reasonable.

11.1.8 All costs and expenses borne by the Association in compliance with or as may be permitted by the Act, including, but not limited to, insurance premiums, and all costs and expenses borne by the Association in connection with insured and uninsured losses to person or property within the Common Interest Community, repairs and replacement of insured and uninsured property, and claims settlement or adjustment shall be considered Common Expenses.

Section 11.2 **Condemnation.** Condemnation of all or any portion of the Real Estate shall be governed by applicable provisions of the Act.

Section 11.3 **Insurance on Units.** Each Owner shall obtain adequate hazard and liability insurance covering loss, damage or destruction by fire or other casualty to the

improvements, installed or made to their Unit, the other property of that Owner, and any injuries occurring to the persons while on a Unit. The Association shall have no liability for failure of an Owner to maintain required insurance.

Section 11.4 **Damage to or Destruction of Structures on Units.** In the event of damage to or destruction of structures on a Unit, the Owner shall proceed to repair or to reconstruct the damaged structure in a manner consistent with the construction at the time of damage or destruction or such other plans and specifications as are approved in accordance with this Declaration within 120 days of the damage or destruction, unless a determination not to rebuild is made by the Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall promptly clear the Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Unit in a neat and attractive condition consistent with this Declaration.

ARTICLE 12. AMENDMENT AND TERMINATION

Section 12.1 **Technical, Clerical, Typographical or Clarification Amendment.** If the Board of Directors determines that any amendments to this Declaration or to the plat shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement, then, subject to the following sentence of this Section 12.1, the Board of Directors shall have the right and power to make and execute any such amendment without obtaining the approval of any Owners

Section 12.2 **Necessary to Exercise Authority of Association Documents.** The Board of Directors shall have the authority to execute amendments to this Declaration or to the Plat, which are reasonably necessary in order to perform duties authorized by this Declaration.

Section 12.3 **Attorney in Fact.** In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Executive Board to make or consent to an amendment under this Article 12 on behalf of each Owner and holder of a security interest. Each deed, security interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Board of Directors to make, execute and record an amendment under this section.

Section 12.4 **Amendment of Declaration by Owners.** Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of others, any provision, covenant, condition, restriction may be changed or repealed, and any such provision added to this Declaration at any time and from time to time upon approval of the Board of Directors and at least 51% of the votes in the Association.

Amendments to the Declaration required by this article to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by any office of the Association designed for that purpose or, in the absence of designation, by the president of the Association. The Association shall record an amendment with a certificate from the Association executed by any officer designated for that purpose or, in the absence of the designation, by the president, that the requisite number of Owners, have consented to the amendment. No action to challenge the validity of an amendment adopted by the Association pursuant to this section can be brought more than one year after the amendment is recorded.

Section 12.5 **Termination.** The Common Interest Community may be terminated upon an affirmative vote of the Owners holding 67% of the Allocated Interests, and in accordance with Section 38-33.3-218 of the Act, and upon obtaining the prior written consent thereto of Douglas County, Colorado.

ARTICLE 13. ALLOCATED INTERESTS

Section 13.1 **Formula for Determining Allocated Interests.** The Common Expenses and the votes in the Association shall be allocated to each Unit. The interests allocated to each Unit have been calculated as follows:

13.1.1 the percentage of liability for Common Expenses; on the basis of a fraction, the numerator is one and the denominator is the total number of Units within the Common Interest Community; and

13.1.2 the number of votes in the Association; on the basis of one Unit, one vote; cast in accordance with the provisions of the Bylaws of the Association.

ARTICLE 14. GENERAL PROVISIONS

Section 14.1 **Attorney Fees.** If an Owner or Related User fails to comply with any provision of the Governing Documents or with the Act, the Association or any person or class of persons adversely affected by the failure to comply may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply. For each claim, including but not limited to counterclaims, cross-claims, and third-party claims, in any legal proceeding to enforce provisions of the Act or the Governing Documents, the court shall award to the party prevailing on such claim the prevailing party's reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim. Provided, however, in all instances the court shall award the Associations its fees and costs incurred in recovering assessments, pursuant to Section 7.9 above.

Section 14.2 **Severability.** Should any part or parts of the Declaration be declared invalid or unenforceable by any court of competent jurisdiction, such decisions shall not affect the validity of the remaining provisions.

Section 14.3 **Repeal of the Act.** In the event that the Act is repealed, the provisions of the Act in effect immediately before its repeal shall control this Declaration.

Section 14.4 **Paragraph Headings.** The paragraph headings in this instrument are for convenience only and shall not be construed to be a part of the provisions contained herein or to limit the contents of any paragraph.

Section 14.5 **Registration by Owner of Mailing Address and Notice.** Each Owner shall register his mailing address with the Association. All notices or demands affecting this planned community may be served upon an Owner by the Association or by other Owners by regular United States Mail, postage prepaid, addressed in the name of the Owner at such registered mailing address or by personal service. All notices or demands intended to be served upon the Association shall be sent by certified United States Mail, postage prepaid, return receipt requested, to the address of the Association's designated management agent, and if no such agent, then its registered agent as filed with the Colorado Secretary of state or served by personal service on the Association's registered agent for service or president.

Section 14.6 **Gender.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the sex of any gender shall include all genders.

Section 14.7 **Applicable Law.** This Declaration is filed in the records of Douglas County, Colorado and it is agreed that the proper jurisdiction and venue of any action is in Douglas County, Colorado.

Section 14.8 Binding Agreement. It is understood and agreed that this Declaration shall be binding upon and inure to the benefit of the successors, executors, administrators and assigns of the parties hereto.

Section 14.9 Reference to Ownership Interests. Whenever in this Declaration or in the Articles of Incorporation or Bylaws of the Association reference is made to a specific percentage interest of Owners, such reference shall be deemed to mean such percentage of the total aggregate Allocated Interests of such Owners, unless the context otherwise requires, and shall not be deemed to mean a percentage of owners by number of individual persons, partnerships, corporations or other entities.

IN WITNESS WHEREOF, the undersigned officers of the Cherokee Ridge Estates Homeowners Association, Inc. hereby certify that this Declaration was adopted by the Board of Directors and at least 51% of the members of the Association.

This 19th day of April, 2016.

CHEROKEE RIDGE ESTATES
HOMEOWNERS ASSOCIATION, INC.

Russell Wilson
Resident

STATE OF COLORADO)
) ss.
COUNTY OF Douglas)

The foregoing Declaration was acknowledged before me by Russell Wilson
Resident of the Cherokee Ridge Estates Homeowners Association, Inc. on this
19 day of April, 2016.

[Signature]
Notary Public

JASON WARRICK
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 2016422604
MY COMMISSION EXPIRES JUNE 30, 21

My commission expires: June 30, 2019

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

LOTS 1 through 26, 27A, 29A, 30 through 44

CHEROKEE RIDGE ESTATES FILING NO. 1
COUNTY OF DOUGLAS
STATE OF COLORADO

together with all recorded easements and encumbrances.